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4. An introduction to the finding aids of the FR/CFR system.

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

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

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

RESERVATIONS: (202) 741-6008



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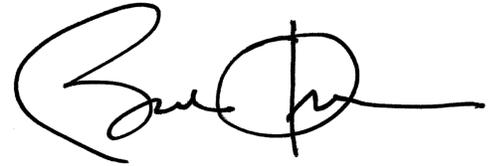
Memorandum of April 30, 2009

The President

Delegation of Certain Functions Under Sections 603–604 and 699 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by sections 603–604 and 699 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228).

You are authorized and directed to transmit this determination and certification to the appropriate committees of the Congress and to publish it in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 30, 2009

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket ID OCC-2009-0001]

RIN 1557-AD14

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12 CFR Part 222

[Regulation V; Docket No. R-1203, R-1255]

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12 CFR Part 334

RIN 3064-AC83; 3064-AD00

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Office of Thrift Supervision

12 CFR Part 571

[Docket ID OTS-2008-0024]

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12 CFR Part 717

RIN 3133-AC90 and RIN 3133-AD00

FEDERAL TRADE COMMISSION

16 CFR Parts 641, 681, and 698

RIN 3084-AA94

Fair Credit Reporting Affiliate Marketing Regulations; Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve

System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (Commission).

ACTION: Final rules; technical corrections.

SUMMARY: The OCC, Board, FDIC, OTS and NCUA published in the **Federal Register** final rules to implement the affiliate marketing provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) on November 7, 2007. The Commission published its final affiliate marketing rule on October 30, 2007. The OCC, Board, FDIC, OTS, NCUA and the Commission (Agencies) published in the **Federal Register** final rules and guidelines to implement the identity theft red flags and address discrepancy provisions of the FACT Act on November 9, 2007. The technical corrections included in this **Federal Register** document revise one of the affiliate marketing model forms and the instructions to the model forms to correct inadvertent omissions and conform the model forms and the instructions to the affiliate marketing rules, and correct minor errors in the identity theft red flags and address discrepancy rules and guidelines. The substantive requirements of the affiliate marketing and the identity theft red flags and address discrepancy rules are unchanged.

DATES: These final rules are effective May 14, 2009, except for the amendments in instructions 4, 10, 15, 20, 26, and 34 relating to appendices C to 12 CFR parts 41, 222, 334, 571, 717 and 16 CFR part 698, respectively, which are effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT:

OCC: Jon Mitchell, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Amy E. Burke, Senior Attorney, or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or (202) 452-2412; or Kara Handzlik, Attorney, Legal Division, (202) 452-3852, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the

Deaf (TDD) only, contact (202) 263-4869.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424; Jeffrey M. Kopchik, Senior Policy Analyst, (202) 898-3872, or Samuel Frumkin, Senior Policy Analyst, (202) 898-6602, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906-6459; April Breslaw, Director, Consumer Regulations, (202) 906-6989; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Linda Dent, Attorney, or Regina Metz, Attorney, Office of General Counsel, 703-518-6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

Commission: Anthony Rodriguez (Affiliate Marketing Rule) or Cora Han (Identity Theft Red Flags Rules), Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Technical Corrections to Affiliate Marketing Final Rules

This final rule includes technical corrections to the affiliate marketing rules (72 FR 61424 and 72 FR 62910) that conform the model notices and instructions to the model notices to the requirements of the affiliate marketing rules. The first technical correction revises current Model Form C-5, one of several optional safe harbor forms provided in the Agencies' regulations, to include language about the duration of a consumer's opt-out. Pursuant to § __.23(a)(1)(v) of the affiliate marketing rules, an affiliate marketing opt-out notice must disclose accurately "[t]hat the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires." ¹

¹ The OCC, Board, FDIC, OTS and NCUA placed the final regulations implementing section 214 of the FACT Act in the part of their regulations that

Model Form C-5 is the model form that can be used by a person to provide a voluntary opt-out from all marketing by that person and its affiliates. The version of Model Form C-5 promulgated in the fall of 2007 does not include any information about the duration of the opt-out. By contrast, Model Forms C-1 and C-2 include model language that explains the duration of the consumer's opt-out choice.

In order to ensure that the content of the model form is consistent with the requirements of the regulation, the Agencies are inserting bracketed language into Model Form C-5 that a person may use to disclose the duration of the opt-out period. The new language is based on the assumption that persons providing to consumers a broader right to opt out will not limit the duration of the opt-out period and will allow any voluntary "no-marketing" opt-out to remain in effect until the consumer changes his or her choice. If that is not the case, then alternate language accurately describing the duration of the opt-out period must be substituted for the new bracketed language in the revised Model Form C-5.

The version of Model Form C-5 promulgated in the fall of 2007 is being renumbered as Model Form C-6. To give industry adequate time to revise their model forms, the safe harbor for Model Form C-6 will remain in effect until January 1, 2010.

The second technical correction involves joint relationships. Section __.23(a)(2) of the affiliate marketing rules permits a single opt-out notice to be provided to joint consumers and specifies that the opt-out notice must disclose how an opt-out direction by a joint consumer will be treated. The model forms and instructions to the model forms currently are silent on joint relationships.

In order to ensure that the instructions are consistent with the requirements of the regulation, the Agencies are inserting an additional provision into the instructions for acceptable changes to the model forms clarifying that a person may add to the model forms a disclosure regarding the treatment of opt-outs by joint consumers to comply with the requirements of § __.23(a)(2). Where the notice pertains to a joint account, the person must include such language under

implement the FCRA—12 CFR parts 41, 222, 334, 571, and 717, respectively. The Commission placed the final regulations implementing section 214 of the FACT Act in 16 CFR parts 680 and 698. For ease of reference, the discussion in this preamble about technical corrections to the affiliate marketing final rules uses the shared numerical suffix of each of these agencies' regulations.

§ __.23(a)(2). Where the notice pertains to an account that is not a joint account, the person may, but is not required to, include language on joint accounts. A statement about joint accounts in an opt-out notice must be clear, conspicuous, and concise, and must accurately reflect the institution's policy regarding the treatment of opt-outs by joint consumers. For example, where the notice pertains to a joint account and the opt-out will apply to everyone on the account, the statement may provide that, for joint accounts, the opt-out will apply to everyone on the account.

Technical Corrections to Identity Theft Red Flags and Address Discrepancies Final Rules

The technical corrections to the identity theft red flags and address discrepancy rules included in this final rule clarify that address discrepancy notices are provided only by the nationwide CRAs described in section 603(p) of the FCRA (15 U.S.C. 1681a(p)). These corrections to § __.82 conform the address discrepancy rules to the statute.²

This final rule also corrects four minor typographical errors in the final rules and supplement to the guidelines implementing section 114 of the FACT Act (72 FR 63718).

This final rule also corrects a minor error in the scope section of the Board's final rules regarding identity theft red flags. The Board's correction to § 222.90(a) clarifies that operating subsidiaries of member banks of the Federal Reserve System (other than national banks) that are functionally regulated within the meaning of section

² The OCC, Board, FDIC, OTS and NCUA placed the final regulations implementing sections 114 and 315 in the part of their regulations that implement the FCRA—12 CFR parts 41, 222, 334, 571, and 717, respectively. In addition, the FDIC cross-references the regulations and guidelines in 12 CFR part 364. For ease of reference, the discussion in this preamble about the technical corrections to the address discrepancy rule and the identity theft rules uses the shared numerical suffix of each of these agency's regulations. The Commission has placed the final regulations and guidelines in the part of its regulations implementing the FCRA as follows: 16 CFR 641.1 for the address discrepancy rule, 16 CFR 681.1 for the red flags rule, and 16 CFR 681.2 for the card issuer rule. In addition, the Commission uses different numerical suffixes for these rules that equate to the numerical suffixes discussed in this preamble and the preamble to the final rule as follows: preamble suffix .82 = 16 CFR 641.1, preamble suffix .90 = 16 CFR 681.1, and preamble suffix .91 = 16 CFR 681.2. Because these technical amendments are placing the address discrepancy rule into its own part of the CFR, part 641, and are reordering the Commission's red flags rule and card issuer rule as 16 CFR 681.1 and 681.2, respectively, these technical amendments pertain to the Commission's address discrepancy, red flags, and card issuer rules.

5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)) are not covered by the Board's rule.

This final rule places section 681.1 of the Commission's final rule into its own separate part of the CFR, part 641, in order to clarify that it pertains to the duties of users of consumer reports regarding address discrepancies. Current sections 681.2 and 681.3, which pertain to identity theft, are reordered as sections 681.1 and 681.2 respectively, and references to these sections in the appendices are corrected as necessary.

The final rule further revises a caption of the NCUA's final rule to clarify which section pertains to the duties of card issuers regarding changes of address.

Basis for the Corrections

The Agencies are issuing these technical corrections as final rules. Under the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, publication of a notice of proposed rulemaking is not required for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rules issued) that notice and public procedures are impracticable, unnecessary, or contrary to the public interest. In addition, a rule may be made effective less than thirty days from publication when an agency finds good cause for such action. 5 U.S.C. 553(b)(A)-(B) and (d)(3). The Agencies find that a notice of proposed rulemaking is not required. First, many of the revisions are interpretative in that they indicate how substantive requirements of the rules apply. In addition, notice is unnecessary because the technical corrections do not change or modify the substantive requirements of the provisions amended. Further, the Agencies find good cause for an immediate effective date because it is unnecessary and contrary to the public interest to delay the effectiveness of those revisions.

With respect to the affiliate marketing rule, the corrections do not establish new regulatory requirements. They merely clarify, through revisions to the model forms and instructions to the model forms, how persons can meet the requirements of the final rules. The Agencies unintentionally omitted the clarifications to the model form and instructions to the model forms and find that it would be potentially misleading, and therefore contrary to the public interest, to delay issuance of the revised model form and instructions to the model forms that conform to the rule.

The Agencies recognize that industry may be relying on the safe harbor

provided by the version of Model Form C-5 promulgated in the fall of 2007. See 72 FR 62910. In order to allow persons subject to the rules adequate time to revise applicable opt-out forms to conform to the revised Model Form C-5, the safe harbor for Model Form C-5 promulgated in the fall of 2007, which is being renumbered as Model Form C-6, will remain in effect until January 1, 2010. Use of the revised Model Form C-5 published today complies with the requirements of the rule effective immediately. Thus, until January 1, 2010, the safe harbor is available for a person that uses either form. On and after January 1, 2010, the safe harbor is available only for use of revised Model Form C-5.

Because the corrections to the final rules and supplement to the guidelines implementing section 114 of the FACT Act are typographical in nature, or simply clarify the rule by conforming it to the statute, the Agencies find that it is unnecessary to publish a notice of proposed rulemaking or to delay the effective date of the corrections. Furthermore, the Board finds that it is unnecessary to publish a notice of proposed rulemaking to include a clarification that was unintentionally omitted from the scope section of the Board's final rules regarding identity theft red flags. The addition of language specifying the types of operating subsidiaries that are covered by the Board's rules provides more precise clarification in the regulation of the scope of the Board's statutory enforcement authority of the rule. 15 U.S.C. 1681s. In addition, the FTC finds that it is unnecessary to publish a notice of proposed rulemaking regarding its placing of section 681.1 of the Commission's final rule into a separate part of the CFR, part 641, for purposes of clarifying that this section pertains to the duties of users of consumer reports regarding address discrepancies. The clarification does not change the text or scope of the regulation.

Further, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that federal banking agency regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication, unless the agency determines, for good cause published with the regulation, that the regulation should become effective before such time. 12 U.S.C. 4802. For the same reasons as already discussed, the OCC, Board, FDIC, and OTS find good cause for an immediate effective date on grounds that it is unnecessary and

contrary to the public interest to delay the effectiveness of those revisions.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the final rules. The rules contain no collections of information pursuant to the Paperwork Reduction Act.

Executive Order 12866

The OCC and OTS have determined that their respective portions of the final rules are not significant regulatory actions under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a notice of proposed rulemaking for these final rules. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (UMRA), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. The inflation adjusted threshold is \$133 million or more. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have each determined that their respective portions of these final rules will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$133 million or more in any one year. Accordingly, these final rules are not subject to section 202 of the UMRA.

Executive Order 13132

The OCC and OTS have each determined that their respective portions of these final rules do not have any Federalism implications as required by Executive Order 13132.

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on

state and local interests. NCUA voluntarily complies with the Executive Order and has determined that the final rules do not have federalism implications for purposes of the Executive Order.

NCUA: Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA does not apply to a rulemaking where a final regulatory flexibility analysis under section 604 of title 5, United States Code is not required. 5 U.S.C. 601 note. As noted above, the Agencies have determined the requirements for a final regulatory flexibility analysis do not apply. Accordingly, no SBREFA reporting requirement is required.

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

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

List of Subjects

12 CFR Part 41

Banks, Banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, Banking, Consumer protection, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 641

Consumer reports, Users of consumer reports, Consumer reporting agencies, Information furnishers.

16 CFR Part 681

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Creditors, Information furnishers, Identity theft, Trade practices.

16 CFR Part 698

Consumer reports, Consumer reporting agencies, Credit, Fair Credit Reporting Act, Trade practices.

Title 12

Department of the Treasury

Office of the Comptroller of the Currency

For the reasons set forth in the preamble, 12 CFR part 41 is amended as follows:

PART 41—FAIR CREDIT REPORTING

1. The authority citation for part 41 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s-3, 1681t, 1681w, 6801, and 6805; Sec. 214, Public Law 108-159, 117 Stat. 1952.

§ 41.82 [Amended]

- 2. Section 41.82 is amended by:
a. Adding in paragraph (a) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)";
b. Adding in paragraph (b) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)";
c. Removing in paragraph (c)(2)(i)(A) the phrase "Customer Information Program" and adding in its place the phrase "Customer Identification Program";
d. Adding in paragraph (d)(1) introductory text after the second occurrence of the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)"; and
e. Adding in paragraph (d)(3) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)".
3. Appendix C to Part 41 is amended by:
a. Redesignating Model Form C-5 as Model Form C-6; and
b. Adding new paragraph b.10 and new Model Form C-5 to read as follows:

Appendix C to Part 41—Model Forms for Opt-Out Notices

* * * * *

b. * * *

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 41.23(a)(2) of this part.

* * * * *

C-5—Model Form for Voluntary "No Marketing" Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
You may choose to stop all marketing from us and our affiliates.
[Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1-877-###-####
On the Web: www.—.com
By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]
Do not market to me.

* * * * *

Appendix C to Part 41 [Amended]

4. Effective January 1, 2010, remove newly redesignated Model Form C-6.

Appendix J to Part 41, Supplement A [Amended]

- 5. Appendix J to Part 41, Supplement A, is amended by:
a. Removing in paragraph 15 the phrase "account number" and adding in its place the word "address";
b. Removing in paragraph 15 the phrase "other customers" and adding in its place the phrase "by other customers"; and
c. Removing in paragraph 20 introductory text the phrase "patterns of fraud patterns" and adding in its place the phrase "patterns of fraud".

Board of Governors of the Federal Reserve System

For the reasons set forth in the preamble, 12 CFR part 222 is amended as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

6. The authority citation for part 222 continues to read as follows:

Authority: 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s-2, 1681s-3, 1681t, and 1681w; Secs. 3 and 214, Pub. L. 108-159, 117 Stat. 1952.

§ 222.82 [Amended]

- 7. Section 222.82 is amended by:
a. Adding in paragraph (a) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)";
b. Adding in paragraph (b) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)";
c. Removing in paragraph (c)(2)(i)(A) the phrase "Customer Information Program" and adding in its place the

phrase "Customer Identification Program";

- d. Adding in paragraph (d)(1) introductory text after the second occurrence of the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)"; and
e. Adding in paragraph (d)(3) after the phrase "consumer reporting agency" the phrase "described in 15 U.S.C. 1681a(p)".

§ 222.90 [Amended]

8. Section 222.90(a) is amended by adding after the phrase "and their respective operating subsidiaries" the phrase "that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5))".

9. Appendix C to Part 222 is amended by:

- a. Redesignating Model Form C-5 as Model Form C-6; and
b. Adding new paragraph b.10 and new Model Form C-5 to read as follows:

Appendix C to Part 222—Model Forms for Opt-Out Notices

b. * * *

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 222.23(a)(2) of this part.

* * * * *

C-5—Model Form for Voluntary "No Marketing" Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
You may choose to stop all marketing from us and our affiliates.
[Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1-877-###-####
On the Web: www.—.com
By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]
Do not market to me.

* * * * *

Appendix C to Part 222 [Amended]

10. Effective January 1, 2010, remove newly redesignated Model Form C-6.

Appendix J to Part 222, Supplement A [Amended]

- 11. Appendix J to Part 222, Supplement A, is amended by:
a. Removing in paragraph 15 the phrase "account number" and adding in its place the word "address";
b. Removing in paragraph 15 the phrase "other customers" and adding in its place the phrase "by other customers"; and

■ c. Removing in paragraph 20 the phrase “patterns of fraud patterns” and adding in its place the phrase “patterns of fraud”

Federal Deposit Insurance Corporation

■ For the reasons set forth in the preamble, 12 CFR part 334 is amended as follows:

PART 334—FAIR CREDIT REPORTING

■ 12. The authority citation for part 334 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth) and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–3, 1681t, 1681w, 6801 and 6805, Public Law 108–159, 117 Stat. 1952.

§ 334.82 [Amended]

■ 13. Section 334.82 is amended by:

■ a. Adding in paragraph (a) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C.

1681a(p)”;

■ b. Adding in paragraph (b) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;

■ c. Removing in paragraph (c)(2)(i)(A) the phrase “Customer Information Program” and adding in its place the phrase “Customer Identification Program”;

■ d. Adding in paragraph (d)(1) introductory text after the second occurrence of the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;

■ e. Adding in paragraph (d)(3) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”.

■ 14. Appendix C to Part 334 is amended by:

■ a. Redesignating Model Form C–5 as Model Form C–6; and

■ b. Adding new paragraph b.10 and new Model Form C–5 to read as follows:

Appendix C to Part 334—Model Forms for Opt-Out Notices

* * * * *

b.* * *

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 334.23(a)(2) of this part.

* * * * *

C–5—Model Form for Voluntary “No Marketing” Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
- You may choose to stop all marketing from us and our affiliates.
- [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1–877–###–####
- On the Web: www.–.com
- By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]
Do not market to me.

* * * * *

Appendix C to Part 334 [Amended]

■ 15. Effective January 1, 2010, remove newly redesignated Model Form C–6.

Appendix J to Part 334, Supplement A [Amended]

■ 16. Appendix J to Part 334, Supplement A, is amended by:

■ a. Removing in paragraph 15 the phrase “account number” and adding in its place the word “address”;

■ b. Removing in paragraph 15 the phrase “other customers” and adding in its place the phrase “by other customers”;

■ c. Removing in paragraph 20 the phrase “patterns of fraud patterns” and adding in its place the phrase “patterns of fraud”.

Department of the Treasury

Office of Thrift Supervision

■ For the reasons set forth in the preamble, 12 CFR part 571 is amended as follows:

PART 571—FAIR CREDIT REPORTING

■ 17. The authority citation for part 571 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, and 1881–1884; 15 U.S.C. 1681b, 1681c, 1681m, 1681s, 1681s–1, 1681t and 1681w; 15 U.S.C. 6801 and 6805; Sec. 214 Pub. L. 108–159, 117 Stat. 1952.

§ 571.82 [Amended]

■ 18. Section 571.82 is amended by:

■ a. Adding in paragraph (a) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;

■ b. Adding in paragraph (b) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;

■ c. Removing in paragraph (c)(2)(i)(A) the phrase “Customer Information Program” and adding in its place the phrase “Customer Identification Program”;

■ d. Adding in paragraph (d)(1) introductory text after the second occurrence of the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;

■ e. Adding in paragraph (d)(3) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”.

■ 19. Appendix C to Part 571 is amended by:

■ a. Redesignating Model Form C–5 as Model Form C–6; and

■ b. Adding new paragraph b.10 and new Model Form C–5 to read as follows:

Appendix C to Part 571—Model Forms for Opt-Out Notices

* * * * *

b.* * *

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 571.23(a)(2) of this part.

* * * * *

C–5—Model Form for Voluntary “No Marketing” Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
- You may choose to stop all marketing from us and our affiliates.
- [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1–877–###–####
- On the Web: www.–.com
- By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]
Do not market to me.

* * * * *

Appendix C to Part 571 [Amended]

■ 20. Effective January 1, 2010, remove newly redesignated Model Form C–6.

Appendix J to Part 571, Supplement A [Amended]

■ 21. Appendix J to Part 571, Supplement A, is amended by:

■ a. Removing in paragraph 15 the phrase “account number” and adding in its place the word “address”;

■ b. Removing in paragraph 15 the phrase “other customers” and adding in its place the phrase “by other customers”;

■ c. Removing in paragraph 20 the phrase “patterns of fraud patterns” and adding in its place the phrase “patterns of fraud”.

National Credit Union Administration

■ For the reasons set forth in the preamble, 12 CFR part 717 is amended as follows:

PART 717—FAIR CREDIT REPORTING

■ 22. The authority citation for part 717 continues to read as follows:

Authority: 12 U.S.C. 1751 *et seq.*; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–1, 1681t, 1681w, 6801 and 6805, Public Law 108–159, 117 Stat. 1952.

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

§ 717.82 [Amended]

- 23. Section 717.82 is amended by:
 - a. Adding in paragraph (a) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;
 - b. Adding in paragraph (b) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;
 - c. Removing in paragraph (c)(2)(i)(A) the phrase “Customer Information Program” and adding in its place the phrase “Customer Identification Program”;
 - d. Adding in paragraph (d)(1) introductory text after the second occurrence of the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”;
 - e. Adding in paragraph (d)(3) after the phrase “consumer reporting agency” the phrase “described in 15 U.S.C. 1681a(p)”.
- 24. The heading for § 717.91 is revised to read as follows:

§ 717.91 Duties of card issuers regarding changes of address.

* * * * *

- 25. Appendix C to Part 717 is amended by:
 - a. Redesignating Model Form C–5 as Model Form C–6; and
 - b. Adding new paragraph b.10 and new Model Form C–5 to read as follows:

Appendix C to Part 717—Model Forms for Opt-Out Notices

* * * * *b. * * *

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 717.23(a)(2) of this part.

* * * * *

C–5—Model Form for Voluntary “No Marketing” Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
- You may choose to stop all marketing from us and our affiliates.
- [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1–877–###–####
- On the Web: www.—.com
- By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]

Do not market to me.

* * * * *

Appendix C to Part 717 [Amended]

- 26. Effective January 1, 2010, remove newly redesignated Model Form C–6.

Appendix J to Part 717, Supplement A [Amended]

- 27. Appendix J to Part 717, Supplement A, is amended by:
 - a. Removing in paragraph 15 the phrase “account number” and adding in its place the word “address”;
 - b. Removing in paragraph 15 the phrase “other members” and adding in its place the phrase “by other members”; and
 - c. Removing in paragraph 20 the phrase “patterns of fraud patterns” and adding in its place the phrase “patterns of fraud”.

Title 16

Federal Trade Commission

- For the reasons set forth in the preamble, 16 CFR chapter I is amended as follows:

- 28. Add a new part 641 to read as follows:

PART 641—DUTIES OF USERS OF CONSUMER REPORTS REGARDING ADDRESS DISCREPANCIES

Sec.

641.1 Duties of users of consumer reports regarding address discrepancies.

Authority: Public Law 108–159, sec. 315; 15 U.S.C. 1681c(h).

§ 641.1 Duties of users of consumer reports regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1) (users).

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

(c) *Reasonable belief—(1) Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

(2) *Examples of reasonable policies and procedures.* (i) Comparing the

information in the consumer report provided by the consumer reporting agency with information the user:

- (A) Obtains and uses to verify the consumer’s identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 103.121);
- (B) Maintains in its own records, such as applications, change of address notifications, other customer account records, or retained CIP documentation; or
- (C) Obtains from third-party sources; or
- (ii) Verifying the information in the consumer report provided by the consumer reporting agency with the consumer.

(d) *Consumer’s address—(1) Requirement to furnish consumer’s address to a consumer reporting agency.*

A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) from whom it received the notice of address discrepancy when the user:

- (i) Can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report;
- (ii) Establishes a continuing relationship with the consumer; and
- (iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

(2) *Examples of confirmation methods.* The user may reasonably confirm an address is accurate by:

- (i) Verifying the address with the consumer about whom it has requested the report;
- (ii) Reviewing its own records to verify the address of the consumer;
- (iii) Verifying the address through third-party sources; or
- (iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer’s address that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

PART 681—IDENTITY THEFT RULES

- 29. The authority citation for part 681 is revised to read as follows:

Authority: Public Law 108–159, sec. 114; 15 U.S.C. 1681m(e).

■ 30. Revise §§ 681.1 and 681.2 to read as follows:

§ 681.1 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope.* This section applies to financial institutions and creditors that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1).

(b) *Definitions.* For purposes of this section, and Appendix A, the following definitions apply:

(1) *Account* means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes:

(i) An extension of credit, such as the purchase of property or services involving a deferred payment; and

(ii) A deposit account.

(2) The term *board of directors* includes:

(i) In the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee at the level of senior management.

(3) *Covered account* means:

(i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and

(ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

(4) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5), and includes lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies.

(6) *Customer* means a person that has a covered account with a financial institution or creditor.

(7) *Financial institution* has the same meaning as in 15 U.S.C. 1681a(t).

(8) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(9) *Red Flag* means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

(10) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Periodic Identification of Covered Accounts.* Each financial institution or creditor must periodically determine whether it offers or maintains covered accounts. As a part of this determination, a financial institution or creditor must conduct a risk assessment to determine whether it offers or maintains covered accounts described in paragraph (b)(3)(ii) of this section, taking into consideration:

(1) The methods it provides to open its accounts;

(2) The methods it provides to access its accounts; and

(3) Its previous experiences with identity theft.

(d) *Establishment of an Identity Theft Prevention Program—(1) Program requirement.* Each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities.

(2) *Elements of the Program.* The Program must include reasonable policies and procedures to:

(i) Identify relevant Red Flags for the covered accounts that the financial institution or creditor offers or maintains, and incorporate those Red Flags into its Program;

(ii) Detect Red Flags that have been incorporated into the Program of the financial institution or creditor;

(iii) Respond appropriately to any Red Flags that are detected pursuant to paragraph (d)(2)(ii) of this section to prevent and mitigate identity theft; and

(iv) Ensure the Program (including the Red Flags determined to be relevant) is updated periodically, to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft.

(e) *Administration of the Program.* Each financial institution or creditor that is required to implement a Program must provide for the continued administration of the Program and must:

(1) Obtain approval of the initial written Program from either its board of

directors or an appropriate committee of the board of directors;

(2) Involve the board of directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the Program;

(3) Train staff, as necessary, to effectively implement the Program; and

(4) Exercise appropriate and effective oversight of service provider arrangements.

(f) *Guidelines.* Each financial institution or creditor that is required to implement a Program must consider the guidelines in appendix A of this part and include in its Program those guidelines that are appropriate.

§ 681.2 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 681.1(a) that issues a debit or credit card (card issuer).

(b) *Definitions.* For purposes of this section:

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *Address validation requirements.*

A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, until, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1)(i) Notifies the cardholder of the request:

(A) At the cardholder's former address; or

(B) By any other means of communication that the card issuer and the cardholder have previously agreed to use; and

(ii) Provides to the cardholder a reasonable means of promptly reporting incorrect address changes; or

(2) Otherwise assesses the validity of the change of address in accordance with the policies and procedures the

card issuer has established pursuant to § 681.1 of this part.

(d) *Alternative timing of address validation.* A card issuer may satisfy the requirements of paragraph (c) of this section if it validates an address pursuant to the methods in paragraph (c)(1) or (c)(2) of this section when it receives an address change notification, before it receives a request for an additional or replacement card.

(e) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

§ 681.3 [Removed]

- 31. Remove § 681.3.

Appendix A to Part 681 [Amended]

■ 32. Appendix A to Part 681 is amended by:

- a. Revising the introduction;
■ b. Removing in sections VI(a)(2) and VI(b)(1) the term “§ 681.2,” and adding in its place the term “§ 681.1”;
■ c. Removing, in Supplement A to Appendix A, in paragraph 3, the term “§ 681.1(b)” and adding in its place the term “§ 641.1(b)”;

The revision reads as follows:

Appendix A to Part 681—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Section 681.1 of this part requires each financial institution and creditor that offers or maintains one or more covered accounts, as defined in § 681.1(b)(3) of this part, to develop and provide for the continued administration of a written Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of § 681.1 of this part.

* * * * *

PART 698—MODEL FORMS AND DISCLOSURES

■ 33. The authority citation for part 698 continues to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, 1681s, and 1681s-3; sections 211(d) and 214(b), Public Law 108-159, 117 Stat.1952.

■ 34. Appendix C to Part 698 is amended by:

- a. Redesignating Model Form C-5 as Model Form C-6; and
■ b. Adding new paragraph B.10 and new Model Form C-5 to read as follows:

Appendix C to Part 698—Model Forms for Opt-Out Notices

* * * * *

B. * * *
10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 680.23(a)(2) of part 680.

* * * * *

C-5—Model Form for Voluntary “No Marketing” Notice

Your Choice To Stop Marketing

- [Name of Affiliate] is providing this notice.
• You may choose to stop all marketing from us and our affiliates.
• [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

- By telephone: 1-877-###-####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]
Do not market to me.
* * * * *

Appendix C to Part 698 [Amended]

■ 35. Effective January 1, 2010, newly redesignated Model Form C-6 is removed.

By order of the Board of Governors of the Federal Reserve System, April 27, 2009.

Jennifer J. Johnson, Secretary of the Board.

By the Office of the Comptroller of the Currency.

Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman, Executive Secretary.

By the Office of Thrift Supervision, John E. Bowman, Acting Director.

By order of the National Credit Union Administration Board.

Mary F. Rupp, Secretary of the Board.

By direction of the Commission.

Donald S. Clark, Secretary.

[FR Doc. E9-10009 Filed 5-13-09; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P, 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0448; Directorate Identifier 2009-NM-052-AD; Amendment 39-15906; AD 2009-10-10]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During testing, it was discovered that when the outflow valve (OFV) manual mode connector is not connected, the manual mode motor and altitude limitation are not properly tested. Consequently, a disconnect

of the OFV manual mode and/or a related wiring failure could potentially result in a dormant loss of several CPC [cabin pressure control] backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization and smoke clearance. * * *

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 29, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 29, 2009.

We must receive comments on this AD by June 15, 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.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is 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 Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7303; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2009-08, dated March 9, 2009 (referred to after this as "the MCAI"), to correct an unsafe

condition for the specified products. The MCAI states:

During testing, it was discovered that when the outflow valve (OFV) manual mode connector is not connected, the manual mode motor and altitude limitation are not properly tested. Consequently, a disconnect of the OFV manual mode and/or a related wiring failure could potentially result in a dormant loss of several CPC [cabin pressure control] backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization and smoke clearance. This deficiency is applicable to CPC units, Part Number (P/N) GG670-98002-3 and -5, and CPCP [cabin pressure control panel], Part Number GG670-98001-5, -7 and -9.

This [Canadian] directive mandates an interim repetitive check of the OFV manual mode motor and altitude limitation functions, followed by modification (software update) of the CPC units and the CPCP.

The corrective action for findings of improper OFV manual mode motor or altitude limitation functions is replacing the valve with a new or serviceable valve. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA-21-022, dated August 3, 2006. Bombardier has also issued Tasks 21-32-01-000-801 and 21-32-01-400-801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B-001, Part 2, Volume 1, Revision 28, dated January 20, 2009. 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the 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.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of possible latent failure of several CPC backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization, and smoke clearance, which could result in altitude limitation, emergency depressurization, and smoke clearance issues. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0448; Directorate Identifier 2009-NM-052-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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:

2009–10–10 Bombardier Inc. (Formerly Canadair): Amendment 39–15906. Docket No. FAA–2009–0448; Directorate Identifier 2009–NM–052–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, certificated in any category, serial numbers 10003 through 10260 inclusive; Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, serial numbers 15001 through 15095 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air Conditioning.

Reason

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

During testing, it was discovered that when the outflow valve (OFV) manual mode connector is not connected, the manual mode motor and altitude limitation are not properly tested. Consequently, a disconnect of the OFV manual mode and/or a related wiring failure could potentially result in a dormant loss of several CPC [cabin pressure control] backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization and smoke clearance. This deficiency is applicable to CPC units, Part Number (P/N) GG670–98002–3 and –5, and CPCP [cabin pressure control panel], Part Number GG670–98001–5, –7 and –9.

This [Canadian] directive mandates an interim repetitive check of the OFV manual mode motor and altitude limitation functions, followed by modification (software update) of the CPC units and the CPCP.

The corrective action for findings of improper OFV manual mode motor and altitude limitation functions is replacing the valve with a new or serviceable valve.

Actions and Compliance

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

(1) Within 450 flight hours after the effective date of this AD, inspect the OFV for proper operation of the manual mode motor and altitude limitation functions, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006 (“the service bulletin”). If the OFV manual mode motor or altitude limitation functions do not operate properly, before further flight, do the actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 450 flight hours. Accomplishing the actions specified in paragraph (f)(3) of this AD terminates the requirements of this paragraph.

(i) Make sure that the electrical connectors, MPE23P1 and MPE23P2, are connected to the OFV.

(ii) Repeat the inspection of the OFV for proper operation of the manual mode motor

and altitude limitation functions, in accordance with Part A of the service bulletin. If the OFV manual mode motor or altitude limitation functions do not operate properly, before further flight, replace the OFV with a new or serviceable valve in accordance with Tasks 21–32–01–000–801 and 21–32–01–400–801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B–001, Part 2, Volume 1, Revision 28, dated January 20, 2009, and do the inspection of the OFV specified in paragraph (f)(1) of this AD.

(2) Prior to accomplishing paragraph (f)(3) of this AD: Install modified CPC units, Part Number GG670–98002–7, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006.

(3) Installing modified CPCPs, Part Number GG670–98001–11, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006, terminates the requirements of paragraph (f)(1) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI and Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006, do not describe corrective actions for findings of improper OFV manual mode motor and altitude limitation functions. This AD requires the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, which includes replacing the valve if the OFV manual mode motor or altitude limitation functions do not operate properly.

(2) This AD does not require the software update of the CPC units specified in Part 2 of the MCAI, and the software update of the CPCP specified in Part 3 of the MCAI. The planned compliance times for those actions would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to address this issue.

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 Mechanical Systems 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. The AMOC approval letter must specifically reference this AD.

(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-2009-08, dated March 9, 2009;

Bombardier Alert Service Bulletin A670BA-21-022, dated August 3, 2006; and Tasks 21-32-01-000-801 and 21-32-01-400-801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B-001, Part 2, Volume 1, Revision 28, dated January 20, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Alert Service Bulletin A670BA-21-022, dated August 3, 2006; Task 21-32-01-000-801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B-001, Part 2, Volume 1, Revision 28, dated January 20, 2009; and Task 21-32-01-400-801, of the

Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B-001, Part 2, Volume 1, Revision 28, dated January 20, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The optional terminating actions, if done, must be done in accordance with Bombardier Alert Service Bulletin A670BA-21-022, dated August 3, 2006. Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B-001, Part 2, Volume 1, Revision 28, dated January 20, 2009, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on page(s)
Title Page	None shown	28	January 20, 2009.
List of Chapters	1-2	28	January 20, 2009.
Chapter 21 List of Effective Pages	1-39	None shown*	January 20, 2009.
Task 21-32-01-000-801	401-403	None shown*	July 20, 2008.
Task 21-32-01-400-801	408-411	None shown*	July 20, 2008.

(* The revision level is specified only on the title page and List of Chapters pages of this document.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; e-mail thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-11139 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 91, 120, 121, 135

[Docket No. FAA-2008-0937; Amendment Nos. 61-122, 63-37, 65-53, 91-307, 120-0, 121-343, 135-117]

RIN 2120-AJ37

Drug and Alcohol Testing Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the FAA's drug and alcohol regulations to place them in a new part. The FAA is not making any substantive changes to the drug and alcohol regulations in this rulemaking.

DATES: *Effective Date:* July 13, 2009.

FOR FURTHER INFORMATION CONTACT:

Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM-800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8442; facsimile (202) 267-5200; e-mail drugabatement@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of 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 FAA's authority.

These rules were originally promulgated under the authority described in Subtitle VII, Part A Chapter 451—Alcohol and Controlled Substances Testing. Under section 45102, the FAA is charged with prescribing regulations for air carriers and foreign air carriers to establish and to conduct preemployment, reasonable suspicion, random, and post-accident drug and alcohol testing. Some of these rules, for example those dealing with contract air traffic controllers, were promulgated under the FAA's general rulemaking authority in 49 U.S.C. 44701(a)(5).

This rule is intended to reorganize the requirements for drug and alcohol testing into a single part. It also clarifies the rules by, for example, replacing references to appendices I and J with references to part 120. It is expected that this rule will simplify locating specific provisions and changes to those provisions for individuals and entities required to comply with the FAA's drug and alcohol testing requirements. For this reason, the changes are within the scope of our authority and are a reasonable and necessary exercise of our statutory obligations.

Background

The regulations governing FAA-required drug and alcohol testing requirements currently are scattered throughout Chapter I of Title 14, Code of Federal Regulations. Requirements for affected certificated airmen are located in parts 61, 63, 65, and 67.

Requirements for affected air carriers and operators are located in parts 91, 121 and 135. Requirements for affected air traffic control facilities and air traffic controllers are included in subpart B of part 65. Requirements for repair stations certificated under part 145, and contractors, who elect to have drug and alcohol testing programs, are included in appendices I and J of part 121.

At this time, the FAA is working on a major revision of its drug and alcohol testing regulations. Given the complexity of that revision and the time it will take to complete the rulemaking process, the FAA has concluded that in the interim it makes sense to pull the existing regulations together in one place. The FAA expects that doing so will clarify the requirements for testing, and simplify locating specific provisions and changes to those provisions for individuals and entities that have drug and alcohol testing programs.

This rulemaking will gather the existing regulations into the new part, remove them from their existing

locations, and provide cross references in parts 91 and 135 to the new part.

Appendices I and J themselves set forth the requirements for drug and alcohol testing programs. Some provisions in the current regulations in appendices I and J are duplicative. For example, the definitions in the appendices are mostly verbatim duplications. In addition, some of the terms defined in the appendices I and J are used in parts 121 and 135. Because the drug and alcohol testing provisions of 121 and 135 are being moved to new part 120, it makes sense to move those definitions up to subpart A of new part 120. We are therefore including all the definitions in section 120.7 of subpart A.

The FAA has begun moving away from using the separate terms “antidrug program” and “alcohol misuse prevention program” in favor of “drug testing program” and “alcohol testing program” where appropriate. For example, in this rulemaking, we use the term “drug testing program” instead of “antidrug program” in § 120.101 and “alcohol testing program” instead of

“alcohol misuse prevention program” in § 120.21(a). However, the Operations Specifications A449 relating to drug and alcohol testing is still titled “Antidrug and Alcohol Misuse Prevention Program Operations Specifications”.

The language in the rules governing the requirements for part 119 certificate holders to conduct drug and alcohol testing is mostly identical for both 121 and 135 operations. There is some language that is unique to operations under part 135. To limit duplication and the potential for confusion related to having multiple regulations dealing with the same requirements, the FAA is combining the drug and alcohol testing requirements in current parts 121 and 135 rather than having separate part 120 subparts for 121 or 135. Provisions unique to operations conducted under part 135 are placed at the end of relevant sections.

Organization of New Part 120

The following table shows the derivation of the regulations contained in this final rule:

Final Rule part 120 section or paragraph	Based in whole or in part on 14 CFR parts 61, 63, 65, 121, and 135 sections or paragraphs
120.11 Refusal to submit to a drug or alcohol test by a part 61 certificate holder.	61.14 Refusal to submit to a drug or alcohol test.
120.13 Refusal to submit to a drug or alcohol test by a part 63 certificate holder.	63.12b Refusal to submit to a drug or alcohol test.
120.15 Refusal to submit to a drug or alcohol test by a part 65 certificate holder.	65.23 Refusal to submit to a drug or alcohol test.
120.17 Use of prohibited drugs	65.46 Use of prohibited drugs.
Subpart C 120.19 Misuse of alcohol	65.46a Misuse of alcohol.
Subpart C 120.21 Testing for alcohol	65.46b Testing for alcohol.
120.31 Prohibited drugs	121.429 and 135.353 Prohibited drugs.
120.33 Use of prohibited drugs	121.455 and 135.249 Use of prohibited drugs.
120.35 Testing for prohibited drugs	121.457 and 135.251 Testing for prohibited drugs.
Subpart D 120.37 Misuse of alcohol	121.458 and 135.253 Misuse of alcohol.
Subpart D 120.39 Testing for alcohol	121.459 and 135.255 Testing for alcohol.
Part 120 subpart E	Part 121 appendix I.
Part 120 subpart F	Part 121 appendix J.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Analysis, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign

commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

In conducting these analyses, FAA has determined this rule—(1) Has benefits which do justify its costs, is not

a significant regulatory action as defined in the Executive Order and is not significant as defined in DOT’s Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will have no effect on barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect

and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows: The FAA is not making any substantive changes to the drug and alcohol regulations in this rulemaking. This action amends the FAA's drug and alcohol regulations to place them in a new part. This rule imposes no costs and provides no accrual of benefits; and therefore, this rule will have no economic impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule imposes no costs and provides no accrual of benefits; and therefore, this rule will have no economic impact. This action amends the FAA's drug and alcohol regulations to place them in a new part. The FAA is not making any substantive changes to the drug and alcohol regulations in this rulemaking. Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this Final Rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We

have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this final rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

Information collection requirements associated with the final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers 2105-0529, 2120-0535, 2120-0685, 2120-0689.

Good Cause Justification for Adoption Without Prior Notice

We find good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) to implement this final rule immediately without prior notice and comment. This rule merely reorganizes existing regulations governing drug and alcohol testing into their own part and makes clarifying changes to the existing parts of the rules necessitated by the reorganization.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send

the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under § 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulation_policies/; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

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://DocketsInfo.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBRFA on the Internet at <http://www.faa.gov/>

regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 120

Alcoholism, Air carriers, Air traffic control, Airmen, Alcohol abuse, Alcohol testing, Aviation safety, Charter flights, Commercial air tour operators, Contract air traffic controllers, Drug abuse, Drug testing, Operators, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, the Federal Aviation Administration adds part 120 and amends parts 61, 63, 65, 91, 121, and 135 of Title 14 of the Code of Federal Regulations (14 CFR parts 61, 63, 65, 91, 121, 135), as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 61.14 [Removed and Reserved]

■ 2. Section 61.14 is removed and reserved.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 63.12b [Removed and Reserved]

■ 4. Section 63.12b is removed and reserved.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 65.23 [Removed and Reserved]

■ 6. Section 65.23 is removed and reserved.

§ 65.46 [Removed and Reserved]

■ 7. Section 65.46 is removed and reserved.

§ 65.46a [Removed and Reserved]

■ 8. Section 65.46a is removed and reserved.

§ 65.46b [Removed and Reserved]

■ 9. Section 65.46b is removed and reserved.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 10. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 11. Section 91.147(d) is revised to read as follows:

§ 91.147 Passenger-carrying flights for compensation or hire.

* * * * *

(d) The Operator must register and implement its drug and alcohol testing programs in accordance with part 120 of this chapter.

* * * * *

■ 12. Section 91.1047(c)(3) is revised to read as follows:

§ 91.1047 Drug and alcohol misuse education program.

* * * * *

(c) * * *

(3) The degree to which the program manager's company testing program is comparable to the federally mandated drug and alcohol testing program required under part 120 of this chapter regarding the information in paragraphs (c)(1) and (c)(2) of this section.

* * * * *

■ 13. Add Part 120 to read as follows:

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

Subpart A—General

- Sec.
120.1 Applicability.
120.3 Purpose.
120.5 Procedures.
120.7 Definitions.

Subpart B—Individuals Certificated Under Parts 61, 63, and 65

- 120.11 Refusal to submit to a drug or alcohol test by a Part 61 certificate holder.
120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.
120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.

Subpart C—Air Traffic Controllers

- 120.17 Use of prohibited drugs.
120.19 Misuse of alcohol.
120.21 Testing for alcohol.

Subpart D—Part 119 Certificate Holders Authorized To Conduct Operations Under Part 121 or Part 135 or Operators Under § 91.147 of This Chapter and Safety-Sensitive Employees

- 120.31 Prohibited drugs.
120.33 Use of prohibited drugs.
120.35 Testing for prohibited drugs.
120.37 Misuse of alcohol.
120.39 Testing for alcohol.

Subpart E—Drug Testing Program Requirements

- 120.101 Scope.**
120.103 General.
120.105 Employees who must be tested.
120.107 Substances for which testing must be conducted.
120.109 Types of drug testing required.
120.111 Administrative and other matters.
120.113 Medical Review Officer, Substance Abuse Professional, and employer responsibilities.
120.115 Employee Assistance Program (EAP).
120.117 Implementing a drug testing program.

- 120.119 Annual reports.
120.121 Preemption.
120.123 Drug testing outside of the territory of the United States.
120.125 Waivers from 49 CFR 40.21.

Subpart F—Alcohol Testing Program Requirements

- 120.201 Scope.
120.203 General.
120.205 Preemption of State and local laws.
120.207 Other requirements imposed by employers.
120.209 Requirement for notice.
120.211 Applicable Federal regulations.
120.213 Falsification.
120.215 Covered employees.
120.217 Tests required.
120.219 Handling of test results, record retention, and confidentiality.
120.221 Consequences for employees engaging in alcohol-related conduct.
120.223 Alcohol misuse information, training, and substance abuse professionals.
120.225 How to implement an alcohol testing program.
120.227 Employees located outside the U.S.

Authority: 49 U.S.C. 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

Subpart A—General

§ 120.1 Applicability.

This part applies to the following persons:

(a) All air carriers and operators certificated under part 119 of this chapter authorized to conduct operations under part 121 or part 135 of this chapter, all air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; and all operators as defined in 14 CFR 91.147.

(b) All individuals who perform, either directly or by contract, a safety-sensitive function listed in subpart E or subpart F of this part.

(c) All part 145 certificate holders who perform safety-sensitive functions and elect to implement a drug and alcohol testing program under this part.

(d) All contractors who elect to implement a drug and alcohol testing program under this part.

§ 120.3 Purpose.

The purpose of this part is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

§ 120.5 Procedures.

Each employer having a drug and alcohol testing program under this part must ensure that all drug and alcohol testing conducted pursuant to this part

complies with the procedures set forth in 49 CFR part 40.

§ 120.7 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Accident* means an occurrence associated with the operation of an aircraft which takes place between the time any individual boards the aircraft with the intention of flight and all such individuals have disembarked, and in which any individual suffers death or serious injury, or in which the aircraft receives substantial damage.

(b) *Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

(c) *Alcohol concentration (or content)* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under subpart F of this part.

(d) *Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

(e) *Contractor* is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

(f) *Covered employee* means an individual who performs, either directly or by contract, a safety-sensitive function listed in §§ 120.105 and 120.215 for an employer (as defined in paragraph (i) of this section). For purposes of pre-employment testing only, the term “covered employee” includes an individual applying to perform a safety-sensitive function.

(g) *DOT agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug testing (14 CFR part 61 et al.; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

(h) *Employee* is an individual who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined in paragraph (i) of this section. An employee is also an individual who transfers into a position to perform a safety-sensitive function for an employer.

(i) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer's FAA-mandated drug testing

program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated drug testing program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

(j) *Hire* means retaining an individual for a safety-sensitive function as a paid employee, as a volunteer, or through barter or other form of compensation.

(k) *Performing* (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

(l) *Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under subpart E of this part, plus the number of refusals of random drug tests required by subpart E of this part, divided by the total number of random drug test results (i.e., positives, negatives, and refusals) under subpart E of this part.

(m) *Prohibited drug* means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, as specified in 49 CFR 40.85.

(n) *Refusal to submit to alcohol test* means that a covered employee has engaged in conduct including but not limited to that described in 49 CFR 40.261, or has failed to remain readily available for post-accident testing as required by subpart F of this part.

(o) *Refusal to submit to drug test* means that an employee engages in conduct including but not limited to that described in 49 CFR 40.191.

(p) *Safety-sensitive function* means a function listed in §§ 120.105 and 120.215.

(q) *Verified negative drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

(r) *Verified positive drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

(s) *Violation rate for random alcohol testing* means the number of 0.04, and above, random alcohol confirmation test results conducted under subpart F of this part, plus the number of refusals of random alcohol tests required by subpart F of this part, divided by the total number of random alcohol screening tests (including refusals) conducted under subpart F of this part.

Subpart B—Individuals Certificated Under Parts 61, 63, and 65

§ 120.11 Refusal to submit to a drug or alcohol test by a Part 61 certificate holder.

(a) This section applies to all individuals who hold a certificate under part 61 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 61 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under part 61 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate, rating, or authorization issued under part 61 of this chapter.

§ 120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.

(a) This section applies to all individuals who hold a certificate under part 63 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 63 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under part 63 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate, rating, or authorization issued under part 63 of this chapter.

§ 120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.

(a) This section applies to all individuals who hold a certificate under part 65 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 65 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under part 65 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate, rating, or authorization issued under part 65 of this chapter.

Subpart C—Air Traffic Controllers

§ 120.17 Use of prohibited drugs.

(a) Each employer shall provide each employee performing a function listed

in subpart E of this part, and his or her supervisor, with the training specified in that subpart. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer, and his or her supervisor, with the training specified in subpart E of this part.

(b) No employer may knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function while that individual has a prohibited drug, as defined in subpart E of this part, in his or her system.

(c) No employer shall knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function if the individual has a verified positive drug test result on, or has refused to submit to, a drug test required by subpart E of this part and the individual has not met the requirements of subpart E of this part for returning to the performance of safety-sensitive duties.

(d) Each employer shall test each of its employees who perform any air traffic control function in accordance with subpart E of this part. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with subpart E of this part.

§ 120.19 Misuse of alcohol.

(a) This section applies to covered employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the US military.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* No covered employee shall perform air traffic control duties within 8 hours after using alcohol. No employer having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform air traffic control duties.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under subpart F of this part or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* A covered employee may not refuse to submit to any alcohol test required under subpart F of this part. An employer may not permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

§ 120.21 Testing for alcohol.

(a) Each air traffic control facility not operated by the FAA or the U.S. military must establish an alcohol testing program in accordance with the provisions of subpart F of this part.

(b) No employer shall use any individual who meets the definition of covered employee in subpart A of this part to perform a safety-sensitive function listed in subpart F of this part unless that individual is subject to testing for alcohol misuse in accordance with the provisions of that subpart.

Subpart D—Part 119 Certificate Holders Authorized To Conduct Operations under Part 121 or Part 135 or Operators Under § 91.147 of This Chapter and Safety-Sensitive Employees

§ 120.31 Prohibited drugs.

(a) Each certificate holder or operator shall provide each employee performing a function listed in subpart E of this part, and his or her supervisor, with the training specified in that subpart.

(b) No certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor provides each of its employees performing that function for the certificate holder or operator, and his or her supervisor, with the training specified in that subpart.

§ 120.33 Use of prohibited drugs.

(a) This section applies to individuals who perform a function listed in subpart

E of this part for a certificate holder or operator. For the purpose of this section, an individual who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in that subpart, in his or her system.

(c) No certificate holder or operator shall knowingly use any individual to perform, nor shall any individual perform for a certificate holder or operator, either directly or by contract, any safety-sensitive function if that individual has a verified positive drug test result on, or has refused to submit to, a drug test required by subpart E of this part and the individual has not met the requirements of that subpart for returning to the performance of safety-sensitive duties.

§ 120.35 Testing for prohibited drugs.

(a) Each certificate holder or operator shall test each of its employees who perform a function listed in subpart E of this part in accordance with that subpart.

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that subpart.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of subpart E of this part and emergency maintenance is required, the certificate holder may use individuals not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

§ 120.37 Misuse of alcohol.

(a) *General.* This section applies to covered employees who perform a function listed in subpart F of this part for a certificate holder. For the purpose of this section, an individual who meets the definition of covered employee in subpart F of this part is considered to be performing the function for the certificate holder.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No certificate holder having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* (1) No covered employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No covered employee shall perform safety-sensitive duties other than those specified in paragraph (d)(1) of this section within 4 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the

time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under subpart F of this part, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* A covered employee must not refuse to submit to any alcohol test required under subpart F of this part. A certificate holder must not permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

§ 120.39 Testing for alcohol.

(a) Each certificate holder must establish an alcohol testing program in accordance with the provisions of subpart F of this part.

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any individual who meets the definition of covered employee in subpart A of this part to perform a safety-sensitive function listed in that subpart F of this part unless that individual is subject to testing for alcohol misuse in accordance with the provisions of that subpart.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of subpart F of this part and emergency maintenance is required, the certificate holder may use individuals not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

Subpart E—Drug Testing Program Requirements

§ 120.101 Scope.

This subpart contains the standards and components that must be included in a drug testing program required by this part.

§ 120.103 General.

(a) *Purpose.* The purpose of this subpart is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

(b) *DOT procedures.* (1) Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 91, 121, and 135 comply with the requirements of this subpart and the “Procedures for Transportation Workplace Drug Testing Programs” published by the Department of Transportation (DOT) (49 CFR part 40).

(2) An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

(c) *Employer responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this subpart and 49 CFR part 40.

(d) *Applicable Federal Regulations.* The following applicable regulations appear in 49 CFR or 14 CFR:

(1) 49 CFR Part 40—Procedures for Transportation Workplace Drug Testing Programs

(2) 14 CFR:

(i) § 67.107—First-Class Airman Medical Certificate, Mental.

(ii) § 67.207—Second-Class Airman Medical Certificate, Mental.

(iii) § 67.307—Third-Class Airman Medical Certificate, Mental.

(iv) § 91.147—Passenger carrying flight for compensation or hire.

(e) *Falsification.* No individual may make, or cause to be made, any of the following:

(1) Any fraudulent or intentionally false statement in any application of a drug testing program.

(2) Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this part.

(3) Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this part.

§ 120.105 Employees who must be tested.

Each employee, including any assistant, helper, or individual in a

training status, who performs a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this subpart must be subject to drug testing under a drug testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

(a) Flight crewmember duties.

(b) Flight attendant duties.

(c) Flight instruction duties.

(d) Aircraft dispatcher duties.

(e) Aircraft maintenance and preventive maintenance duties.

(f) Ground security coordinator duties.

(g) Aviation screening duties.

(h) Air traffic control duties.

§ 120.107 Substances for which testing must be conducted.

Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by § 120.109.

§ 120.109 Types of drug testing required.

Each employer shall conduct the types of testing described in this section in accordance with the procedures set forth in this subpart and the DOT “Procedures for Transportation Workplace Drug Testing Programs” (49 CFR part 40).

(a) *Pre-employment drug testing.* (1) No employer may hire any individual for a safety-sensitive function listed in § 120.105 unless the employer first conducts a pre-employment test and receives a verified negative drug test result for that individual.

(2) No employer may allow an individual to transfer from a nonsafety-sensitive to a safety-sensitive function unless the employer first conducts a pre-employment test and receives a verified negative drug test result for the individual.

(3) Employers must conduct another pre-employment test and receive a verified negative drug test result before hiring or transferring an individual into a safety-sensitive function if more than 180 days elapse between conducting the pre-employment test required by paragraphs (a)(1) or (2) of this section and hiring or transferring the individual into a safety-sensitive function, resulting in that individual being brought under an FAA drug testing program.

(4) If the following criteria are met, an employer is permitted to conduct a pre-

employment test, and if such a test is conducted, the employer must receive a negative test result before putting the individual into a safety-sensitive function:

(i) The individual previously performed a safety-sensitive function for the employer and the employer is not required to pre-employment test the individual under paragraphs (a)(1) or (2) of this section before putting the individual to work in a safety-sensitive function;

(ii) The employer removed the individual from the employer's random testing program conducted under this subpart for reasons other than a verified positive test result on an FAA-mandated drug test or a refusal to submit to such testing; and

(iii) The individual will be returning to the performance of a safety-sensitive function.

(5) Before hiring or transferring an individual to a safety-sensitive function, the employer must advise each individual that the individual will be required to undergo pre-employment testing in accordance with this subpart, to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under paragraph (a)(4) of this section.

(b) *Random drug testing.* (1) Except as provided in paragraphs (b)(2) through (b)(4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the statistical reports required by § 120.119. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(3) When the minimum annual percentage rate for random drug testing

is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of this subpart for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(5) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(i) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random testing results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(A) To calculate whether you have met the annual minimum percentage rate, count all random positives, random negatives, and random refusals as your "random testing results."

(B) To calculate the average number of safety-sensitive employees eligible for random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly) you do not need to compute this total number of safety-sensitive employees more than on a once per month basis.

(ii) As an employer, you may use a service agent to perform random selections for you, and your safety-

sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(A) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(B) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(C) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

(7) Each employer shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) Each employer shall require that each safety-sensitive employee who is notified of selection for random drug testing proceeds to the collection site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible.

(9) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(10) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select covered employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

(11) An employer required to conduct random drug testing under the anti-drug rules of more than one DOT agency shall provide each such agency access to the employer's records of random drug testing, as determined to be necessary by the agency to ensure the employer's compliance with the rule.

(c) *Post-accident drug testing.* Each employer shall test each employee who performs a safety-sensitive function for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident. The employee shall submit to post-accident testing under this section.

(d) *Drug testing based on reasonable cause.* Each employer must test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, must substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; except that in the case of an employer, other than a part 121 certificate holder, who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use must substantiate the decision to test an employee who is reasonably suspected of drug use.

(e) *Return to duty drug testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this subpart or receiving a verified positive drug test result on a test conducted under this subpart the individual shall undergo a return-to-duty drug test. No employer shall allow an individual required to undergo return-to-duty testing to perform a safety-sensitive function unless the

employer has received a verified negative drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

(f) *Follow-up drug testing.* (1) Each employer shall implement a reasonable program of unannounced testing of each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a drug test required by this subpart or receiving a verified positive drug test result on a test conducted under this subpart.

(2) The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional conducted in accordance with the provisions of 49 CFR part 40, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

(3) The employer must direct the employee to undergo testing for alcohol in accordance with subpart F of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

(4) Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

§ 120.111 Administrative and other matters.

(a) *MRO record retention requirements.* (1) Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

(2) Should the employer change MRO's for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within ten working days of receiving

notice from the employer of the new MRO's name and address.

(3) Any employer obtaining MRO services by contract, including a contract through a C/TPA, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

(b) *Access to records.* The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this subpart and 49 CFR part 40. The Administrator or the Administrator's representative may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

(c) *Release of drug testing information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this subpart, or 49 CFR part 40, no employer shall release employee information.

(d) *Refusal to submit to testing.* Each employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this subpart. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Permanent disqualification from service.* (1) An employee who has verified positive drug test results on two drug tests required by this subpart of this chapter, and conducted after September 19, 1994, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.

(2) An employee who has engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994 is permanently precluded from performing that safety-sensitive function for an employer.

(f) *DOT management information system annual reports.* Copies of any annual reports submitted to the FAA under this subpart must be maintained by the employer for a minimum of 5 years.

§ 120.113 Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.

(a) The employer shall designate or appoint a Medical Review Officer (MRO) who shall be qualified in accordance with 49 CFR part 40 and shall perform the functions set forth in 49 CFR part 40 and this subpart. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

(b) *Medical Review Officer (MRO).* The MRO must perform the functions set forth in subpart G of 49 CFR part 40, and subpart E of this part. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

(c) *Substance Abuse Professional (SAP).* The SAP must perform the functions set forth in 49 CFR part 40, subpart O.

(d) *Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.* (1) As part of verifying a confirmed positive test result or refusal to submit to a test, the MRO must ask and the individual must answer whether he or she holds an airman medical certificate issued under 14 CFR part 67 or would be required to hold an airman medical certificate to perform a safety-sensitive function for the employer. If the individual answers in the affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph (d)(5) of this section, the name of the individual, along with identifying information and supporting documentation, within 2 working days after verifying a positive drug test result or refusal to submit to a test.

(2) During the SAP interview required for a verified positive test result or a refusal to submit to a test, the SAP must ask and the individual must answer whether he or she holds or would be required to hold an airman medical

certificate issued under 14 CFR part 67 to perform a safety-sensitive function for the employer. If the individual answers in the affirmative, the individual must obtain an airman medical certificate issued by the Federal Air Surgeon dated after the verified positive drug test result date or refusal to test date. After the individual obtains this airman medical certificate, the SAP may recommend to the employer that the individual may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(3) An employer must forward to the Federal Air Surgeon within 2 working days of receipt, copies of all reports provided to the employer by a SAP regarding the following:

(i) An individual who the MRO has reported to the Federal Air Surgeon under § 120.113 (d)(1); or

(ii) An individual who the employer has reported to the Federal Air Surgeon under § 120.111(d).

(4) The employer must not permit an employee who is required to hold an airman medical certificate under 14 CFR part 67 to perform a safety-sensitive duty to resume that duty until the employee has:

(i) Been issued an airman medical certificate from the Federal Air Surgeon after the date of the verified positive drug test result or refusal to test; and

(ii) Met the return to duty requirements in accordance with 49 CFR part 40.

(5) Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(6) MROs, SAPs, and employers who send reports to the Federal Air Surgeon must keep a copy of each report for 5 years.

§ 120.115 Employee Assistance Program (EAP).

(a) The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

(b) *EAP education program.* (1) Each EAP education program must include at least the following elements:

(i) Display and distribution of informational material;

(ii) Display and distribution of a community service hot-line telephone number for employee assistance; and

(iii) Display and distribution of the employer's policy regarding drug use in the workplace.

(2) The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

(c) *EAP training program.* (1) Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements:

(i) The effects and consequences of drug use on individual health, safety, and work environment;

(ii) The manifestations and behavioral cues that may indicate drug use and abuse; and

(iii) Documentation of training given to employees and employer's supervisory personnel.

(2) The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified in § 120.115 (c).

(3) The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training.

(4) The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years.

(5) The employer shall identify the employee and supervisor for EAP training in the employer's drug testing plan submitted to the FAA for approval.

§ 120.117 Implementing a drug testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are . . .	You must . . .
(1) A part 119 certificate holder with authority to operate under parts 121 and/or 135. (2) A sightseeing operator as defined in §91.147 of this chapter. (3) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. (4) A part 145 certificate holder who has your own drug testing program. (5) A contractor who has your own drug testing program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector. Register with the FAA by contacting the Flight Standards District Office nearest to your principal place of business. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591. Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, if you opt to conduct your own drug testing program. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, if you opt to conduct your own drug testing program.

(b) Use the following chart for implementing a drug testing program if you are applying for a part 119 certificate with authority to operate under parts 121 or 135 of this chapter, if you intend to begin operations as defined in §91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive functions must be tested in accordance with this subpart. The chart follows:

If you . . .	You must . . .
(1) Apply for a part 119 certificate with authority to operate under parts 121 or 135. (2) Intend to begin operations as defined in §91.147 of this chapter (3) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification. (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart. (i) Register with the FAA, by contacting the Flight Standards District Office nearest to your principal place of business prior to starting operations. (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart. (i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 prior to starting operations. (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.

(c) If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operation as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, use the following chart to determine what you must do if you opt to have your own drug testing program.

If you . . .	And you opt to conduct your own drug program, you must . . .
(1) Are a part 145 certificate holder (2) Are a contractor	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, (ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in §91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer. (i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, (ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, and (iii) Meet the requirements of this subpart as if you were an employer.

(d) *Obtaining an Antidrug and Alcohol Misuse Prevention Program Operations Specification.* (1) To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector.

Provide him/her with the following information:

- (i) Company name.
- (ii) Certificate number.
- (iii) Telephone number.
- (iv) Address where your drug and alcohol testing program records are kept.
- (v) Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 119 certificate holders with authority to operate only under part 121 of this chapter are not required to provide this information.)

(2) You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector that you will comply with this part and 49 CFR part 40.

(3) You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under this part.

(4) You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

(e) *Registering a drug and alcohol testing program with the FAA.* (1) To register with the FAA, submit the following information:

- (i) Company name.
- (ii) Telephone number.
- (iii) Address where your drug and alcohol testing program records are kept.
- (iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more safety-sensitive employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 119 certificate holder with authority to operate under part 121 and/or part 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement

Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(3) Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph (e)(2) of this section.

(4) This registration will satisfy the registration requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

§ 120.119 Annual reports.

(a) Annual reports of testing results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the following provisions:

(1) Each part 121 certificate holder shall submit an annual report each year.

(2) Each entity conducting a drug testing program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(3) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

(b) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and subpart H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/.

(c) A service agent may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

§ 120.121 Preemption.

(a) The issuance of 14 CFR parts 65, 91, 121, and 135 by the FAA preempts any State or local law, rule, regulation, order, or standard covering the subject matter of 14 CFR parts 65, 91, 121, and 135, including but not limited to, drug

testing of aviation personnel performing safety-sensitive functions.

(b) The issuance of 14 CFR parts 65, 91, 121, and 135 does not preempt provisions of state criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

§ 120.123 Drug testing outside the territory of the United States.

(a) No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

(1) Each employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

(2) Each covered employee who is removed from the random testing pool under this section shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

(b) The provisions of this subpart shall not apply to any individual who performs a function listed in § 120.105 by contract for an employer outside the territory of the United States.

§ 120.125 Waivers from 49 CFR 40.21.

An employer subject to this part may petition the Drug Abatement Division, Office of Aerospace Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(a) Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(b) Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(c) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

Subpart F—Alcohol Testing Program Requirements

§ 120.201 Scope.

This subpart contains the standards and components that must be included

in an alcohol testing program required by this part.

§ 120.203 General.

(a) *Purpose.* The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

(b) *Alcohol testing procedures.* Each employer shall ensure that all alcohol testing conducted pursuant to this subpart complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to employers by this subpart.

(c) *Employer responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

§ 120.205 Preemption of State and local laws.

(a) Except as provided in paragraph (a)(2) of this section, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart.

(b) The alcohol testing requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 120.207 Other requirements imposed by employers.

Except as expressly provided in these alcohol testing requirements, nothing in this subpart shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including any authority and rights with respect to alcohol testing and rehabilitation.

§ 120.209 Requirement for notice.

Before performing an alcohol test under this subpart, each employer shall notify a covered employee that the alcohol test is required by this subpart. No employer shall falsely represent that a test is administered under this subpart.

§ 120.211 Applicable Federal regulations.

The following applicable regulations appear in 49 CFR and 14 CFR:

(a) 49 CFR Part 40—Procedures for Transportation Workplace Drug Testing Programs

(b) 14 CFR:

(1) § 67.107—First-Class Airman Medical Certificate, Mental.

(2) § 67.207—Second-Class Airman Medical Certificate, Mental.

(3) § 67.307—Third-Class Airman Medical Certificate, Mental.

(4) § 91.147—Passenger carrying flights for compensation or hire.

§ 120.213 Falsification.

No individual may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application of an alcohol testing program.

(b) Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this subpart.

(c) Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this subpart.

§ 120.215 Covered employees.

(a) Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this subpart must be subject to alcohol testing under an alcohol testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

(1) Flight crewmember duties.

(2) Flight attendant duties.

(3) Flight instruction duties.

(4) Aircraft dispatcher duties.

(5) Aircraft maintenance or preventive maintenance duties.

(6) Ground security coordinator duties.

(7) Aviation screening duties.

(8) Air traffic control duties.

(b) Each employer must identify any employee who is subject to the alcohol testing regulations of more than one DOT agency. Prior to conducting any alcohol test on a covered employee subject to the alcohol testing regulations of more than one DOT agency, the employer must determine which DOT agency authorizes or requires the test.

§ 120.217 Tests required.

(a) *Pre-employment alcohol testing.* As an employer, you may, but are not

required to, conduct pre-employment alcohol testing under this subpart. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40.

(5) You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 120.221(f) apply.

(b) *Post-accident alcohol testing.* (1) As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

(3) A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(c) *Random alcohol testing.* (1) Except as provided in paragraphs (c)(2) through (c)(4) of this section, the minimum annual percentage rate for random alcohol testing will be 25 percent of the covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from MIS reports required by this subpart. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(3)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(4)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting

requirements of this subpart for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of this subpart for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(5) The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(i) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random alcohol screening test results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(A) To calculate whether you have met the annual minimum percentage rate, count all random screening test results below 0.02 breath alcohol concentration, random screening test results of 0.02 or greater breath alcohol concentration, and random refusals as your "random alcohol screening test results."

(B) To calculate the average number of safety-sensitive employees eligible for random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly) you do not need to compute this total number of

safety-sensitive employees more than on a once per month basis.

(ii) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(A) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(B) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(C) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

(7) Each employer shall ensure that random alcohol tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(9) A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(10) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.

(11) If an employer is required to conduct random alcohol testing under

the alcohol testing rules of more than one DOT agency, the employer may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

(d) *Reasonable suspicion alcohol testing.* (1) An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in §§ 120.19 or 120.37.

(2) The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (d)(2) of this section are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination made under paragraph (d)(2) of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination made under paragraph (d)(2) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee

is under the influence of, or impaired by, alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph (d)(2) of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in §§ 120.19 or 120.37.

(iii) No employer shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this subpart from taking any action otherwise consistent with law.

(e) *Return-to-duty alcohol testing.* Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in §§ 120.19 or 120.37 the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

(f) *Follow-up alcohol testing.* (1) Each employer shall ensure that the employee who engages in conduct prohibited by §§ 120.19 or 120.37, is subject to unannounced follow-up alcohol testing as directed by a SAP.

(2) The number and frequency of such testing shall be determined by the employer's SAP, but must consist of at least six tests in the first 12 months following the employee's return to duty.

(3) The employer must direct the employee to undergo testing for drugs in accordance with subpart E of this part, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

(4) Follow-up testing shall not exceed 60 months after the date the individual begins to perform, or returns to the performance of, a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been

conducted, if the SAP determines that such testing is no longer necessary.

(5) A covered employee shall be tested for alcohol under this section only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

(g) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each employer shall retest a covered employee to ensure compliance with the provisions of § 120.221(f) if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

§ 120.219 Handling of test results, record retention, and confidentiality.

(a) *Retention of records.* (1) *General requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this subpart in a secure location with controlled access.

(2) *Period of retention.*

(i) *Five years.*

(A) Copies of any annual reports submitted to the FAA under this subpart for a minimum of 5 years.

(B) Records of notifications to the Federal Air Surgeon of refusals to submit to testing and violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(C) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(D) Records related to other violations of §§ 120.19 or 120.37.

(ii) *Two years.* Records related to the testing process and training required under this subpart.

(A) Documents related to the random selection process.

(B) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(C) Documents generated in connection with decisions on post-accident tests.

(D) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(E) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(F) Documentation of compliance with the requirements of § 120.223(a).

(G) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(H) Certification that any training conducted under this subpart complies with the requirements for such training.

(b) *Annual reports.* (1) Annual reports of alcohol testing program results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions of paragraphs (b)(1)(i) through (iii) of this section.

(i) Each part 121 certificate holder shall submit an annual report each year.

(ii) Each entity conducting an alcohol testing program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(iii) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

(2) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/.

(3) A service agent may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

(c) *Access to records and facilities.*

(1) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained under this subpart.

(2) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records

pertaining to his or her alcohol tests in accordance with 49 CFR part 40. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(3) Each employer shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

§ 120.221 Consequences for employees engaging in alcohol-related conduct.

(a) *Removal from safety-sensitive function.* (1) Except as provided in 49 CFR part 40, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by §§ 120.19 or 120.37, or an alcohol misuse rule of another DOT agency.

(2) No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this section.

(b) *Permanent disqualification from service.* An employee who violates §§ 120.19 or 120.37, or who engages in alcohol use that violates another alcohol misuse provision of §§ 120.19 or 120.37 and who had previously engaged in alcohol use that violated the provisions of §§ 120.19 or 120.37 after becoming subject to such prohibitions is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

(c) *Notice to the Federal Air Surgeon.* (1) An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has engaged in alcohol use that violated the alcohol misuse provisions of §§ 120.19 or 120.37 shall notify the Federal Air Surgeon within 2 working days.

(2) Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of § 120.223(c) within 2 working days of the employer's receipt of the report.

(3) All documents must be sent to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(4) No covered employee who is required to hold an airman medical certificate in order to perform a safety-sensitive duty may perform that duty

following a violation of this subpart until the covered employee obtains an airman medical certificate issued by the Federal Air Surgeon dated after the alcohol test result or refusal to test date. After the covered employee obtains this airman medical certificate, the SAP may recommend to the employer that the covered employee may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(5) Once the Federal Air Surgeon has recommended under paragraph (c)(4) of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

(d) *Notice of refusals.* Each covered employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to an alcohol test required under this subpart. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Required evaluation and alcohol testing.* No covered employee who has engaged in conduct prohibited by §§ 120.19 or 120.37 shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

(f) *Other alcohol-related conduct.* (1) No covered employee tested under this subpart who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(i) The employee's alcohol concentration measures less than 0.02; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

(2) Except as provided in paragraph (f)(1) of this section, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an

employer with authority independent of this rule from taking any action otherwise consistent with law.

§ 120.223 Alcohol misuse information, training, and substance abuse professionals.

(a) *Employer obligation to promulgate a policy on the misuse of alcohol.* (1) *General requirements.* Each employer shall provide educational materials that explain these alcohol testing requirements and the employer's policies and procedures with respect to meeting those requirements.

(i) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated alcohol testing program and to each individual subsequently hired for or transferred to a covered position.

(ii) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(2) *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(i) The identity of the individual designated by the employer to answer employee questions about the materials.

(ii) The categories of employees who are subject to the provisions of these alcohol testing requirements.

(iii) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in

compliance with these alcohol testing requirements.

(iv) Specific information concerning employee conduct that is prohibited by this chapter.

(v) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(vi) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(vii) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(viii) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(ix) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the process in 49 CFR part 40, subpart O.

(x) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(xi) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected,

including confrontation, referral to any available employee assistance program, and/or referral to management.

(xii) Optional provisions. The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this subpart. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(b) *Training for supervisors.* Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 120.217(d) of this subpart receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

(c) *Substance abuse professional (SAP) duties.* The SAP must perform the functions set forth in 49 CFR part 40, subpart O, and this subpart.

§ 120.225 How to implement an alcohol testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are . . .	You must . . .
(1) A part 119 certificate holder with authority to operate under parts 121 and/or 135.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
(2) An operator as defined in §91.147 of this chapter.	Register with the FAA, by contacting the Flight Standards District Office nearest to your principal place of business.
(3) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.
(4) A part 145 certificate holder who has your own alcohol testing program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program.
(5) A contractor who has your own alcohol testing program.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program.

(b) Use the following chart for implementing an alcohol testing program if you are applying for a part 119 certificate with authority to operate under parts 121 and/or 135 of this chapter, if you intend to begin operations as defined in § 91.147 of this

chapter, or if you intend to begin operations as defined air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program

Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this subpart. The chart follows:

If you . . .	You must . . .
(1) Apply for a part 119 certificate with authority to operate under parts 121 and/or 135.	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, (ii) Implement an FAA alcohol testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in § 91.147 of this chapter.	(i) Register with the FAA by contacting the Flight Standards District Office nearest your principal place of business prior to starting operations, (ii) Implement an FAA alcohol testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.
(3) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 prior to starting operations, (ii) Implement an FAA alcohol testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.

(c) If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to

operate under parts 121 and/or 135 of this chapter or an operator as defined in § 91.147 of this chapter, use the following chart to determine what you

must do if you opt to have your own alcohol testing program.

If you . . .	And you opt to conduct your own Alcohol Testing Program, you must . . .
(1) Are a part 145 certificate holder	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specifications or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, (ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with the authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer.
(2) Are a contractor	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, (ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer.

(d)(1) To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

- (i) Company name.
- (ii) Certificate number.
- (iii) Telephone number.
- (iv) Address where your drug and alcohol testing program records are kept.
- (v) Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 119 certificate holders with authority to operate only under part 121 of this chapter are not required to provide this information.)

(2) You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification, issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector, that you will comply with this part and 49 CFR part 40.

(3) You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under this part.

(4) You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

(e)(1) To register with the FAA, submit the following information:

- (i) Company name.
- (ii) Telephone number.
- (iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: Your company will comply with this part and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 119 certificate holder with authority to operate under part 121 and/or 135 of this chapter, an operator as

defined by § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.

(2) Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(3) Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph (e)(2) of this section.

(4) This registration will satisfy the registration requirements for both your drug testing program under subpart E of this part and your alcohol testing program under this subpart.

§ 120.227 Employees located outside the U.S.

(a) No covered employee shall be tested for alcohol misuse while located outside the territory of the United States.

(1) Each covered employee who is assigned to perform safety-sensitive functions solely outside the territory of

the United States shall be removed from the random testing pool upon the inception of such assignment.

(2) Each covered employee who is removed from the random testing pool under this paragraph shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

(b) The provisions of this subpart shall not apply to any person who performs a safety-sensitive function by contract for an employer outside the territory of the United States.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 121.429 [Removed and Reserved]

■ 15. Section 121.429 is removed and reserved.

§ 121.455 [Removed and Reserved]

■ 16. Section 121.455 is removed and reserved.

§ 121.457 [Removed and Reserved]

■ 17. Section 121.457 is removed and reserved.

§ 121.458 [Removed and Reserved]

■ 18. Section 121.458 is removed and reserved.

§ 121.459 [Removed and Reserved]

■ 19. Section 121.459 is removed and reserved.

Appendix I to Part 121 [Removed and Reserved]

■ 20. Appendix I is removed and reserved.

Appendix J to Part 121 [Removed and Reserved]

■ 21. Appendix J is removed and reserved.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 22. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 23. Section 135.1(a)(5) is revised to read as follows:

§ 135.1 Applicability

(a) * * *

(5) Nonstop Commercial Air Tour flights conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with the drug and alcohol testing requirements in §§ 120.31, 120.33, 120.35, 120.37, and 135.39 of this chapter; and with the provisions of part 136, subpart A, and § 91.147 of this chapter by September 11, 2007.

* * * * *

§ 135.249 [Removed and Reserved]

■ 24. Section 135.249 is removed and reserved.

§ 135.251 [Removed and Reserved]

■ 25. Section 135.251 is removed and reserved.

§ 135.253 [Removed and Reserved]

■ 26. Section 135.253 is removed and reserved.

§ 135.255 [Removed and Reserved]

■ 27. Section 135.255 is removed and reserved.

§ 135.353 [Removed and Reserved]

■ 28. Section 135.353 is removed and reserved.

Issued in Washington, DC, on May 7, 2009.
Lynne A. Osmus,
Acting Administrator.

[FR Doc. E9–11289 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30666; Amdt. No. 3321]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are

needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.

*Availability—*All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P-NOTAMs.

The SIAPs, as modified by FDC P-NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will

not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 1, 2009.

John M. Allen,
Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	Subject
04/22/09	OH	Cleveland	Burke Lakefront	9/4657	TAKE-OFF MINIMUMS AND OBSTACLE DP, AMDT 4.
04/17/09	KS	Olathe	Johnson County Executive ...	9/4658	LOC RWY 36, AMDT 1.
04/17/09	KS	Olathe	Johnson County Executive ...	9/4659	LOC RWY 18, AMDT 7A.
04/17/09	TX	Granbury	Granbury Rgnl	9/4696	GPS RWY 14, ORIG–A.
04/22/09	ND	Bismarck	Bismarck Muni	9/4714	ILS OR LOC RWY 31, AMDT 32D.
04/22/09	KY	Somerset	Lake Cumberland Rgnl	9/4761	ILS OR LOC/DME RWY 5, ORIG.
04/20/09	OK	Altus	Altus/Quartz Mountain Rgnl ..	9/4847	VOR A, AMDT 4B.
04/22/09	MI	Cadillac	Wexford County	9/4903	ILS or LOC RWY 7, ORIG.
04/20/09	TX	Harlingen	Valley Intl	9/4923	ILS or LOC RWY 17R, ORIG–A.
04/20/09	TX	Midland	Midland Intl	9/4924	ILS or LOC RWY 10, AMDT 14B.
04/20/09	WA	Walla Walla	Walla Walla Rgnl	9/4951	NDB RWY 20, AMDT 5B.
04/22/09	CA	Palmdale	Palmdale Rgnl/USAF Plant 42.	9/5301	RNAV (GPS) RWY 25, ORIG–C.
04/22/09	MT	Baker	Baker Muni	9/5302	GPS RWY 31, ORIG–A.
04/22/09	MT	Baker	Baker Muni	9/5303	NDB RWY 31, ORIG.
04/22/09	MT	Baker	Baker Muni	9/5305	NDB RWY 13, ORIG.
04/23/09	OR	Aurora	Aurora State	9/5489	RNAV (GPS) RWY 35, ORIG–A.
04/24/09	AK	Kiana	Bob Baker Memorial	9/5711	TAKE-OFF MINIMUMS AND OBSTACLE DP, ORIG.
04/24/09	AK	Kotlik	Kotlik	9/5745	RNAV (GPS) RWY 20, ORIG.
04/24/09	AK	Kotlik	Kotlik	9/5746	RNAV (GPS) RWY 2, ORIG.
04/27/09	GQ	Guam	Guam Intl	9/5900	RNAV (GPS) Y RWY 24L, AMDT 1A.
04/27/09	GQ	Guam	Guam Intl	9/5901	RNAV (RNP) Z RWY 24L, ORIG–B.
04/27/09	LA	Houma	Houma-Terrebonne	9/5912	VOR RWY 12, AMDT 5B.

FDC date	State	City	Airport	FDC No.	Subject
04/24/09	AK	King Cove	King Cove	9/6056	TAKE-OFF MINIMUMS AND OBSTACLE DP, ORIG.
04/22/09	MN	Grand Marais	Grand Marais/Cook County ..	9/6107	NDB RWY 27, ORIG-B.
04/22/09	IL	Chicago	Chicago-O Hare Intl	9/6120	ILS OR LOC RWY 9L, ILS RWY 9L (CAT II), ILS RWY 9L (CAT III), ORIG-A.
04/22/09	IL	Chicago	Chicago-O Hare Intl	9/6121	ILS OR LOC RWY 4R, AMDT 6K.
04/28/09	CO	Denver	Front Range	9/6125	ILS RWY 35, ORIG.
04/28/09	CO	Denver	Front Range	9/6126	ILS RWY 17, ORIG.
04/29/09	MN	St Cloud	St Cloud Rgnl	9/6360	VOR/DME RWY 13, ORIG.
04/29/09	MN	St Cloud	St Cloud Rgnl	9/6361	VOR RWY 31, ORIG.
04/29/09	MN	St Cloud	St Cloud Rgnl	9/6362	RNAV (GPS) RWY 5, ORIG.
04/29/09	MN	St Cloud	St Cloud Rgnl	9/6363	RNAV (GPS) RWY 23, ORIG.
04/29/09	MN	St Cloud	St Cloud Rgnl	9/6367	ILS OR LOC RWY 31, AMDT 3.
04/29/09	OK	El Reno	El Reno Rgnl	9/6368	NDB RWY 35, AMDT 3B.

[FR Doc. E9-10990 Filed 5-13-09; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30665 Amdt. No. 3320]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.

*Availability—*All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit <http://www.nfdc.faa.gov> to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or

revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the

remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPS, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPS, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPS are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 1, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 04 JUN 2009

Currituck, NC, Currituck County, GPS RWY 23, Orig-A, CANCELLED
Currituck, NC, Currituck County, RNAV (GPS) RWY 23, Orig
Le Roy, NY, Le Roy, Takeoff Minimums and Obstacle DP, Orig
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 3, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 21, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) Y RWY 3, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) Y RWY 21, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Rgnl, VOR RWY 21, Amdt 17

Effective 02 JUL 2009

Kake, AK, Kake, KAKE TWO Graphic Obstacle DP
Kenai, AK, Kenai Muni, VOR RWY 19R, Amdt 18B
Ketchikan, AK, Ketchikan Intl, ILS OR LOC/DME Z RWY 11, Orig
Perryville, AK, Perryville, RNAV (GPS) RWY 2, Orig-B
Unalakleet, AK, Unalakleet, GPS RWY 14, Orig, CANCELLED
Unalakleet, AK, Unalakleet, LOC/DME RWY 15, Amdt 3
Unalakleet, AK, Unalakleet, RNAV (GPS) RWY 33, Orig
Unalakleet, AK, Unalakleet, RNAV (GPS)-A, Orig
Unalakleet, AK, Unalakleet, Takeoff Minimums and Obstacle DP, Amdt 1
Unalakleet, AK, Unalakleet, VOR/DME-D, Amdt 4
Bullhead City, AZ, Laughlin/Bullhead Intl, RNAV (GPS) RWY 16, Amdt 1
Bullhead City, AZ, Laughlin/Bullhead Intl, RNAV (GPS) RWY 34, Amdt 2
Bullhead City, AZ, Laughlin/Bullhead Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Bullhead City, AZ, Laughlin/Bullhead Intl, VOR/DME RWY 34, Amdt 1
Kingman, AZ, Kingman, GPS RWY 3, Orig, CANCELLED
Kingman, AZ, Kingman, GPS RWY 21, Orig, CANCELLED
Kingman, AZ, Kingman, RNAV (GPS) RWY 3, Orig
Kingman, AZ, Kingman, RNAV (GPS) Y RWY 21, Orig
Kingman, AZ, Kingman, RNAV (GPS) Z RWY 21, Orig
Kingman, AZ, Kingman, VOR/DME RWY 21, Amdt 7

Ramona, CA, Ramona, RNAV (GPS) RWY 9, Amdt 1
Ramona, CA, Ramona, RNAV (GPS)-B, Orig
Ramona, CA, Ramona, Takeoff Minimums and Obstacle DP, Amdt 3
Ramona, CA, Ramona, VOR/DME-A, Amdt 2
Pueblo, CO, Pueblo Memorial, GPS RWY 8L, Orig-A, CANCELLED
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 8L, Orig
Marathon, FL, The Florida Keys Marathon, RNAV (GPS) RWY 25, Amdt 1
Mount Sterling, IL, Mount Sterling Muni, RNAV (GPS) RWY 18, Orig
Mount Sterling, IL, Mount Sterling Muni, RNAV (GPS) RWY 36, Orig
Mount Sterling, IL, Mount Sterling Muni, Takeoff Minimums and Obstacle DP, Orig
Mount Sterling, IL, Mount Sterling Muni, VOR/DME-A, Amdt 1
Hyannis, MA, Barstable Muni-Boardman/Polando Field, ILS OR LOC RWY 15, Amdt 4
Hyannis, MA, Barstable Muni-Boardman/Polando Field, ILS OR LOC RWY 24, Amdt 18
Hyannis, MA, Barstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 15, Orig
Hyannis, MA, Barstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 24, Amdt 1
Cadillac, MI, Wexford County, GPS RWY 25, Orig, CANCELLED
Cadillac, MI, Wexford County, NDB RWY 7, Amdt 2
Cadillac, MI, Wexford County, NDB RWY 25, Amdt 2
Cadillac, MI, Wexford County, RNAV (GPS) RWY 7, Orig
Cadillac, MI, Wexford County, RNAV (GPS) RWY 25, Orig
Cadillac, MI, Wexford County, Takeoff Minimums and Obstacle DP, Amdt 7
Chillicothe, MO, Chillicothe Muni, NDB RWY 14, Amdt 8
Chillicothe, MO, Chillicothe Muni, RNAV (GPS) RWY 14, Orig
Chillicothe, MO, Chillicothe Muni, RNAV (GPS) RWY 32, Amdt 1
Chillicothe, MO, Chillicothe Muni, Takeoff Minimums and Obstacle DP, Orig
Pascagoula, MS, Trent Lott Intl, VOR-A, Amdt 1
Oak Island, NC, Brunswick County, Takeoff Minimums and Obstacle DP, Orig
Pinehurst/Southern Pines, NC, Moore County, Takeoff Minimums and Obstacle DP, Orig
Whiteville, NC, Columbus County Muni, NDB RWY 6, Amdt 5
Whiteville, NC, Columbus County Muni, RNAV (GPS) RWY 6, Orig
Whiteville, NC, Columbus County Muni, Takeoff Minimums and Obstacle DP, Orig
Ashtabula, OH, Ashtabula County, GPS RWY 8, Amdt 1A, CANCELLED
Ashtabula, OH, Ashtabula County, GPS RWY 26, Orig-A, CANCELLED
Ashtabula, OH, Ashtabula County, RNAV (GPS) RWY 8, Orig
Ashtabula, OH, Ashtabula County, RNAV (GPS) RWY 26, Orig
Ashtabula, OH, Ashtabula County, Takeoff Minimums and Obstacle DP, Orig
Bluffton, OH, Bluffton, RNAV (GPS) RWY 23, Orig

Bluffton, OH, Bluffton, Takeoff Minimums and Obstacle DP, Amdt 1
 Bluffton, OH, Bluffton, VOR RWY 23, Amdt 7
 Harrison, OH, Cincinnati West, RNAV (GPS) RWY 19, Orig
 Harrison, OH, Cincinnati West, VOR RWY 19, Amdt 4
 Enid, OK, Enid Woodring Rgnl, GPS RWY 17, Orig-A, CANCELLED
 Enid, OK, Enid Woodring Rgnl, GPS RWY 35, Orig-B, CANCELLED
 Enid, OK, Enid Woodring Rgnl, ILS OR LOC RWY 35, Amdt 5
 Enid, OK, Enid Woodring Rgnl, RNAV (GPS) RWY 17, Orig
 Enid, OK, Enid Woodring Rgnl, RNAV (GPS) RWY 35, Orig
 Enid, OK, Enid Woodring Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
 Enid, OK, Enid Woodring Rgnl, VOR RWY 17, Amdt 13
 Enid, OK, Enid Woodring Rgnl, VOR RWY 35, Amdt 14
 Redmond, OR, Roberts Field, Takeoff Minimums and Obstacle DP, Amdt 5
 Bolivar, TN, William L. Whitehurst Field, NDB OR GPS RWY 1, Amdt 3, CANCELLED
 Bolivar, TN, William L. Whitehurst Field, RNAV (GPS) RWY 1, Orig
 Bolivar, TN, William L. Whitehurst Field, RNAV (GPS) RWY 19, Orig
 Devine, TX, Devine Muni, NDB RWY 35, Amdt 3
 Devine, TX, Devine Muni, RNAV (GPS) RWY 35, Orig
 Falfurrias, TX, Brooks County, GPS RWY 35, Orig-A, CANCELLED
 Falfurrias, TX, Brooks County, RNAV (GPS) RWY 35, Orig
 San Antonio, TX, San Antonio Intl, ILS OR LOC RWY 3, Amdt 21
 San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 3, Amdt 2
 San Antonio, TX, San Antonio Intl, Takeoff Minimums and Obstacle DP, Orig
 Brigham City, UT, Brigham City, NDB RWY 34, Amdt 6A, CANCELLED
 Brigham City, UT, Brigham City, NDB-A, Orig
 Richland, WA, Richland, LOC RWY 19, Amdt 7
 Milwaukee, WI, General Mitchell Intl, Takeoff Minimums and Obstacle DP, Amdt 6
 Casper, WY, Casper/Natrona County Intl, RNAV (GPS) RWY 21, Amdt 2
 Casper, WY, Casper/Natrona County Intl, RNAV (GPS) RWY 26, Amdt 1

Effective 30 JUL 2009

Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 28, Amdt 30A
 Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 4, Amdt 1A
 Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 28, Amdt 1A
 Rochester, NY, Greater Rochester Intl, VOR RWY 4, Amdt 11A
 Rochester, NY, Greater Rochester Intl, VOR/DME RWY 4, Amdt 3A

[FR Doc. E9-10991 Filed 5-13-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2008-0386]

RIN 1625-AA08

Marine Events Regattas; Annual Marine Events in the Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating the list of marine events and regattas that take place in the Eighth Coast Guard District and changing patrol requirements for these events. This update informs the public of regularly scheduled regattas and marine events and facilitates effective control over regattas and marine events to insure safety of life in each regatta or marine event area.

DATES: This final rule is effective June 15, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0386 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0386 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Dr. Madeleine McNamara, Eighth Coast Guard District Prevention Division, at (504) 671-2103 or Madeleine.W.McNamara@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

DHS—Department of Homeland Security.
 FR—Federal Register.
 §—Section symbol.
 U.S.C.—United States Code.

II. Regulatory History

On June 16, 2008, we published a notice of proposed rulemaking entitled “Marine Events Regattas; Annual Marine Events in the Eighth Coast Guard District” in the **Federal Register** (73 FR 116). We received no comments on the proposed rule. No public meeting was requested and none was held.

III. Background

33 CFR part 100 provides regulations to provide effective control over regattas and marine parades conducted on U.S. navigable waters to insure safety of life in the regattas or marine parade area. Section 100.801 list recurring events that take place in the Eighth Coast Guard District. This section needed to be updated because the Coast Guard reorganized Coast Guard Group Offices and Marine Safety Offices into Coast Guard Sectors and because the list of events in Table 1 of Sec.100.801 was out of date needed to be revised to reflect current events.

This regulation also modifies Coast Guard patrol requirements for Eighth Coast Guard District regattas and marine parades. Section 100.801(a) requires the Coast Guard to patrol marine events in the Eighth Coast Guard District. The Coast Guard feels that not all events require Coast Guard patrols and therefore leaves the decision of whether to patrol these events to the discretion of the local Coast Guard Captain of the Port.

IV. Discussion of Comments and Changes

No comments were received regarding the published NPRM. Therefore, the final rule text is largely the same as the text published in the NPRM.

The following general changes were made to the regulatory text. Paragraph (i) was added to clarify the definition of each regulated area. Paragraph (j) was added to advise mariners of where to look for more specific information about recurring marine events. Events were

renumbered for ease of reference. References to “mile markers” were changed to “miles” in recognition that not every tenth of a mile on a waterway has a signpost. Several locations were clarified by adding the name of a city or river, additional mile references, or points of latitude and longitude. Where the title of an event makes reference to the year or the number of recurrences (i.e. “Riverfest 2007” or “Rodeofest XXVI”), the year or number was removed.

The following specific changes were made to individual regulated areas. Within each Sector’s list of events, each event is referred to by the event number in the NPRM, then the new number assigned in the final rule, then the title of the event.

I. Sector Ohio Valley

7./7. Indiana Governor’s Cup

“Four days” was clarified to “Thursday through Sunday.”

27./[n/a] Dragon Boat Festival

The Dragon Boat Festival in Pittsburgh, PA, was removed from the list entirely.

II. Sector Upper Mississippi River

1./29. Hudson Hot Air Affair.

Clarified the regulated area by adding upper and lower bounds.

3./31. St. Patrick’s Water Parade.

This event is deleted from the Final Rule. The regulated area “Lake of the Ozarks mile 013.0” was not the intended area. The space in the table is reserved to facilitate re-adding this event in a future rulemaking.

4./32. Deke Slayton Airfest, LaCrosse

Clarified the regulated area by adding upper and lower bounds.

7./35. Lodge of the Four Seasons Memorial Day

Clarified the regulated area by adding upper and lower bounds.

9./37. Burlington Steamboat Days

Clarified the regulated area by adding upper and lower bounds.

11./39. Taste of the Quad Cities

Clarified the regulated area by adding upper and lower bounds.

12./40. Great Rivers Towboat Festival

Clarified the regulated area by adding upper and lower bounds.

14./42. Taste of Minnesota

Clarified the regulated area by adding upper and lower bounds.

15./43. Sioux City Big Parade

Clarified the regulated area by adding upper and lower bounds.

16./44. KC Riverfest/Kansas City Riverfest

Clarified the regulated area by adding upper and lower bounds. Clarified event name and sponsor.

19./47. 3rd Annual Dosh River Rally/Annual Dosh River Rally

Clarified the regulated area by adding upper and lower bounds. Removed “3rd” from event name.

23./51. Riverfest 2007/Riverfest

Removed “2007” from event name.

24./52. Red White and Boom

Clarified the regulated area by adding upper and lower bounds.

27./55. John E. Curran Fireworks

Clarified the regulated area by adding upper and lower bounds.

29./57. Red White and Boom Peoria

Reordered upper and lower bounds.

31./59. Minneiska 4th of July

Clarified the regulated area by adding upper and lower bounds.

34./62. Hermann 4th of July

Clarified the regulated area by adding upper and lower bounds.

37./65. Mike Herrington Fireworks

Clarified the regulated area by adding upper and lower bounds.

38./66. Riverfest, La Crosse

Clarified the regulated area by adding upper and lower bounds.

40./68. Grafton Chamber 4th of July Fireworks

Clarified the regulated area by adding upper and lower bounds.

41./69. Parkville 4th of July Fireworks

Clarified the regulated area by adding upper and lower bounds.

42./70. Harrah’s Fireworks Extravaganza

Clarified the regulated area by adding upper and lower bounds.

43./71. Hooligan Bay Fireworks Display

Clarified the regulated area by adding upper and lower bounds.

44./72. Tan-Tar-A 4th of July Fireworks

Clarified the regulated area by adding upper and lower bounds.

45./73. Red White and Boom Minneapolis

Clarified the regulated area by adding upper and lower bounds.

47./75. Lodge of the Four Seasons 4th of July

Clarified the regulated area by adding upper and lower bounds.

48./76. Gravois Mills Fireworks

Clarified the regulated area by adding upper and lower bounds.

50./78. Prairie du Chien Area Chamber Fireworks

Clarified the regulated area by adding upper and lower bounds.

52./80. Stars and Stripes River Day

Clarified the regulated area by adding upper and lower bounds.

53./81.

Clarified the regulated area by adding upper and lower bounds.

54./82. Lumberjack Days

Clarified the regulated area by adding upper and lower bounds.

55./83. Prairie Air Show

Clarified the regulated area by adding upper and lower bounds.

59./87. Cassville Twin-O-Rama

Clarified the regulated area by adding upper and lower bounds.

61./89. River City Days

Clarified the regulated area by adding upper and lower bounds.

62./90. New Piasa Chataqua

Clarified the regulated area by adding upper and lower bounds.

67./95. Tan-Tar-A-Fireworks

Clarified the regulated area by adding upper and lower bounds.

68./96. Mike Herrington Labor Day Fireworks

Clarified the regulated area by adding upper and lower bounds.

69./97. Lodge of the Four Seasons

Clarified the regulated area by adding upper and lower bounds.

74./102. Railroad Days

Clarified the regulated area by adding upper and lower bounds.

Sector Houston-Galveston

1./117. Port Arthur Fourth of July Fireworks Demonstration.

Replaced references to “Wilson Middle School” and “Old Golf Course Road” with miles on the waterway.

Sector New Orleans

4./131. Lundi Gras River Parade and Fireworks Display

Clarified regulated area by removing extraneous details.

Sector Mobile Events

1./141. Seroma's 4th of July

Defined regulated area using latitude and longitude instead of local landmarks and defined the regulated area as a radius instead of a point.

2./142. South Georgia Showdown

Defined regulated area using miles on the Flint River instead of landmarks.

3./143. Thunder on the Gulf

Defined regulated area as a four sided box using latitude and longitude points instead of landmarks.

4./144. GYA Challenge Cup

This event was removed from the list but the line is reserved to facilitate re-adding the event in the future.

8./148. Isle of Capri Anniversary Celebration

Defined regulated area using latitude and longitude instead of local landmarks.

15./155. Christmas Afloat

Clarified the regulated area.

20./160. Blue Angels Air Show

Defined the regulated area to exclude the interior waters of Pensacola Bay.

22./162. Mardi Gras Boat Parade

Clarified the regulated area.

23./163. Blessing of the Fleet

Clarified the regulated area.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary.

The regattas and marine parades listed in this rule will restrict vessel traffic from transiting certain areas of Eighth Coast Guard District waters; however the effect of this regulation will not be significant because these events are short duration and the special local regulation governing vessel movements and restrictions are also short duration. Additionally, the public is given advance notification through the **Federal Register** and thus will be able to plan operations around the event in advance.

B. Small Entities

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

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit the regulated area during the regattas or marine parade. The special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for short periods of times and vessel traffic can pass safely around the regulated area or through the regulated area with permission of the patrol commander. And before the effective period, the Coast Guard Captain of the Port will issue maritime advisories widely available to users of the river. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. Small entities were given a point-of-contact to direct questions regarding the provisions of this rule and options for compliance. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

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

E. Federalism

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

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 *note*) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications

of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(h) of the Instruction.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Amend § 100.801 to revise paragraph (a), add paragraphs (i) and (j), and revise table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

(a) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM.”

* * * * *

(i) In Table 1 to this section, where a regulated area is described by reference to miles of a river, channel or lake, the regulated area includes all waters between the indicated miles as defined by lines drawn perpendicular to shore passing through the indicated points.

(j) In Table 1 to this section, where alternative dates are described (“third or fourth Saturday”), the exact date and times will be advertised by the Coast Guard through Local Notices to Mariners and Broadcast Notices to Mariners.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS

I. SECTOR OHIO VALLEY

1. WEBN/Riverfest Fireworks
Sponsor: WEBN.
Date: The Sunday before Labor Day.
Regulated Area: Ohio River miles 469.2–470.5, Cincinnati, OH.
2. Aurora Thunder Regatta
Sponsor: Aurora Riverfront Beautification Committee.
Date: The last weekend in August.
Regulated Area: Ohio River channel miles 496.0–499.0, Aurora, IN.
3. Ohio River Way Paddlefest
Sponsor: Ohio River Way (Paddlefest).
Date: The last weekend in June.
Regulated Area: Ohio River miles 461.5–470.5, Cincinnati, OH.
4. Thunder Over Louisville.
Sponsor: Thunder Over Louisville.
Date: Five days during the 2nd half of April.
Regulated Area: Ohio River miles 602.0–606.0, Louisville, KY.
5. Kentucky Derby Festival Great Steamboat Race
Sponsor: Kentucky Derby Festival/Belle of Louisville Operating Board.
Date: One day during the last week in April or the first week in May.
Regulated Area: Ohio River miles 596.0–604.3, Louisville, KY.
6. Thunder on the Ohio
Sponsor: Evansville Freedom Festival.
Date: Six days during the last week in June and/or the first week in July.
Regulated Area: Ohio River miles 791.0–795.0, Evansville, IN.
7. Indiana Governor's Cup
Sponsor: Madison Regatta Inc.
Date: Thursday through Sunday over the 1st weekend in July.
Regulated Area: Ohio River miles 555.0–560.0, Madison, IN.
8. Kentucky Drag Boat Association Inc.: Drag Boat Races
Sponsor: Kentucky Drag Boat Association Inc.
Date: Three days between August 15th and August 31st.
Regulated Area: Green River miles 70.0–71.5, Livermore, KY.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

9. Ducks on the Ohio
Sponsor: Goodwill Industries, Inc.
Date: One day between August 15th and September 30th.
Regulated Area: Ohio River miles 791.5–793.5, Evansville, IN.
10. Clarksville Riverfest—Wakeboard Contest, Regatta, Fireworks
Sponsor: City of Clarksville, TN.
Date: The 2nd weekend in September.
Regulated Area: Cumberland River miles 125–126.
11. Spirit of Freedom Fireworks Florence, TN—Fireworks
Sponsor: Urban Broadcasting.
Date: July 4th.
Regulated Area: Tennessee River miles 255–257.
12. Lake Guntersville 4th of July Celebration—Fireworks
Sponsor: Lake Guntersville, AL Chamber of Commerce.
Date: July 4th.
Regulated Area: Tennessee River miles 356–358.
13. The Great Kiwanis Duck Race—Rubber Duck Regatta
Sponsor: Kiwanis Club of Chattanooga, TN.
Date: The 3rd weekend in June.
Regulated Area: Tennessee River miles 463–464.
14. Chattanooga Dragon Boat Festival—Rowing Race
Sponsor: Dynamic Events and Management.
Date: The 1st weekend in August.
Regulated Area: Tennessee River miles 463–464.
15. Pickwick Challenge—Powerboat Race
Sponsor: Pickwick Challenge, LLC.
Date: The 1st weekend in May.
Regulated Area: Tennessee River miles 206–210.
16. Lighting Up the Cumberland—Fireworks
Sponsor: Town of Cumberland City, TN.
Date: The Saturday before July 4th, or on July 4th if that day is a Saturday.
Regulated Area: Cumberland River miles 103–105.
17. Knoxville Dragon Boat Races—Rowing Race
Sponsor: Dynamic Events & Management.
Date: The 4th Weekend in August.
Regulated Area: Tennessee River miles 647–648.
18. Marietta Invitational Rowing Regatta
Sponsor: Marietta High School.
Date: One day during the 2nd or 3rd weekend in April.
Regulated Area: Muskingum River miles 0.5–1.5, Marietta, OH.
19. West Virginia Governor's Cup Regatta
Sponsor: University of Charleston.
Date: One day during the 2nd or 3rd weekend in April.
Regulated Area: Kanawha River miles 59.5–62.0, Charleston, WV.
20. Point Pleasant Sternwheel Regatta
Sponsor: City of Point Pleasant.
Date: Three days during the 1st or 2nd weekend in July.
Regulated Area: Ohio River miles 265.0–266.0, Point Pleasant, WV.
21. Charleston 4th of July Celebration
Sponsor: City of Charleston.
Date: Two days during the 1st week in July.
Regulated Area: Kanawha River miles 57.5–59.0, Charleston, WV.
22. Summer Motion
Sponsor: Summer Motion Inc.
Date: Three days during the 1st week in July.
Regulated Area: Ohio River miles 321.6–323.3.
23. Marietta Riverfront Roar Tunnel Boat Races
Sponsor: Marietta Riverfront Roar.
Date: Two days during either the 2nd or 3rd weekend in July.
Regulated Area: Ohio River miles 171.5–172.5, Marietta, OH.
24. Dawg Dazzle Fireworks Spectacular
Sponsor: Big Sandy Superstore Arena.
Date: One day during the 1st week in July.
Regulated Area: Ohio River miles 307.8–308.8, Huntington, WV.
25. Brundage Memorial Regatta
Sponsor: Brundage Regatta Committee.
Date: One day during the 3rd or 4th weekend in May.
Regulated Area: Ohio River miles 182.5–183.5.
26. St. Mary Medical Center Foundation Gala
Sponsor: St. Mary Medical Center Foundation.
Date: One day during the 2nd or 3rd weekend in May.
Regulated Area: Ohio River miles 307.8–308.8.
27. Pirates Fireworks
Sponsor: Pittsburgh Pirates.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

- Date: Every Saturday from April through September.
Regulated Area: Allegheny River miles 0.4–0.6, Pittsburgh, PA.
28. Wheeling Vintage Regatta
Sponsor: Wheeling Vintage Race Boat Association.
Date: Labor Day weekend.
Regulated Area: Ohio River miles 90.4–91.5, Wheeling, WV.
- II. SECTOR UPPER MISSISSIPPI RIVER*
29. Hudson Hot Air Affair
Sponsor: Hudson Hot Air Affair, Inc.
Dates: The 1st Friday in February.
Regulated Area: St. Croix River miles 16.5–16.9.
30. Winter Carnival—Comcast Fireworks
Sponsor: St. Paul Festival and Heritage Foundation.
Dates: The 1st Saturday in February.
Regulated Area: Upper Mississippi River miles 840.5–841.0.
31. [RESERVED].
32. Deke Slayton Airfest, LaCrosse
Sponsor: Deke Slayton Airfest.
Dates: Three days during the 3rd week in May.
Regulated Area: Upper Mississippi River miles 702.5–703.5.
33. That Was Then, This Is Now Boat Show & Exhibition
Sponsor: Clear Lake Chapter of the ACBS.
Dates: The 3rd Saturday in May.
Regulated Area: Upper Mississippi River miles 454.0–456.0.
34. Tan-Tar-A Memorial Day Fireworks
Sponsor: Tan-Tar-A Resort.
Dates: The last Sunday in May.
Regulated Area: Lake of the Ozarks miles 025.5–26.5.
35. Lodge of the Four Seasons Memorial Day
Sponsor: Lodge of the Four Seasons.
Dates: The last Sunday in May.
Regulated Area: Lake of the Ozarks miles 013.5–14.5.
36. Steamboat Sports Festival
Sponsor: Peoria Area Community Events.
Dates: Two days during the 2nd weekend in June.
Regulated Area: Illinois River miles 162.3–163.7.
37. Burlington Steamboat Days
Sponsor: Burlington Steamboat Days.
Dates: The 3rd Sunday in June.
Regulated Area: Upper Mississippi River miles 403.5–404.5.
38. Winona Steamboat Days Fireworks
Sponsor: Winona Steamboat Days Festival.
Dates: The 3rd Sunday in June.
Regulated Area: Upper Mississippi River miles 725.4–725.7.
39. Taste of the Quad Cities
Sponsor: Taste of the Quad Cities.
Dates: The 2nd Friday in June.
Regulated Area: Upper Mississippi River mile 485.0–485.5.
40. Great Rivers Towboat Festival
Sponsor: Great Rivers Towboat Festival.
Dates: Two days during the 3rd Weekend in June.
Regulated Area: Illinois River miles 0.2–0.5.
41. Water Ski Days
Sponsor: Lake City Chamber of Commerce.
Dates: Two days during the 3rd Weekend in June.
Regulated Area: Upper Mississippi River miles 772.4–772.8.
42. Taste of Minnesota
Sponsor: Taste of Minnesota.
Dates: Five days during the last week in June and/or the first week in July.
Regulated Area: Upper Mississippi River mile 839.5–840.5.
43. Sioux City Big Parade
Sponsor: City of Sioux City.
Dates: One day during the last weekend in June.
Regulated Area: Missouri River miles 731.0–733.0.
44. Kansas City Riverfest
Sponsor: Friends of the River (FOR-KC), Inc.
Dates: One day during the last weekend in June or the first weekend in July.
Regulated Area: Missouri River miles 365.5–370.5.
45. Bellevue Heritage Days
Sponsor: Bellevue Heritage Days.
Dates: One day during the last weekend in June or the first weekend in July.
Regulated Area: Upper Mississippi River miles 556.6–557.0.
46. Hudson Booster Days
Sponsor: Hudson Boosters.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

- Dates: One day during the last weekend in June or the first weekend in July.
Regulated Area: St. Croix River miles 017.0–017.2.
47. Annual Dosh River Rally
Sponsor: Village of Meredosia.
Dates: One day during the 1st weekend in July.
Regulated Area: Illinois River miles 072.0–072.2.
48. Mississippi Fireworks Festival
Sponsor: Alton Exposition Commission.
Dates: Either the 3rd or 4th day of July.
Regulated Area: Upper Mississippi River miles 202.5–203.0.
49. Radio Dubuque
Sponsor: Radio Dubuque.
Dates: Either the 3rd or 4th day of July.
Regulated Area: Upper Mississippi River miles 581.2–583.0.
50. Omaha World Herald Fireworks
Sponsor: Omaha Royals.
Dates: Either the 3rd or 4th day of July.
Regulated Area: Missouri River miles 612.1–613.9.
51. Riverfest—St. Charles
Sponsor: City of St. Charles.
Dates: July 3rd & 4th.
Regulated Area: Missouri River miles 28.2–28.8.
52. Red White and Boom
Sponsor: Davenport One Chamber.
Dates: Either the 3rd or 4th day of July.
Regulated Area: Upper Mississippi River mile 482.0–483.0.
53. Fair of St. Louis
Sponsor: Fair St. Louis.
Dates: Two days between the 1st and 4th of July.
Regulated Area: Upper Mississippi River miles 179.2–180.0.
54. Louisiana July 4th Fireworks
Sponsor: Louisiana Chamber of Commerce.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 282.0–283.0.
55. John E. Curran Fireworks
Sponsor: John E. Curran.
Dates: Either the 3rd or 4th day of July.
Regulated Area: Lake of the Ozarks mile 8.9–9.1.
56. Nauvoo 4th of July
Sponsor: Nauvoo Chamber of Commerce.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 375.0–376.0.
57. Red White and Boom Peoria
Sponsor: JMP Radio.
Dates: July 4th.
Regulated Area: Illinois River miles 162.5–162.1.
58. Stillwater 4th of July
Sponsor: City of Stillwater/St. Croix Events.
Dates: July 4th.
Regulated Area: St. Croix River miles 22.9–23.5.
59. Minneiska 4th of July
Sponsor: City of Minneiska.
Dates: July 4th.
Regulated Area: Upper Mississippi River mile 742.5–743.5.
60. Fort Madison 4th of July
Sponsor: City of Fort Madison.
Dates: July 4th.
Regulated Area: Upper Mississippi River mile 383.0–384.0.
61. Lake City 4th of July Fireworks
Sponsor: Lake City Chamber of Commerce.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 772.4–772.8.
62. Hermann 4th of July
Sponsor: Hermann Chamber of Commerce
Dates: July 4th.
Regulated Area: Missouri River miles 98.0–99.0.
63. Muscatine 4th of July
Sponsor: Greater Muscatine Chamber of Commerce.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 455.0–456.0.
64. National Tom Sawyer Days
Sponsor: Hannibal JayCees.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 308.0–309.0.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

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65. Mike Herrington Fireworks
Sponsor: Mike Herrington.
Dates: July 4th.
Regulated Area: Lake of the Ozarks miles 1.5–2.5.
 66. Riverfest, La Crosse
Sponsor: Riverfest, Inc.
Dates: 4 days during the 1st or 2nd week of July.
Regulated Area: Upper Mississippi River miles 697.5–698.5.
 67. Salute to America
Sponsor: Salute to America Foundation, Inc.
Dates: July 4th.
Regulated Area: Missouri River miles 143.0–143.5.
 68. Grafton Chamber 4th of July Fireworks
Sponsor: Grafton Chamber of Commerce.
Dates: July 4th.
Regulated Area: Illinois River miles 0.5–1.5.
 69. Parkville 4th of July Fireworks
Sponsor: Main Street Parkville Assoc.
Dates: July 4th.
Regulated Area: Missouri River miles 377.2–378.2.
 70. Harrah's Fireworks Extravaganza
Sponsor: Harrah's Casino and Hotel.
Dates: July 4th.
Regulated Area: Missouri River miles 614.8–615.8.
 71. Hooligan Bay Fireworks Display
Sponsor: Hooligan Bay Resort.
Dates: July 4th.
Regulated Area: Lake of the Ozarks miles 37.5–38.5.
 72. Tan-Tar-A 4th of July Fireworks
Sponsor: Tan-Tar-A Resort.
Dates: July 4th.
Regulated Area: Lake of the Ozarks miles 25.5–26.5.
 73. Red, White and Boom Minneapolis
Sponsor: Minneapolis Park and Recreation Board.
Dates: July 4th.
Regulated Area: Upper Mississippi River miles 853.5–854.5.
 74. Chillicothe 4th of July
Sponsor: Chillicothe 4th of July.
Dates: July 4th.
Regulated Area: Illinois River miles 179.1–180.1.
 75. Lodge of the Four Seasons 4th of July
Sponsor: Lodge of the Four Seasons.
Dates: July 4th.
Regulated Area: Lake of the Ozarks miles 13.5–14.5.
 76. Gravois Mills Fireworks
Sponsor: Town of Gravois.
Dates: One day during the 1st week of July.
Regulated Area: Lake of the Ozarks miles 9.5–10.5.
 77. Live on the Levee
Sponsor: Fair St. Louis.
Dates: Friday and Saturday of every weekend from the 2nd week of July until the 2nd week in August.
Regulated Area: Upper Mississippi River miles 179.2–180.0.
 78. Prairie du Chien Area Chamber Fireworks
Sponsor: Prairie du Chien Area Chamber of Commerce.
Dates: One day during the 2nd weekend of July.
Regulated Area: Upper Mississippi River miles 633.5–634.5.
 79. Clinton Riverboat Days
Sponsor: Clinton Riverboat Days.
Dates: Two days during the 2nd weekend of July.
Regulated Area: Upper Mississippi River miles 518.0–519.0.
 80. Stars and Stripes River Day
Sponsor: Naturally Guttenberg.
Dates: One day during the 2nd weekend of July.
Regulated Area: Upper Mississippi River miles 614.5–615.5.
 81. Sioux City Rivercade
Sponsor: Rivercade Association.
Dates: One day during the 3rd week in July.
Regulated Area: Missouri River miles 731.7–732.7.
 82. Lumberjack Days
Sponsor: St. Croix Events.
Dates: Four days during the 3rd week in July.
Regulated Area: St. Croix River miles 22.9–28.5.
 83. Prairie Air Show
Sponsor: Prairie Airshow, Inc.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

- Dates: One day during the 2nd weekend in July.
Regulated Area: Illinois River miles 161.5–162.5.
84. Aquatennial Power Boat Grand Prix
Sponsor: Champboat Series LLC.
Dates: Two days during the 3rd weekend in July.
Regulated Area: Upper Mississippi River miles 854.8–855.8.
85. Target Aquatennial Fireworks
Sponsor: Marketing Minneapolis, LLC.
Dates: One day during the 3rd weekend in July.
Regulated Area: Upper Mississippi River miles 853.2–854.2.
86. Rivertown Days
Sponsor: Hasting Riverboat Days.
Dates: Two days during the 3rd weekend in July.
Regulated Area: Upper Mississippi River miles 812.0–815.3.
87. Cassville Twin-o-Rama
Sponsor: Cassville Twin-O-Rama.
Dates: One day during the 3rd weekend in July.
Regulated Area: Upper Mississippi River mile 606.0–607.0.
88. Amelia Earhart Festival
Sponsor: Amelia Earhart Festival Committee.
Dates: The 3rd weekend in July.
Regulated Area: Missouri River miles 422.0–424.5.
89. River City Days
Sponsor: River City Days Association.
Dates: Two days during the 1st week in August.
Regulated Area: Upper Mississippi River miles 791.0–792.0.
90. New Piasa Chautauqua
Sponsor: New Piasa Chautauqua
Dates: One day during the 1st weekend in August.
Regulated Area: Upper Mississippi River miles 214.5–215.5.
91. Great River Tug
Sponsor: Tug Committee.
Dates: Two days during the 2nd weekend in August.
Regulated Area: Upper Mississippi River miles 497.2–497.6.
92. Evansville Day Drag Boat Race
Sponsor: St. Louis Drag Boat Association.
Dates: Two days during the 2nd weekend in August.
Regulated Area: Kaskaskia River miles 10.0–11.0.
93. Lansing Fish Days
Sponsor: Lansing Lions Club.
Dates: Two days during the 2nd weekend in August.
Regulated Area: Upper Mississippi River miles 662.5–663.8.
94. Lake Rescue Shoot Out
Sponsor: Lake Rescue Shoot Out INC.
Dates: Two days during the 4th weekend in August.
Regulated Area: Lake of the Ozarks miles 21.0–23.0.
95. Tan-Tar-A Fireworks
Sponsor: Tan-Tar-A Resort.
Dates: One day during the 1st weekend in September.
Regulated Area: Lake of the Ozarks miles 025.5–026.5.
96. Mike Herrington Labor Day Fireworks
Sponsor: Mike Herrington.
Dates: One day during the 1st weekend in September.
Regulated Area: Lake of the Ozarks miles 001.5–002.5.
97. Lodge of the Four Seasons
Sponsor: Lodge of the Four Seasons.
Dates: One day during the 1st weekend in September.
Regulated Area: Lake of the Ozarks miles 13.5–14.5.
98. First City Festival
Sponsor: Leavenworth Main Street Program.
Dates: Two days during the 2nd weekend in September.
Regulated Area: Missouri River miles 397.0–398.0.
99. Rodeo Cup
Sponsor: Old Fort Yacht Club.
Dates: One day during the 2nd weekend in September.
Regulated Area: Upper Mississippi River miles 374.0–375.0.
100. New Athens Drag Boat Race
Sponsor: St. Louis Drag Boat Association.
Dates: Two days during the 2nd weekend in September.
Regulated Area: Kaskaskia River miles 28.0–29.0.
101. Riverfest
Sponsor: Riverside Riverfest Committee.
Dates: Two days during the 3rd weekend in September.
Regulated Area: Missouri River miles 371.1–371.3.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

102. Railroad Days
Sponsor: Marquette Action Club.
Dates: One day during the 3rd weekend in September.
Regulated Area: Upper Mississippi River miles 634.0–635.0.
103. Missouri Governor's Cup
Sponsor: Valley Sailing Club.
Dates: Two days during the 1st weekend in October.
Regulated Area: Upper Mississippi River miles 211.0–212.0.
- III. SECTOR LOWER MISSISSIPPI RIVER*
104. Memphis in May Canoe & Kayak Race
Sponsor: Outdoors, Inc.
Date: The 1st or 2nd Saturday in May.
Regulated Area: Lower Mississippi River miles 735.5–738.5, Memphis, TN.
105. Memphis in May Sunset Symphony Fireworks Display
Sponsor: Memphis in May International Festival, Inc.
Date: The Saturday before Memorial Day.
Regulated Area: Lower Mississippi River miles 735.0–736.0, Memphis, TN.
106. Riverfest, Little Rock, Arkansas
Sponsor: Riverfest, Inc.
Date: The Sunday before Memorial Day.
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR.
107. Riverfest Fireworks Display
Sponsor: Old Fort Riverfest Committee.
Date: Either the 2nd or 3rd Saturday in June.
Regulated Area: Arkansas River miles 297.0–298.0, Fort Smith, AR.
108. Fourth of July Fireworks
Sponsor: Memphis Center City Commission.
Date: July 4th.
Regulated Area: Lower Mississippi River miles 735.5–736.5, Mud Island, Memphis, TN.
109. Pops on the River Fireworks Display
Sponsor: Arkansas Democrat-Gazette.
Date: July 4th.
Regulated Area: Arkansas River miles 118.8–119.5 near the Main Street Bridge, Little Rock, AR.
110. Uncle Sam Jam Fireworks, Alexandria, LA
Sponsor: Champion Broadcasting of Alexandria.
Date: July 4th.
Regulated Area: Red River miles 83.0–87.0, Alexandria, LA.
- IV. SECTOR CORPUS CHRISTI*
111. Buccaneer Days Fireworks Display
Sponsor: Buccaneer Commission, Inc.
Date: The 3rd or 4th Friday in April.
Regulated Area: Downtown waterfront, all waters inside Corpus Christi Marina breakwater, Corpus Christi Bay, TX.
112. Corpus Christi 4th of July Fireworks Display
Sponsor: Buccaneer Commission, Inc.
Date: July 4th.
Regulated Area: Downtown waterfront, all waters inside Corpus Christi Marina breakwater, Corpus Christi Bay, TX.
113. City of Port Aransas 4th of July Fireworks Display
Sponsor: City of Port Aransas.
Date: July 4th.
Regulated Area: all waters within a 600-foot radius of a point halfway between Port Aransas Harbor Daybeacon 2 to Port Aransas Ferry Landing in the Corpus Christi Ship Channel, Port Aransas, TX.
114. Bayfest Fireworks Display
Sponsor: Bayfest, Inc.
Date: The last Saturday in September.
Regulated Area: Downtown waterfront, all waters inside Corpus Christi Marina breakwater, Corpus Christi Bay, TX.
115. Harbor Lights
Sponsor: City of Corpus Christi.
Date: The 1st Saturday in December.
Regulated Area: Downtown waterfront, all waters inside Corpus Christi Marina breakwater, Corpus Christi Bay, TX.
116. Wendell Family Fireworks
Sponsor: City of Rockport.
Date: July 4th.
Regulated Area: all waters within a 700-foot radius of the northeast point of Rockport Beach Park in Rockport, TX.
- V. SECTOR HOUSTON-GALVESTON*
117. Port Arthur Fourth of July Fireworks Demonstration
Sponsor: The City of Port Arthur and Lamar State College.
Date: July 4th.
Regulated Area: All waters of the Sabine-Neches Canal between Intracoastal Waterway miles 284 and 285.
118. Neches River Festival and Fireworks, Beaumont, TX
Sponsor: Port Neches Chamber of Commerce.
Date: Two Days during either the 2nd or 3rd weekend in May.
Regulated Area: All waters of the Bessie Heights canal adjacent to Port Neches between the northern boundary at 30°00'00" N and the southern boundary at 29°59'42" N.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

119. Contraband Days Fireworks Display
Sponsor: Contraband Days Festivities, Inc.
Date: The 2nd Saturday in May.
Regulated Area: In Lake Charles a 500-foot radius from the fireworks barge anchored at approximate position 30°13'05" N, 093°13'42" W, Lake Charles, LA.
120. Neches River 4th of July Celebration
Sponsor: City of Beaumont.
Date: July 4th.
Regulated Area: At River Front Park in Beaumont, TX, the Neches River from the Trinity Industries Dry Dock to the northeast corner of the Port of Beaumont's dock Number 5.
121. National Safe Boating Week
Sponsor: Houston Power Squadron.
Date: The last weekend in May or the first weekend in June.
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
122. Sylvan Beach Fireworks Display, Sylvan Beach, Houston, TX
Sponsor: City of LaPorte.
Date: One day in the end of June or early July.
Regulated Area: An east-west oriented square extending 600 feet North, 600 feet South; 600 feet East, and 600 feet West centered around the fireworks launch area on the bank of Galveston Bay in the vicinity of the Sylvan Beach Bait Shop, Sylvan Beach, La Porte, TX.
123. Clear Lake Fireworks Display, Clear Lake, Houston, TX
Sponsor: Clear Lake Chamber of Commerce.
Date: July 4th.
Regulated Area: An east-west oriented rectangle extending 500 feet East, 500 feet West; 1000 feet North, and 1000 feet South, centered around the fireworks barge at Light 19 on Clear Lake, Houston, TX.
124. Blessing of the Fleet
Sponsor: Clear Lake Elks Club.
Date: The 1st Sunday in August.
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
125. Galveston Harbor Lighted Boat Parade
Sponsor: Historic Downtown/Strand Partnership.
Date: The last Saturday in November.
Regulated Area: Galveston Channel from Pier 9 to the Pelican Island Bridge.
126. Christmas Boat Parade on Clear Lake
Sponsor: Clear Lake Area Chamber of Commerce.
Date: The 2nd Saturday in December.
Regulated Area: Clear Lake, Texas from South Shore Harbor Marina down Clear Lake Channel to Clear Creek Channel Light 2.
127. Kemah Board Walk Summer Season Fireworks Display, Kemah, TX
Sponsor: Kemah Boardwalk.
Date: July 4th and every Friday night in June and July.
Regulated Area: Clear Creek Channel, including the area within an 840-foot radius of the fireworks barge on the south side of the channel, 100 ft off of Kemah Boardwalk in Galveston, TX.
- VI. SECTOR NEW ORLEANS*
128. Rivertown Christmas Festival
Sponsor: City of Port Allen.
Date: The 3rd Saturday in December.
Regulated Area: Located on Levee Batture in the vicinity of the Old Ferry Landing, the Lower Mississippi River from mile marker 230–231.
129. Donaldsonville Fireworks Display
Sponsor: Donaldsonville Tourism Commission.
Date: December 31st.
Regulated Area: Located on the Levee Batture, all waters of the Lower Mississippi River from mile marker 175–176.
130. New Orleans New Years Eve
Sponsor: Mardi Gras World, Inc.
Date: December 31st.
Regulated Area: In vicinity of Jackson Square, the Lower Mississippi River from miles 94–95.
131. Lundi Gras River Parade and Fireworks Display
Sponsor: (King REX and King ZULU) New Orleans RiverWalk Marketing Group and ZULU Social Aid and Pleasure Club.
Date: Lundi Gras (the Monday before Mardi Gras).
Regulated Area: The Lower Mississippi River from mile 93 to mile 96, New Orleans, LA.
132. Independence Day Celebration
Sponsor: Saint John the Baptist Parish.
Date: July 3rd.
Regulated Area: In vicinity of Saint Peter's Church, all waters of the Lower Mississippi River miles 138.5–139.5, Reserve, LA.
133. Donaldsonville Fireworks Display
Sponsor: Donaldsonville Tourism Commission.
Date: July 3rd.
Regulated Area: In the vicinity of Crescent Park, the Lower Mississippi River miles 175–176, Donaldsonville, LA.
134. Independence Day Celebration
Sponsor: Saint Charles Parish Fireworks.
Date: July 3rd.
Regulated Area: Levee Batture, in the vicinity of I-310 Bridge, the Lower Mississippi River miles 121–122, Luling, LA.
135. Independence Day Celebration (Dueling Barges)
Sponsor: Riverfront Marketing Group.
Date: July 4th
Regulated Area: In vicinity of Jackson Square and Spanish Plaza, the Lower Mississippi River from miles 94.3–95.3.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

136. Independence Day Celebration
Sponsor: WBRZ-TV, Baton Rouge, LA.
Date: July 4th.
Regulated Area: In the vicinity of the USS KIDD, the Lower Mississippi River from miles 228.8–229.8.
137. Fourth of July Star-Spangled Celebration
Sponsor: USS KIDD Veterans Memorial Baton Rouge, LA.
Date: July 4th.
Regulated Area: In the vicinity of 305 South River Road, the Lower Mississippi River miles 229.4–230.0, Baton Rouge, LA.
138. Independence Day Celebration
Sponsor: Boomtown Casino.
Date: July 4th.
Regulated Area: In the vicinity of Boomtown Casino, Harvey Canal miles 4–5.
139. Independence Day Celebration
Sponsor: City of Morgan City.
Date: July 4th.
Regulated Area: Morgan City Port Allen Route miles 4–5.
140. Louisiana Shrimp and Petroleum Festival
Sponsor: City of Morgan City.
Date: The 1st Sunday in September.
Regulated Area: Lower Atchafalaya River between the Berwick Bay Southern Pacific Railroad Bridge and 1/4 mile north of the Highway 182 Bridge on the Lower Atchafalaya River.
- VII. SECTOR MOBILE*
141. Seroma's 4th of July
Sponsor: Seroma's 4th of July.
Date: July 4th.
Regulated Area: All waters within a 200-foot radius of 30°24'27" N/ 087°2'27" W near Seville Harbor in Pensacola, FL.
142. South Georgia Showdown
Sponsor: Flint River Racers.
Date: One day during the last weekend in August or the first weekend in September.
Regulated Area: The Flint River from mile 21.8 to 22.6 near Bainbridge, GA.
143. Thunder on the Gulf
Sponsor: Gulf Coast Power Boat Association.
Date: 2 Days during the 3rd weekend in August.
Regulated Area: The waters off Orange Beach, Florida enclosed by a line starting at a point on the shore at approximately 30°15'38" N/ 087°36'45" W, then south to 30°14'18" N/087°36'45" W, then east, roughly parallel to the shore to 30°15'14" N/087°33'36" W, then north to a point on the shore at approximately 30°16'19" N/087°33'36" W, then west along the shore back to the starting point.
144. [RESERVED]
145. Christmas on the River
Sponsor: Demopolis Chamber of Commerce.
Date: The 1st Saturday in December from 6 p.m. to 8 p.m.
Regulated Area: Tombigbee River from Lock 4 to Caldwell Landing in Demopolis, AL.
146. Christmas by the River
Sponsor: Moss Point Active Citizens.
Date: The 1st Saturday in December from 5:00 p.m. to 7:30 p.m.
Regulated Area: Escataba River from the route 613 bridge east to the Moss Point City Docks.
147. Christmas on the Water
Sponsor: Biloxi Bay Chamber of Commerce.
Date: The 1st Saturday in December.
Regulated Area: Biloxi Channel from mile 5 to mile 28, Biloxi, MS.
148. Isle of Capri Anniversary Celebration
Sponsor: River Boat Corporation (Isle of Capri).
Date: August 1st from 8:45 p.m. to 10:00 p.m.
Regulated Area: All waters within 500 feet of 30°23'32" N 088°51'26" W (south of the Biloxi Ocean Springs Bridge in Biloxi, Mississippi).
149. Billy Bowlegs Pirate Festival
Sponsor: Greater Fort Walton Beach Chamber of Commerce.
Date: One day during the 1st weekend in June.
Regulated Area: In Santa Rosa Sound, the area East of the Brooks Bridge to Fort Walton Yacht Club at Smack Point and the area west of the Brooks Bridge to St. Simon's Church.
150. Dauphin Island Race
Sponsor: Fairhope, Lake Forest, Mobile, and Buccaneer Yacht Clubs.
Date: One day during the next-to-last or last weekend in April.
Regulated Area: Mobile Bay from the Middle Bay Light to Marker 37, Mobile, AL.
151. Big River Blast
Sponsor: City of Chattahoochee.
Date: One day during the 3rd weekend in April from 11:00 a.m. to 6:00 p.m.
Regulated Area: The Appalachianicola River from the dam to 1/4 mile south of the dam, Chattahoochee, FL.
152. Chattahoochee Challenge
Sponsor: City of Chattahoochee.
Date: One day during the last weekend in March from 11:00 a.m. to 6:00 p.m. CST.
Regulated Area: The Appalachianicola River from the dam to 1/2 mile south of the dam, Chattahoochee, FL.
153. Harbor Walk Fireworks Display
Sponsor: Legendary Incorporated.
Date: Memorial Day, Labor Day and every Thursday evening from May to September from 8:00 p.m. to 8:30 p.m.
Regulated Area: In East Pass, a 560-foot safety radius around the fireworks barge and push boat, Destin, FL.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

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154. Smoking the Sound
Sponsor: Biloxi Bay Chamber of Commerce.
Date: Two days between the 4th week in March and the 2nd week in April from 9:00 a.m. to 6:00 p.m. CST.
Regulated Area: Biloxi Ship Channel from buoy 2 to 35.
155. Christmas Afloat
Sponsor: Christmas Afloat Incorporated.
Date: Either the 2nd or 3rd Saturday in December.
Regulated Area: A portion of the Black Warrior River from the U.S. Highway 82 Bypass Bridge to mile 340 near Tuscaloosa, Alabama.
156. Air Sea Rescue
Sponsor: Gulf Coast Shows.
Date: One day during the 3rd or 4th weekend in February.
Regulated Area: On the Mobile River the area 1/2 mile upriver and 1/2 mile down river from the Mobile Convention Center.
157. Blessing of the Fleet
Sponsor: St. Michael's Catholic Church.
Date: The 1st Sunday in June.
Regulated Area: The Biloxi Channel from Daybeacon #1 to Buoy #34, Biloxi, Mississippi.
158. Blessing of the Fleet
Sponsor: St. Margaret Church.
Date: Either the 2nd or 3rd Sunday in May.
Regulated Area: Entire Bayou La Batre, Bayou La Batre, AL.
159. Flag Day Parade
Sponsor: Warrior River Boating Association.
Date: July 3rd.
Regulated Area: Warrior River Bankhead Lake River miles 368.4–386.4, Cottdale, AL.
160. Blue Angels Air Show
Sponsor: Naval Air Station Pensacola.
Date: One day during the 2nd weekend in July.
Regulated Area: All waters south of the Pensacola barrier islands within 5 nautical miles of 30°19'35" N/ 087°08'29" W, a point approximately 500 yards south of the Pensacola Beach water tower at the foot of the Pensacola fixed bridge adjacent to Little Sabine Bay, Pensacola, FL.
161. Boat Parade of Lights
Sponsor: City of Panama City/ St. Andrews Project.
Date: The 2nd Saturday in December from 5:30 p.m. to 7:30 p.m.
Regulated Area: St. Andrews Bay from St. Andrews Bay Yacht Club to St. Andrews Bay Marina in Pensacola, FL.
162. Mardi Gras Boat Parade
Sponsor: Gulf Shores Homeport Marina.
Date: The Monday before Mardi Gras.
Regulated Area: GIWW Pen Mobile Channel in Gulf Shores, AL from the Wharf Orange Beach, west to Oyster Bay and then east to Homeport Marina.
Wharf
Wharf
163. Blessing of the Fleet
Sponsor: Panama City Marina.
Date: The last Saturday in March.
Regulated Area: In the southeast basin of Panama City Marina located at 30°09'06" N/085°39'51" W, all waters between Harrison Avenue and the seawall.
164. Mobile Boat and Sportsman Show
Sponsor: Gulf Coast Shows.
Date: Four days over either the 3rd or 4th weekend of February.
Regulated Area: On the Mobile River the area 1/2 mile upriver and 1/2 mile down river from the Mobile Convention Center, Mobile, AL.
165. Bass Tournament Weigh-In
Sponsor: Gulf Coast Shows.
Date: Two days during the 3rd or 4th weekend in February.
Regulated Area: On the Mobile River the area 1/2 mile upriver and 1/2 mile down river from the Mobile Convention Center, Mobile, AL.
166. Water Ski Demonstration
Sponsor: Gulf Coast Shows.
Date: One day during the 3rd or 4th weekend in February.
Regulated Area: On the Mobile River the area 1/2 mile upriver and 1/2 mile down river from the Mobile Convention Center, Mobile, AL.
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Dated: March 30, 2009.

J.R. Whitehead,

*Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.*

[FR Doc. E9-11224 Filed 5-13-09; 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: Temporary final rule.

SUMMARY: The Coast Guard is 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 the 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: This rule is effective from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0122 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0122 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail Kristen.A.Beer@uscg.mil. If you have questions on viewing the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Ocean Beach Fourth of July Fireworks; Pacific Ocean, San Diego, CA in the **Federal Register** (74 FR 15412). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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.

Regulatory Analyses

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

Regulatory Planning and Review

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

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 rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Pacific Ocean from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 45 minutes late in the evening when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM) and will issue Broadcast Notice to Mariners (BNM) alerts via marine Channel 16 VHF before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

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

ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; 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: May 1, 2009.

T.H. Farris,

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

[FR Doc. E9–11304 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2009-0279]

RIN 1625-AA00

Safety Zone; Sea World Fireworks Season Kickoff; Mission Bay, San Diego, California**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World Fireworks Season Kickoff. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. on May 2, 2009 through 10 p.m. on May 17, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0279 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0279 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA at telephone (619) 278-7262. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

Sea World is sponsoring the Sea World Fireworks Season Kickoff, which will include a fireworks presentation from a barge in Mission Bay. The safety zone will be a 600 foot radius around the barge in approximate position 32°46'03"N, 117°13'11"W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m. on May 2, 3, 9, 10, 16, 17, 2009. The limits of the safety zone will be a 600 foot radius around the barge in approximate position 32°46'03" N, 117°13'11" W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size 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 designated safety zone during the specified times.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Commercial vessel traffic can 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 safety zone is enforced.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human

environment. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary zone § 165.T11-191 to read as follows:

§ 165.T11-191 Safety zone; Sea World Fireworks Season Kickoff; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone will include a 600 foot radius around the barge in approximate position 32°46'03" N, 117°13'11" W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m. on May 2, 3, 9, 10, 16, 17, 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 Sector San Diego Command Center. The Command Center 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: April 23, 2009.

T.H. Farris,

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

[FR Doc. E9-11225 Filed 5-13-09; 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: Temporary final rule.

SUMMARY: The Coast Guard is 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 the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0124 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0124 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey

Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Mission Bay Yacht Club Fourth of July Fireworks; Mission Bay, San Diego, CA in the **Federal Register** (74 FR 15407). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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.

Regulatory Analyses

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

Regulatory Planning and Review

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

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 rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Mission Bay from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 45 minutes late in the evening when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 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: May 1, 2009.

T.H. Farris,

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

[FR Doc. E9-11305 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-15-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: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the 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 the 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: This rule is effective from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0123 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0123 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kristen

Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail Kristen.A.Beer@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Big Bay Fourth of July Fireworks; San Diego Bay, San Diego, CA in the **Federal Register** (74 FR 15404). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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.

Regulatory Analyses

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

Regulatory Planning and Review

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

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 rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 45 minutes late in the evening when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM) and will issue Broadcast Notice to Mariners (BNM) alerts via marine Channel 16 VHF before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 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: May 1, 2009.

T.H. Farris,

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

[FR Doc. E9-11306 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2003-0064; FRL-8904-5]

RIN 2060-AP49

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a rule that amends and delays the effective date for the rule addressing “aggregation” under the Prevention of Significant Deterioration (PSD) and the nonattainment New Source Review (nonattainment NSR) programs (collectively, “NSR”). The “NSR Aggregation Amendments” were published in the **Federal Register** on January 15, 2009, and described when a source must combine nominally-separate physical changes and changes in the method of operation for the purpose of determining whether they are a single change resulting in a significant emissions increase.

On January 30, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration (the “NRDC Petition”) of the NSR Aggregation Amendments. In response to the NRDC Petition, EPA announced on February 13, 2009, that it would convene a reconsideration proceeding for the NSR Aggregation Amendments and would delay the effective date of the rule from February 17, 2009 until May 18, 2009. On March 18, 2009, EPA proposed an additional delay of the effective date and solicited comment on the duration of the additional delay.

By this rule, EPA is delaying the effective date of the NSR Aggregation Amendments for an additional 12 months, which will allow for sufficient time to conduct the reconsideration

proceeding. The new effective date of the rule is May 18, 2010.

DATES: The effective date of FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), and delayed on February 13, 2009 (74 FR 7284), is further delayed to May 18, 2010.

ADDRESSES: *Docket:* The final rule, the petition for reconsideration, comments on the March 18, 2009 proposal, and all other documents in the record for the NSR Aggregation rulemaking are in Docket ID. No. EPA-HQ-OAR-2003-0064. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-2380, fax number (919) 541-5509, e-mail address: svendsgaard.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include sources in all industry groups and state, local, and tribal governments.

B. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

B. How is this preamble organized?

II. Background

III. Summary of Public Comments Received

IV. Additional Twelve Month Delay of Effectiveness

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

B. Paperwork Reduction Act

C. Regulatory Flexibility Analysis

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 12899: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

L. Judicial Review

VI. Statutory Authority

II. Background

On January 15, 2009, the EPA (we) issued a final rule amending our PSD and nonattainment NSR regulations implementing the definition of “modification” in the Clean Air Act (CAA) 111(a)(4). The amendments addressed when a source must combine (aggregate) nominally-separate physical changes and changes in the method of operation (known as “activities”) for the purpose of determining whether they are a single change resulting in a significant emission increase. The amendments retained the rule language for aggregation but interpreted that rule text to mean that sources and permitting authorities should combine emissions when activities are “substantially related.” The rule also adopted a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur three or more years apart. Collectively, this rulemaking is known as the “NSR Aggregation Amendments.” For further information on the NSR Aggregation Amendments, please see 74 FR 2376 (January 15, 2009).

On January 30, 2009, NRDC submitted a petition for reconsideration of the NSR Aggregation Amendments as provided for in CAA 307(d)(7)(B).¹ Under that CAA provision, the Administrator may commence a reconsideration proceeding if the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period. In either case, the objection must be of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

On February 13, 2009, we issued notices announcing the convening of a

¹ John Walke, Natural Resources Defense Council, EPA-HQ-OAR-2003-0064-0116.1.

reconsideration proceeding in response to the NRDC petition and an administrative stay of the NSR Aggregation Amendments, which delayed the effective date of the NSR Aggregation Rule for 90 days from February 17, 2009 until May 18, 2009. See 74 FR 7193 and 74 FR 7284 (February 13, 2009).

As noted above, our authority to delay the effective date of a rule solely under the Administrator's discretion is limited to three months. On occasion, however, we have found three months to be insufficient to complete the necessary steps in the reconsideration process. Therefore, when we have issued similar administrative stays in the past, it has often been our practice to also propose an additional extension of the stay of effectiveness through a rulemaking process. An additional extension enables us to take comment on issues that are in question and complete any revisions of the rule that become necessary as a result of the reconsideration process.

Since we expect to take comment on a broad range of legal and policy issues as part of the NSR Aggregation Amendments reconsideration, on March 18, 2009 (74 FR 11509), we proposed to further delay the effective date of the NSR Aggregation Amendments until November 18, 2009. We also solicited comment on longer periods for a delay of effectiveness: (1) Until February 18, 2010, and (2) May 18, 2010.

III. Summary of Public Comments Received

We received five comments from interested parties on our March 18, 2009 proposal to delay the effective date of the NSR Aggregation Amendments. Most of the commenters requested that we not further delay the effective date of the rule after May 18, 2009. These commenters expressed concerns that sources need more clarity and certainty on the issue of aggregation, and leaving the NSR Aggregation Amendments in place during the reconsideration proceeding would provide greater clarity to sources even if we ultimately decide to change the rule.

While it is understandable that commenters may perceive a need for more clarity in the program, we are concerned that making effective a rule that may later change may actually result in more confusion for both sources and permitting authorities. We also are concerned that portions of the legal basis for the final rule did not undergo comment solicitation, so we would be remiss to let the rule become effective prior to letting the public comment fully on the basic authority for

the rule. Furthermore, a few of the issues raised in the NRDC Petition demonstrate that there are aspects of the final rule that still cause confusion, such as whether states must adopt the new rule and whether SIPs must be amended. These issues were not adequately addressed in the final rule. An additional delay of effectiveness that allows us to address these defects is necessary and prudent.

One commenter claimed it would be inappropriate for EPA to use section 705 of the Administrative Procedures Act (APA) to further postpone the effective date of the rule. However, because we do not rely on that statutory provision for this extension notice, the question is not relevant to this rule.

This commenter also suggested that the January 21, 2009 memorandum from the Director of the Office of Management and Budget (OMB) created an outside limit of 60 days for reconsideration of rules published prior to January 20, 2009.² However, nothing in the OMB memorandum supersedes the procedural and substantive requirements of the CAA. For example, section 307(d) provides the public the procedural right to present oral testimony and a minimum period for parties to comment on the testimony. The time frame allowed by the statute would be difficult to reconcile with the period in the memorandum.

Another commenter stated we lack authority to extend the effective date more than 90 days under the specific provisions of CAA section 307(d). The commenter argues that we can only amend the effective date in a new "substantive" rulemaking. We disagree with the commenter's analysis of the statute.

First, the provision allowing for a three month stay of effectiveness of the rule is an authority that either a court or EPA may use at its discretion without notice or an opportunity for comment. While CAA section 307(d)(7)(B) provides that this type of a stay may not "exceed three months," this limitation is best understood as applying to the plenary authority to grant a stay without notice and comment. There is nothing in this CAA provision indicating that it strips EPA of the authority to amend any provision it establishes through notice and comment rulemaking by a subsequent notice and comment rulemaking. See *National Cable & Telecomms. Ass'n v. Brand X Internet*

² OMB Memorandum M-09-08, "Implementation of Memorandum Concerning Regulatory Review" (January 21, 2009). See http://www.whitehouse.gov/omb/assets/agencyinformation_memoranda_2009_pdf/m09-08.pdf.

Servs., 125 S. Ct. 2688, 2700 (2005). That is the procedure we have undertaken in this action.

Second, the commenter recognizes that a new "substantive" rule following the rulemaking procedures of CAA section 307(d) could shift an effective date. We find no distinction in CAA section 307(d) between what the commenter terms a "substantive" amendment and an amendment modifying when the rule becomes effective, especially when such a rulemaking is completed before the original rule becomes effective. The commenter's interpretation of the statute would require as a matter of law the irrational result that EPA would have to allow a defective rule to nevertheless go into effect even if it could complete a rulemaking revising the effective date in time, or if it could not complete a potentially more complicated rulemaking amendment to address the rule's shortcomings in the same amount of time. However, EPA need not even have to find that a rule is defective before it can undertake notice and comment to revise any part of the rule, as long as the basis for the revisions is reasonable. Thus, like any other provision of a CAA section 307(d) rule, we are authorized to change the effective date of the final rule through rulemaking.

While most commenters were opposed to a further extension of the effective date of the NSR Aggregation Amendments, we note that one commenter concurred entirely with the objections raised in the NRDC petition and specifically pointed out a lack of tribal outreach in the development of the rule. The commenter requested a delay of three months to allow for tribal outreach, and a notice-and-comment rulemaking before a final action on aggregation takes effect. Since the issue of state, local, and tribal involvement under Executive Order 12866 will be addressed as part of our reconsideration proceeding, we will fully respond to this commenter's concern through our reconsideration.

IV. Additional Twelve Month Delay of Effectiveness

As noted above, we solicited comment on three potential periods of delay for the effective date of the NSR Aggregation Amendments. We now believe that allowing 12 additional months is more appropriate than a delay of six months, which was the preferred option at proposal, or nine months. This schedule allows for drafting and publishing a notice that focuses comment on specific issues to be reconsidered, provides a sufficient

opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), and gives us an opportunity to evaluate and respond to such comments.

We note that, over the recent past, reconsideration of NSR rulemakings like the Equipment Replacement Provision required nearly a year between the notice opening the comment period for reconsideration and the final action on reconsideration. See 69 FR 40278 (July 1, 2004) (opening of comments) and 70 FR 33838 (June 10, 2005) (final action). Given the degree of complexity with the issues under review here, the likelihood of significant public interest in this reconsideration, and our experience from recent NSR reconsiderations, we believe the delay we are adopting today is consistent with a realistic and achievable schedule for the reconsideration. While it is possible that we may require less time to complete the reconsideration, we believe extending the effective date by a full 12 months is reasonable and prudent.

Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the CAA, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 14, 2009. APA section 553(d) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication because doing so alleviates any potential confusion and implementation difficulties that could arise were the NSR Aggregation Amendments to go into effect for a 30 day period and then be stayed during reconsideration or modified as a result of the reconsideration process.

The effective date of the NSR Aggregation Amendments, FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), is hereby delayed to May 18, 2010.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This final action is not a "significant regulatory action" under the terms of

Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This final action does not impose any new information collection. However, OMB has previously approved the information collection requirements contained in the existing NSR regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, a "small entity" is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This final action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. This final action will not increase the burden imposed upon reviewing authorities. Therefore, this final action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or

uniquely affect small governments. As described above, this final action does not impose any new requirements on small governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply stays the effective date of the January 15, 2009 rule for an additional 12 months, pending a reconsideration proceeding. Thus, Executive Order 13132 does not apply to this final action.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This final action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action simply stays the effective date of the January 15, 2009 rule for an additional 12 months, pending a reconsideration proceeding. Thus, tribal governments should not experience added burden from this final action, nor should their laws be affected with respect to implementation of this final action. Thus, Executive Order 13175 does not apply to this final action.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This final action is not subject to Executive Order 13045 because it does not establish an

environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action does not involve technical standards; therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Therefore, Executive Order 12898 does not apply to this final action.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final action is not a “major rule” as defined by 5 U.S.C. 804(2). Therefore, this final action will be effective on May 14, 2009.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before July 13, 2009. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period of public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Baseline emissions, Intergovernmental relations, Aggregation, Major modifications, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Baseline emissions, Incorporation by reference, Intergovernmental relations, Aggregation, Major modifications,

Reporting and recordkeeping requirements.

Dated: May 8, 2009.

Lisa P. Jackson,
Administrator.

[FR Doc. E9-11271 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 95

[ET Docket Nos. 06-135, 05-213 and 03-92, RM-11271; FCC 09-23]

Spectrum Requirements for Advanced Medical Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes a new Medical Device Radiocommunication Service (MedRadio Service) of the Commission's rules. This new service incorporates the existing Medical Implant Communications Service (MICS) “core” band at 402-405 MHz, and also includes two megahertz of newly designated spectrum in the adjacent “wing” bands at 401-402 MHz and 405-406 MHz. The MedRadio Service will accommodate the operation of body-worn as well as implanted medical devices, including those using either listen-before-talk (“LBT”) frequency monitoring or non-LBT spectrum access methods, in designated portions of the 401-406 MHz band.

DATES: Effective August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, (202) 418-2290, e-mail Gary.Thayer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket Nos. 06-135, 05-213, and 03-92, RM-11271, FCC 09-23, adopted March 19, 2009, and released March 20, 2009. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th St., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail FCC@BCPIWEB.COM.

Summary of the Report and Order

1. *Overview.* In July 2006, the Commission adopted a Notice of Proposed Rulemaking (NPRM), Notice of Inquiry (NOI) and Order—collectively, the *MedRadio NPRM*. In the *MedRadio NPRM*, the Commission proposed to establish a new service for medical radiocommunication devices to better accommodate the varieties of new implantable and body-worn medical devices.

2. In this Report and Order, the Commission decided to establish a new Medical Device Radio-communication Service (MedRadio Service) under part 95 of the Commission's rules. Under the rules adopted by the Commission in this Report and Order, this new service incorporates the existing Medical Implant Communications Service (MICS) "core" band at 402–405 MHz, and also includes two megahertz of newly designated spectrum in the adjacent "wing" bands at 401–402 MHz and 405–406 MHz. Thus, the MedRadio Service will provide a total of five megahertz of contiguous spectrum on a secondary basis and non-interference basis for advanced wireless medical radiocommunication devices used for diagnostic and therapeutic purposes in humans. In addition, the MedRadio Service will accommodate the operation of body-worn as well as implanted medical devices, including those using either listen-before-talk ("LBT") frequency monitoring or non-LBT spectrum access methods, in designated portions of the 401–406 MHz band.

3. The Commission found that the new MedRadio spectrum in the 401–402 MHz and 405–406 MHz wing bands is well suited for use on a secondary basis by the medical implant and body-worn devices covered by this Order for several reasons. First, these frequencies offer the same propagation, availability, and compatibility characteristics that were found to be favorable for the MICS in the 402–405 MHz core band. In addition, this new designation will result in a continuous span of spectrum (from 401–406 MHz) that matches the five-megahertz of spectrum that is also designated internationally for similar use by medical implant and body-worn devices.

4. The Commission noted that the service and technical rules adopted in this Report and Order for the MedRadio Service are based upon the existing MICS rules, and include modified spectrum sharing requirements in the new wing bands. The new rules will permit the use of both medical implant devices and medical body-worn devices

in specified segments of the 401–406 MHz band.

5. The Commission found that these new MedRadio sharing rules will provide a greater degree of flexibility than is permitted by the existing medical implant rules, while also assuring spectrum use compatibility among different device types. The Commission further found that the new designation in the wing bands will provide the additional shared spectrum that is urgently needed for operation of both implant and body-worn devices. The Commission stated its further belief that the MedRadio rules adopted in this Order should encourage the continuing use of the legacy MICS core band predominantly for life-critical applications, such as those served by the existing population of medical implant devices presently used.

6. With respect to the potential for interference to incumbent users of the 401–402 MHz and 405–406 MHz wing bands arising from the operation of MedRadio devices, the Commission concluded that the potential for such interference is negligibly small. The Commission noted that, in the United States, the 401–406 MHz band is allocated for various Federal and non-Federal uses on a primary basis, and the 402–405 MHz band is allocated for mobile, except mobile aeronautical, service on a secondary basis, with use limited to MICS. The Commission determined that, given the ultra low power limits and intermittent operating modes that will be used by these medical devices, and the expectation of large separation distances, there is little likelihood that these medical devices could cause harmful interference to incumbent operations.

7. With respect to the potential for harmful effects to MedRadio devices due to received interference from incumbent users, the Commission observed that it would be beneficial if MedRadio devices employed robust designs. For example, the Commission noted that MedRadio medical devices—particularly those devices used for life critical and time-sensitive applications—might need to employ a variety of error detection and correction techniques, frequency monitoring capabilities, and re-transmission protocols.

8. In broader terms, the Commission determined that the additional spectrum and enhanced flexibility afforded in the new rules will promote the accelerated development of newer generations of advanced medical device technologies. These advances, the Commission found, will herald dramatic improvements in therapeutic/diagnostic patient care and

quality of life for countless individuals. The Commission also noted that the MedRadio designation and rules adopted in this Order are harmonized for the most part in their general approach with similar European Telecommunication Standards Institute (ETSI) standards relating to use of the 401–406 MHz band by medical implant and body-worn devices in other regions of the world. The Commission stated its belief that such harmonization will serve the public interest by offering Americans greater confidence of reliable device operation while traveling abroad, and conversely, by offering similar confidence for foreign visitors to the United States. The Commission also determined that economies of scale resulting from harmonized rules for domestic manufacturers seeking to compete in the world market should foster a reduction of device prices, thus making the benefits of such technologies more widely available and affordable for the American public.

9. *Licensing.* Consistent with the existing MICS licensing scheme, the Commission decided that the new MedRadio service at 401–406 MHz will be governed under Part 95 of the Commission's rules, thus providing for license-by-rule operation throughout the 5 megahertz band. The Commission concluded that this approach minimizes regulatory procedures and will facilitate the more expeditious deployment of new generations of beneficial wireless medical devices in these bands that can improve the quality of life for countless Americans, thus serving the public interest, convenience and necessity. The Commission also decided that the operation of medical devices in the MedRadio band will be on a secondary, non-interference basis with respect to other authorized services and as such they must accept harmful interference from the systems operating in those services. MedRadio devices will operate on a shared, non-exclusive basis with respect to each other.

10. *Definitions—Implant and Body-worn Devices.* In order to be deemed a *medical body-worn device* or *medical body-worn transmitter*, the Commission required that the antenna of the associated patient-worn device be placed upon or in very close proximity (e.g., within a few centimeters) to the body. In order to be classified as a *medical implant transmitter* or *medical implant device*, the Commission required that the transmitting antenna of the patient device must itself be implanted wholly within the body—which would include any point below the skin, or more deeply within the body. The Commission retained the

existing definitions for medical implant devices.

11. *Authorized Frequencies for Implant and Body-Worn Devices.* The Commission concluded that implanted devices will be permitted in both the existing MICS core band at 402–405 MHz, as well as in the wing bands at 401–402 MHz and 405–406 MHz. This will allow medical implant devices to operate anywhere in the 401–406 MHz band—but subject to different technical requirements in the core and wing bands.

12. The Commission decided, with one exception, to permit body-worn devices to operate only in the wing bands at 401–402 MHz and 405–406 MHz. Thus, in the new MedRadio wing bands, both implant and body-worn devices will be allowed to operate—under common technical requirements for each—throughout both the 401–402 MHz and 405–406 MHz frequency range. The Commission stated its belief this approach will serve to accommodate a greater variety of implant and body-worn devices. The Commission also observed that, by preserving the core band at 402–405 MHz primarily for communications involving deeply implanted devices, these frequencies would likely continue to be used largely for life-critical medical devices such as cardiac defibrillators.

13. As an exception to the general rule for body-worn devices, the Commission decided to permit the operation in the core band of temporary body-worn devices that are used to evaluate the efficacy of an implanted medical device.

14. The Commission determined that allowing the operation of such temporary body-worn devices will enhance the therapeutic and diagnostic options available to patients. In particular, the Commission noted that this will allow physicians to better evaluate the efficacy of proposed treatments involving implanted devices prior to actual device implantation. The Commission decided to permit the operation of such temporary body-worn devices on any frequency in the 402–405 MHz core band provided that: (1) Such external operation is limited solely to evaluating with a patient the efficacy of a fully implanted permanent medical device that is intended to replace the temporary body-worn device; (2) RF transmissions from the external device must cease following the patient evaluation period, which may not exceed 30 days, except where a health care practitioner determines that additional time is necessary due to unforeseen circumstances; (3) the maximum output power of the external,

temporary body-worn device shall not exceed 200 nW EIRP; and (4) the external device must comply fully with all other MedRadio rules described throughout the core 402–405 MHz band.

15. The Commission declined to explicitly limit the core band to life-critical and time-sensitive applications, or to designate the wing bands for non-life-critical, non-time sensitive applications. The Commission said that its decision to limit the core band primarily to communications involving implanted devices, coupled with the technical rules adopted for use of the core and wing bands will achieve much the same result, while providing greater flexibility for device manufacturers and practitioners. The Commission determined that leaving the ultimate decision on these matters to health care professionals and medical device manufactures, in concert with FDA-required risk management processes, would result in better and more flexible use of this scarce spectrum resource.

16. *Permissible Communications and Operator Eligibility.* The Commission concluded that the new MedRadio service will be governed by the same operator eligibility and permissible communications requirements that pertain to the legacy MICS. According to the Commission, this will result in a more beneficial use of the spectrum than alternative approaches.

17. More specifically, the Commission decided that MedRadio devices may be used only by persons for diagnostic and therapeutic purposes, and only when provided for such purposes to a human patient under the direction of a duly authorized health care professional. Furthermore, the Commission limited the MedRadio service to the transmission of non-voice data. MedRadio programmer/control transmitters may not relay information on MedRadio frequencies to a receiver that is not included with a MedRadio device. The Commission concluded that these requirements are central to maintaining the originally intended character and utility of this spectrum, which the Commission found has proven to be of significant benefit to many patients over the years.

18. The Commission declined to adopt rules in this Order that would permit the operation of wireless hearing aids in the upper portion of the lower MedRadio wing band. However, in recognition of the important public interest benefits associated with this proposal, the Commission welcomed additional technical submissions or revisions to address whether this or some other band(s) could accommodate various types of hearing aid devices,

and stated that it would consider developing a record through a notice of proposed rulemaking to more fully analyze these matters.

19. The Commission also declined to allow the use of MedRadio devices in connection with animal test subjects in the course of human drug research. The Commission found that such testing would not, in and of itself, directly perform any diagnostic or therapeutic function for a human patient. In contrast, the Commission observed that, since its creation, the legacy MICS had been explicitly reserved for use by devices performing diagnostic and therapeutic functions with *human* patients and only when such use has been duly authorized by a health care professional. It further found that changing the eligibility requirements to permit animal test subject use would constitute a major departure from these underlying requirements and that such a departure did not appear to be warranted based upon the record in this proceeding. From a procedural perspective, the Commission further stated that the *MedRadio NPRM* neither proposed, nor sought comment on, modifying these basic service and eligibility provisions; and that it particularly did not address the specific question at issue here of whether use of the MICS/MedRadio frequencies should be extended to animal testing. Thus, the Commission concluded that it had an insufficient substantive record or procedural notice upon which to pursue the matter of animal test subjects.

20. *MedRadio channels.* The Commission decided to generally carry forward the MICS rules into the new MedRadio Service. Under the existing rules, no particular channeling scheme is specified for the operation of MICS devices. Instead, a “channel” is simply defined as any continuous segment of spectrum used by a medical device. Thus, a MedRadio device may transmit on any center frequency so long as the maximum authorized emission bandwidth is not exceeded. The Commission stated its belief that this approach is beneficial because it would continue to provide the greater flexibility that device manufacturers now use as compared with a rigid channeling scheme.

21. *Emission Bandwidth.* With respect to the new MedRadio wing bands at 401–402 MHz and 405–406 MHz, the Commission concluded that a 100 kilohertz maximum authorized emission bandwidth in the limited space of the one-megahertz wide wing bands will foster more intensive spectrum utilization by a greater number of devices as compared with a 300

kilohertz maximum bandwidth. The Commission determined that this smaller bandwidth would allow more devices to use the wing bands on non-overlapping spectrum. In addition, the Commission found that this bandwidth will also serve to minimize interference potential from other MedRadio devices, particularly in light of the fact that both LBT and non-LBT devices will share the entire wing bands.

22. As one exception to the general bandwidth requirement for the wing bands, the Commission decided to allow up to a 150 kilohertz maximum authorized emission bandwidth at 401.85–402 MHz. In reaching this decision, the Commission recognized that some body worn devices, such as the glucose monitoring devices that are now operating in the core band under a waiver, need a slightly wider emission bandwidth. Thus, the Commission found that its decision here to allow a slightly wider emission bandwidth at the upper edge of the 401–402 MHz wing band will facilitate transitioning such devices now operating under rule waivers out of the core band. In addition, the Commission observed that the narrower bandwidth for the wing bands, is expected to be better suited for non-life-critical devices—namely, those with less severe battery life constraints that are tailored for operation with lower bandwidth data streams utilizing a relatively greater number of longer data transmission sessions as compared with devices used in the core band.

23. For the core band at 402–405 MHz, the Commission decided to maintain the existing maximum authorized emission bandwidth of 300 kilohertz. The Commission found that, relative to the 100 kilohertz bandwidth it adopted for the wing bands, this 300 kilohertz bandwidth will better facilitate more data-intensive transmissions of shorter duration which tend to be more energy efficient, and thus prolong battery life for implants. This will also support higher data transmission rates than could be accommodated by the maximum authorized emission bandwidth of 100 kilohertz channels of the wing bands, and thus may be more desirable for certain applications. The Commission found that such characteristics are especially beneficial in extending the battery life of deep implant devices.

24. The Commission decided that it would continue to permit MedRadio transmitters to utilize full duplex or half duplex communications if the total amount of bandwidth used by all of the MedRadio channels employed by a MedRadio device during a MedRadio communications session does not

exceed the maximum authorized emission bandwidth (*i.e.*, 100 kilohertz in the wing bands and 300 kilohertz in the core band). Moreover, smaller bandwidths may be employed by a single MedRadio device so long as the device adheres to all other EIRP and unwanted emission limits. For example, a single MedRadio device operating in the wing bands could be designed to operate nominally on two channels, each having a maximum emission bandwidth of 50 kilohertz, because the communications session would, in aggregate, be 100 kilohertz. The Commission noted that, in essence, these provisions carry forward the existing channel use provisions of the MICS rules into the new MedRadio rules.

25. *Frequency monitoring requirement.* In the Report and Order, the Commission observed the current MICS rules require that the programmer/control transmitter associated with a medical implant device in the 402–405 MHz band must incorporate a frequency monitoring mechanism to monitor the channel or channels that the medical device transmitters intend to occupy. The Commission further stated its belief that an LBT frequency monitoring requirement is beneficial because it facilitates spectrum sharing among many uncoordinated devices and can reduce the likelihood of harmful interference from federal systems that are allocated on a primary basis. Thus, the Commission decided to maintain the current frequency monitoring protocol specified in the form MICS rules as a general requirement for implant devices permitted throughout the entire 401–406 MHz MedRadio core band, as well as for body-worn devices permitted in the new wing bands. In addition, the Commission also extended the “medical implant event” exception of the current rules to LBT-enabled implant devices operating throughout the 401–406 MHz MedRadio band.

26. In further recognition of the potential advantages of non-LBT spectrum access methods for certain low power, low duty cycle (LP-LDC) devices—particularly, in terms of extended battery life, reduced complexity, and lower device cost to patients—the Commission decided to permit the use of non-LBT spectrum access methods in the wing bands, with certain transmitter power and duty cycle limits, by both implant and body-worn devices. In addition, the Commission permitted the use of non-LBT spectrum access methods for implant devices that operate with an emission bandwidth not exceeding 300

kilohertz centered at 403.65 MHz in the existing core band with certain transmitter power and duty cycle limits. Finally, the Commission also decided to permit the operation on any of the frequencies in the 402–405 MHz band of temporary body-worn transmitting devices that are used solely during a limited patient evaluation period in order to determine the suitability of a fully implanted device, provided that they fully comply with all other MedRadio rules applicable to the band.

27. *Transmitter power and duty cycle.* The Commission limited the maximum EIRP of LBT-enabled implant devices throughout the 401–406 MHz band and LBT-enabled body-worn medical devices in the wing bands to 25 microwatts EIRP. The Commission determined that, as with the original MICS rules, this limit is intended to ensure efficient spectrum sharing and compatibility among multiple uncoordinated devices. Furthermore, the 25 microwatt limit will maintain continuity with the present EIRP limit and LBT frequency monitoring requirement for the core band (which we also maintain under the new MedRadio rules) that has served well for spectrum access.

28. With respect to access to the 402–405 MHz band by non-LBT devices, the Commission found that the convergence of comments in the record, particularly subsequent to the adoption by ETSI of similar standards, supported permitting operation by such devices with a total emission bandwidth not exceeding 300 kilohertz, centered at 403.65 MHz, with a maximum EIRP of 100 nanowatts and with maximum duty-cycle and transmission session limits of 0.01% and ten per hour, respectively. The Commission stated that its decision was informed by the increasingly widespread adoption of standards internationally that provide for non-LBT spectrum access methods in the 402–405 MHz band. Furthermore, based upon the Commission’s prior experience with single-channel non-LBT devices operating under rule waivers in the core MICS band the Commission concluded that these EIRP and duty cycle limits would be sufficiently conservative to permit efficient spectrum sharing between LBT enabled and non-LBT devices that choose to operate at 403.65 MHz.

29. For devices using non-LBT spectrum access methods in the new MedRadio wing bands at 401–402 and 405–406 MHz, the Commission adopted power and duty cycle limits that match the proposals in the *MedRadio NPRM*, namely a maximum EIRP of 250 nanowatts, together with a maximum

duty cycle limit of 0.1% and a maximum limit of 100 communication sessions per hour. The Commission stated its belief that permitting the higher EIRP of 250 nanowatts for non-LBT operation in the wing bands, as compared with the 100 nanowatts adopted for non-LBT operation in the core band, will serve to encourage use of the wing bands for the majority of non-LBT applications.

30. The Commission also recognized that some body worn devices may require higher power and greater bandwidth, such as the glucose monitoring devices manufactured by one manufacturer that are now operating in the core band under a waiver. Thus, the Commission decided to also allow non-LBT MedRadio devices using a maximum of 25 microwatts EIRP to operate at 401.85–402 MHz at the upper end of the lower wing band. The Commission determined that its decision would facilitate the transition of such devices now operating under waivers out of the core band, and into the new MedRadio wing bands. The Commission also noted that permitting the higher power and bandwidth would also provide flexibility for other manufacturers designing medical devices in these bands.

31. *Unwanted emissions.* The Commission retained without modification the existing in-band and out-of-band emission limits for the MedRadio core band frequencies at 402–405 MHz. For the new MedRadio wing bands at 401–402 MHz and 405–406 MHz, the Commission adopted an emission mask having the same form as the emission mask that already exists for the core band, but modified to apply over the narrower 100 kilohertz maximum authorized emission bandwidth of the wing band. Thus, the Commission required that emissions from devices operating within the MedRadio wing bands more than 50 kilohertz away from the center frequency of a transmission be attenuated below the actual transmitter output power by at least 20 dB. In addition, it required emissions 100 kilohertz or less below 401 MHz, or above 406 MHz, to be attenuated below the maximum permitted output power by at least 20 dB. Finally, for out-of-band emissions at more than 100 kilohertz outside the 401 MHz and 406 MHz MedRadio band edges, the Commission adopted generally the same field strength limits on emissions that presently apply to the core band.

32. The Commission declined to impose more restrictive limits on emissions from MedRadio wing band

devices into the existing core band. The Commission said that under such an approach, which was recommended by one commenter, wing band devices would be burdened with more stringent limits on radiation into the core band as compared to core band devices. The Commission found no compelling reason to place wing band devices on such an unequal footing with core band devices, particularly if such a limit were to be set below the existing general emission limits contained in § 15.209 as suggested by one commenter. The Commission stated that it was confident that manufacturers of wing band devices are capable of designing their products to be compatible with and to protect core band devices, especially when both types of devices are used by the same patient. In addition, the Commission found that the emission limits it adopted would afford sufficient protection to satellite operations on frequencies below 401 MHz adjacent to the lower MedRadio wing band.

33. *RF safety and EIRP compliance.* The Commission retained the basic requirements in the current rules as they apply RF safety and EIRP compliance requirements for implanted devices. In addition, the Commission decided that, to the extent feasible, body-worn MedRadio devices shall be governed by the same requirements as other hand-held transmitting devices for the purposes of demonstrating compliance with RF safety and EIRP limits.

34. The Commission observed that it has another ongoing proceeding concerning RF exposure that would be better suited to address several other concerns expressed by some commenters. One issue involves whether and when open-area test sites or body-torso simulator measurements should be performed, and whether a 4 dB EIRP correction factor should be applied between implant and body-worn devices to account for the absorption of radio energy by body tissue that can be associated with implanted devices. A second issue involves whether unspecified “other techniques” (beyond the finite difference time domain (FDTD) technique cited in the existing rules) could be used for equipment authorization and RF exposure evaluation purposes. In view of the ongoing RF safety proceeding, the Commission declined to make any further modifications in this Report and Order.

35. *Disposition of Biotronik and DexCom Waivers.* The Commission noted that it had previously granted waivers to two device manufacturers (Biotronik and DexCom) that permit the

manufacture and marketing in the United States of certain models of cardiac and diabetic therapy devices that do not possess the LBT frequency monitoring capability required by the present MICS rules for the core band at 402–405 MHz. Both waivers were stated to be valid for one year from the effective date of the final MedRadio rules adopted in this proceeding.

36. With respect to the *Biotronik Waiver*, the Commission found that the technical parameters of the authorized cardiac devices would now be encompassed within the provisions of the new MedRadio rules adopted herein—which provide for non-LBT operation by low power, low duty cycle implants operating between 403.5–403.8 MHz in the 402–405 MHz core band. Consequently, the Commission found that *Biotronik Waiver* would be rendered moot upon the effective date of the MedRadio rules adopted in this Report and Order.

37. With respect to the *DexCom Waiver*, the Commission found that the covered devices did not comply with the new MedRadio rules. It thus decided to extend the waiver term for four years from the effective date of the MedRadio rules adopted herein. The Commission stated that this extended term should provide DexCom with sufficient time to come into compliance with the new MedRadio rules and to obtain the required FDA approval. The Commission also found that continued operation of the DexCom non-LBT devices in the core band, particularly at the higher power levels they use, could in the long term prove problematic for other rules-compliant devices—especially those used for life-critical applications—as the numbers of these types of devices grow. Further, the Commission also observed that the wing bands provide adequate spectrum for both LBT and non-LBT body-worn devices and that DexCom’s devices may reasonably be accommodated under the new MedRadio rules for these bands. In declining to extend the waiver for 5 years as requested by DexCom, the Commission stated that it was not persuaded that the relatively small move in operating frequency, while maintaining emission bandwidth, power and duty cycle specifications, would require 5 additional years. Thus, the Commission encouraged DexCom to transition to the newly designated spectrum as soon as practicable.

Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Notice of Inquiry and Order (MedRadio NPRM)* in ET Docket No. 06–135.² The Commission sought written public comment on the proposals in the *MedRadio NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives, of the Report and Order

39. The Report and Order establishes the Medical Device Radiocommunication Service (MedRadio) under part 95 of the Commission's rules. This new service will incorporate the existing Medical Implant Communications Service (MICS) "core" band at 402–405 MHz, and include two megahertz of newly designated spectrum in the adjacent "wing" bands at 401–402 MHz and 405–406 MHz. Altogether, the MedRadio Service will provide a total of five megahertz of contiguous spectrum for advanced wireless medical radiocommunication devices to be used for diagnostic and therapeutic purposes in humans. Among other benefits, the MedRadio Service will accommodate the operation of body-worn as well as implanted medical devices, including those using either LBT or non-LBT spectrum access methods, in designated portions of the 401–406 MHz band.

40. Significant advances in wireless implanted and body-worn medical technologies are revolutionizing treatment for a wide variety of medical conditions and, even more fundamentally, creating new health care models serving to improve quality of life for all Americans. As demonstrated by the comment record in this proceeding, implanted and body-worn medical devices that rely upon wireless

technologies are being used even today to treat a variety of cardiac and diabetic conditions. For example, wireless implanted cardiac devices serve as defibrillators and pacemakers without the need for external wired connections; while other radio-equipped devices, such as blood glucose monitors and insulin pumps, support more timely treatment for diabetic patients and allow physicians to wirelessly retrieve data and then make operating parameter adjustments with greater ease and accuracy than with the more traditional wired connection technologies. Some examples of newer generations of devices that could benefit from the use of wireless technologies include implanted vagus nerve stimulators that send electric pulses to the brain to treat severe chronic depression, and deep brain stimulators used to treat tremors related to Parkinson's disease.³ Such advances have the potential to significantly improve the quality of life and sophistication of therapy for countless Americans living with a variety of medical conditions; and, in turn, could result in lower medical costs and extend the time between hospital visits and surgical procedures.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

41. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

42. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business concern is one which: (1) Is

³ *Id.*

⁴ 5 U.S.C. 603(b)(3).

⁵ 5 U.S.C. 601(6).

⁶ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*." 5 U.S.C. 601(3).

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

43. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.⁸ A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁹ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁰ The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹¹ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹² We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."¹³ Thus, we estimate that most governmental jurisdictions are small.

44. *Personal Radio Services.* The Medical Device Radio Communications Service are being placed within part 95 of our rules ("Personal Radio Services"). Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules and covers a broad range of uses.¹⁴ Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the fact that licensing of operation under part 95 is accomplished by rule (rather than by issuance of individual license), and due to the shared nature of the spectrum utilized by some of these services, the Commission lacks direct information other than the census data above, upon which to base an estimation of the number of small entities under an SBA

⁷ Small Business Act, 15 U.S.C. 632 (1996).

⁸ See SBA, *Programs and Services*, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

⁹ 5 U.S.C. 601(4).

¹⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹¹ 5 U.S.C. 601(5).

¹² U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹³ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁴ 47 CFR part 90.

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² Investigation of the Spectrum Requirements for Advanced Medical Technologies, Amendment of Parts 2 and 95 of the Commission's Rules to Establish the Medical Device Radio Communications Service at 401–402 and 405–406 MHz, DexCom, Inc. Request for Waiver of the Frequency Monitoring Requirements of the Medical Implant Communications Service Rules, Biotronik, Inc. Request for Waiver of the Frequency Monitoring Requirements for the Medical Implant Communications Service Rules, ET Docket No. 06–135, RM–11271, *Notice of Proposed Rulemaking and Notice of Inquiry and Order*, 21 FCC Rcd 8164 (2006).

definition that might be directly affected by the proposed rules.

45. The Commission notes, however, that the designation for the two megahertz of spectrum for the Medical Device Radio Communications Service would be limited to use by medical implant and body-worn medical devices and, thus, would not be shared with other non-Federal Governmental uses. To date, there are only a small number of manufacturers (i.e., less than ten—as few as five) that produce these devices, and FDA approval must be secured before such devices are brought to market. Due to the stringent FDA approval requirements, the small number of existing medical device manufacturers tends to focus very narrowly on this highly specialized market niche.

46. *Wireless Communications Equipment Manufacturers.* The Census Bureau does not have a category specific to medical device radiocommunication manufacturing. The appropriate category is that for wireless communications equipment manufacturers. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹⁵ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.¹⁶

47. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”¹⁷ and “Cellular and Other Wireless Telecommunications.”¹⁸ Under both categories, the SBA deems a wireless

business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.¹⁹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.²⁰ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.²¹ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.²² Thus, under this second category and size standard, the majority of firms can, again, be considered small.

48. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²³ For

¹⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

²⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

²² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²³ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission’s Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical

small businesses in this category, the above small business size standard applies to 1500 or fewer employees. There are a total of approximately 127,540 licensees in these services. Governmental entities²⁴ as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.²⁵

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

49. The Commission is using the licensing approach for the entire 401–406 MHz MedRadio band that is identical to that used for the existing MICS band at 402–405 MHz. Thus, rather than require individual transmitter licensing, the Commission authorizes operation by rule within the Citizens Band (CB) Radio Service under part 95 of our Rules and pursuant to Section 307(e) of the Communications Act.²⁶ Licensing will be accomplished through adherence to applicable technical standards and other operating rules (unlicensed operations). The Commission concludes that this approach is beneficial because it would minimize the administrative burden on prospective licensees as compared with an individual licensing scheme.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

50. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

²⁴ 47 CFR 1.1162.

²⁵ 5 U.S.C. 601(5).

²⁶ See Medtronic Petition at 1, 16, and Appendix A, at proposed § 95.1601. We note that 47 U.S.C. 307(e)(3) provides that the term “citizens band radio service” shall have the meaning given it by the Commission by rule. 47 U.S.C. 307(e)(1) provides that upon determination by the Commission that an authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the citizens band radio service.

¹⁵ NAICS code 334220.

¹⁶ NAICS code 11210.

¹⁷ 13 CFR 121.201, NAICS code 517211.

¹⁸ 13 CFR 121.201, NAICS code 517212.

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁷

51. In the Report and Order the Commission established a new Medical Device Radiocommunication Service (MedRadio Service) under part 95, which will encompass all medical devices permitted to operate in the 401–406 MHz band. It sought comment on the options concerning whether and how the five megahertz of spectrum that would comprise this MedRadio band could be divided among the evolving varieties of both implanted and body-worn medical transmitters, including low-power, low-duty-cycle (LPLDC) devices that do not employ “listen-before-talk” (LBT) frequency monitoring spectrum access techniques.

52. *Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁸ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

53. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 301, 302, 303(e), 303(f) and 303(r), this Report and Order *is adopted* and parts 1, 2 and 95 of the Commission’s Rules are amended as set forth in Final Rules

²⁷ See 5 U.S.C. 603(c).

²⁸ See 5 U.S.C. 801(a)(1)(A).

effective 90 days after publication in the **Federal Register**.

54. The Commission grants in part, consistent with the terms of this order, DexCom, Inc.’s request for extension of waiver, and otherwise *deny* the request in all other respects.

55. ET Docket No. 03–92 *is terminated*.

56. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in Appendix C, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Parts 2 and 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 95 to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.1307 is amended by revising the fourth sentence in paragraph (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) * * * Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant or body-worn transmitter (as defined in Appendix 1 to Subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement techniques.

* * *

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 24.

■ b. In the list of United States (US) footnotes, revise footnote US345.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260 5.220	399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.260		Satellite Communications (25)
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262	400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261		
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	Satellite Communications (25)
5.262 5.264 401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US345 US384	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US345 US384	MEDRadio (95I)
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402-403 METEOROLOGICAL AIDS (radiosonde) US70 EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US345 US384	402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US345 US384	
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345	
406-406.1 MOBILE-SATELLITE (Earth-to-space)	406-406.1 MOBILE-SATELLITE (Earth-to-space)		Maritime (80) Aviation (87) Personal Radio (95)
5.266 5.267 406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	5.266 5.267 406.1-410 FIXED US13 MOBILE RADIO ASTRONOMY US74 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US117	Private Land Mobile (90)

BILLING CODE 6712-01-C

* * * * *

United States (US) Footnotes

* * * * *

US345 In the band 401–406 MHz, the mobile, except aeronautical mobile, service is allocated on a secondary basis and is limited to, with the exception of military tactical mobile stations, Medical Device Radiocommunication Service (MedRadio) operations. MedRadio stations are authorized by rule on the condition that harmful interference is not caused to stations in the meteorological aids, meteorological-satellite, and Earth exploration-satellite services, and that MedRadio stations accept interference from stations in the meteorological aids, meteorological-satellite, and Earth exploration-satellite services.

* * * * *

■ 5. Section 2.1093 is amended by revising paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Radio Service, the 4.9 GHz Band Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio), authorized under subpart H of part 22 of this chapter, parts 24, 25, 26, 27, 80 and 90 of this chapter, subparts H and I of part 95 of this chapter, and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, 15.253, 15.255 and 15.257 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in 1.1307(c) and 1.1307(d)

of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

* * * * *

■ 6. Section 2.1204 is amended by revising paragraph (a)(9) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

* * * * *

(9) The radio frequency device is a medical implant transmitter inserted in a person or a medical body-worn transmitter as defined in part 95, granted entry into the United States or is a control transmitter associated with such an implanted or body-worn transmitter, provided, however that the transmitters covered by this provision otherwise comply with the technical requirements applicable to transmitters

authorized to operate in the Medical Device Radiocommunication Service (MedRadio) under part 95 of this chapter. Such transmitters are permitted to be imported without the issuance of a grant of equipment authorization only for the personal use of the person in whom the medical implant transmitter has been inserted or on whom the medical body-worn transmitter is applied.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 7. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 8. Section 95.401 is amended by revising paragraph (d) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(d) The Medical Device Radiocommunication Service (MedRadio)—an ultra-low power radio service, for the transmission of non-voice data for the purpose of facilitating diagnostic and/or therapeutic functions involving implanted and body-worn medical devices. The rules for this service are contained in subpart I of this part.

* * * * *

■ 9. Section 95.601 is amended by revising the last sentence to read as follows:

§ 95.601 Basis and purpose.

* * * The Personal Radio Services are the GMRS (General Mobile Radio Service)—subpart A, the Family Radio Service (FRS)—subpart B, the R/C (Radio Control Radio Service)—subpart C, the CB (Citizens Band Radio Service)—subpart D, the Low Power Radio Service (LPRS)—subpart G, the Wireless Medical Telemetry Service (WMTS)—subpart H, the Medical Device Radiocommunication Service (MedRadio)—subpart I, the Multi-Use Radio Service (MURS)—subpart J, and Dedicated Short-Range Communications Service On-Board Units (DSRCS—OBUs)—subpart L.

■ 10. Section 95.603 is amended by revising paragraph (f) to read as follows:

§ 95.603 Certification required.

* * * * *

(f) Each Medical Device Radiocommunication Service (MedRadio) transmitter (a transmitter that operates or is intended to operate

in the MedRadio service) must be certificated except for such transmitters that are not marketed for use in the United States, but which otherwise comply with the MedRadio Service technical requirements and are operated in the United States by individuals who have traveled to the United States from abroad.

* * * * *

■ 11. Section 95.605 is revised to read as follows:

§ 95.605 Certification procedures.

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, FRS, R/C, CB, 218–219 MHz Service, LPRS, MURS, or MedRadio Service following the procedures in part 2 of this chapter. Dedicated Short-Range Communications Service On-Board Units (DSRCS—OBUs) must be certified in accordance with subpart L of this part and subpart J of part 2 of this chapter.

■ 12. Section 95.628 is revised to read as follows:

§ 95.628 MedRadio transmitters.

(a) *Frequency monitoring.* Except as provided in (b) of this section, all MedRadio programmer/control transmitters operating in the 401–406 MHz band must operate under the control of a monitoring system that incorporates a mechanism for monitoring the channel or channels that the MedRadio system devices intend to occupy. The monitoring system antenna shall be the antenna normally used by the programmer/control transmitter for a communications session. Before the monitoring system of a MedRadio programmer/control transmitter initiates a MedRadio communications session, the following access criteria must be met:

(1) The monitoring system bandwidth measured at its 20 dB down points must be equal to or greater than the emission bandwidth of the intended transmission.

(2) Within 5 seconds prior to initiating a communications session, circuitry associated with a MedRadio programmer/control transmitter must monitor the channel or channels the system devices intend to occupy for a minimum of 10 milliseconds per channel.

(3) Based on use of an isotropic monitoring system antenna, the monitoring threshold power level must not be more than $10\log B(\text{Hz}) - 150$ (dBm/Hz) + G(dBi), where B is the emission bandwidth of the MedRadio communications session transmitter having the widest emission and G is the

MedRadio programmer/control transmitter monitoring system antenna gain relative to an isotropic antenna. For purposes of showing compliance with the above provision, the above calculated threshold power level must be increased or decreased by an amount equal to the monitoring system antenna gain above or below the gain of an isotropic antenna, respectively.

(4) If no signal in a MedRadio channel above the monitoring threshold power level is detected, the MedRadio programmer/control transmitter may initiate a MedRadio communications session involving transmissions to and from a medical implant or medical body-worn device on that channel. The MedRadio communications session may continue as long as any silent period between consecutive data transmission bursts does not exceed 5 seconds. If a channel meeting the criteria in paragraph (a)(3) of this section is unavailable, the channel with the lowest ambient power level may be accessed.

(5) When a channel is selected prior to a MedRadio communications session, it is permissible to select an alternate channel for use if communications are interrupted, provided that the alternate channel selected is the next best choice using the above criteria. The alternate channel may be accessed in the event a communications session is interrupted by interference. The following criteria must be met:

(i) Before transmitting on the alternate channel, the channel must be monitored for a period of at least 10 milliseconds.

(ii) The detected power level during this 10 millisecond or greater monitoring period must be no higher than 6dB above the power level detected when the channel was chosen as the alternate channel.

(iii) In the event that this alternate channel provision is not used by the MedRadio system or if the criteria in paragraphs (a)(5)(i) and (ii) are not met, a channel must be selected using the access criteria specified in paragraphs (a)(1) through (a)(4) of this section.

(6) As used in this section, the following definitions apply:

(i) *Emission bandwidth*— Measured as the width of the signal between the points on either side of carrier center frequency that are 20 dB down relative to the maximum level of the modulated carrier. Compliance will be determined using instrumentation employing a peak detector function and a resolution bandwidth approximately equal to 1% of the emission bandwidth of the device under test.

(ii) *MedRadio channel*—Any continuous segment of spectrum in the MedRadio band that is equal to the

emission bandwidth of the device with the largest bandwidth that is to participate in a MedRadio communications session.

Note to paragraph (a)(6)(ii): The rules do not specify a channeling scheme for use by MedRadio systems.

(iii) *MedRadio communications session*—A collection of transmissions, that may or may not be continuous, between MedRadio system devices.

(b) *Exceptions to frequency monitoring criteria.* MedRadio devices or communications sessions that meet any one of the following criteria are not required to use the access criteria set forth in paragraph (a) of this section:

(1) MedRadio communications sessions initiated by a medical implant event.

(2) MedRadio devices operating in either the 401–401.85 MHz or 405–406 MHz bands, provided that the transmit power is not greater than 250 nanowatts EIRP and the duty cycle for such transmissions does not exceed 0.1%, based on the total transmission time during a one-hour interval.

(3) MedRadio devices operating in the 401.85–402 MHz band, provided that the transmit power is not greater than 25 microwatts EIRP and the duty cycle for such transmissions does not exceed 0.1%, based on the total transmission time during a one-hour interval.

(4) MedRadio devices operating with a total emission bandwidth not exceeding 300 kHz centered at 403.65 MHz, provided that the transmit power is not greater than 100 nanowatts EIRP and the duty cycle for such transmissions does not exceed 0.01%, based on the total transmission time during a one-hour interval.

(c) *Operating frequency.* MedRadio stations authorized under this part may operate on frequencies in the 401–406 MHz band as follows provided that the out-of-band emissions are attenuated in accordance with § 95.635:

(1) MedRadio stations associated with medical implant devices, which incorporate a frequency monitoring system as set forth in paragraph (a) of this section, may operate on any of the frequencies in the 401–406 MHz band.

(2) MedRadio stations associated with medical implant devices, which do not incorporate a frequency monitoring system as set forth in paragraph (a) of this section, may operate on any frequency in 401–402 MHz or 405–406 MHz bands, or at 403.65 MHz in the 402–405 MHz band.

(3) MedRadio stations associated with medical body-worn devices, regardless of whether a frequency monitoring system as set forth in paragraph (a) of this section is employed, may operate

on any of the frequencies in the 401–402 MHz or 405–406 MHz bands.

(4) MedRadio stations that are used externally to evaluate the efficacy of a more permanent medical implant device, regardless of whether a frequency monitoring system as set forth in paragraph (a) of this section is employed, may operate on any of the frequencies in the 402–405 MHz band, provided that:

(i) Such external body-worn operation is limited solely to evaluating with a patient the efficacy of a fully implanted permanent medical device that is intended to replace the temporary body-worn device;

(ii) RF transmissions from the external device must cease following the patient evaluation period, which may not exceed 30 days, except where a health care practitioner determines that additional time is necessary due to unforeseen circumstances;

(iii) The maximum output power of the temporary body-worn device shall not exceed 200 nW EIRP; and

(iv) The temporary body-worn device must comply fully with all other MedRadio rules applicable to medical implant device operation in the 402–405 MHz band.

(d) *Authorized bandwidth.* The authorized bandwidth of the emission from a MedRadio station operating between 402–405 MHz shall not exceed 300 kHz, and no communications session involving MedRadio stations shall use more than a total of 300 kHz of bandwidth during such a session. The authorized bandwidth of the emission from a MedRadio station operating between 401–401.85 MHz or 405–406 MHz shall not exceed 100 kHz, and no communications session involving MedRadio stations shall use more than a total of 100 kHz of bandwidth during such a session. The authorized bandwidth of the emission from a MedRadio station operating between 401.85–402 MHz shall not exceed 150 kHz, and no communications session involving MedRadio stations shall use more than a total of 150 kHz of bandwidth during such a session.

Note to paragraph (d): This provision does not preclude full duplex or half duplex communications provided that the total amount of bandwidth utilized by all of the MedRadio channels employed in such a MedRadio communications session does not exceed 300 kHz in the 402–405 MHz band, or 100 kHz in the 401–402 MHz and 405–406 MHz bands.

(e) *Frequency stability.* Each transmitter in the MedRadio service must maintain a frequency stability of

±100 ppm of the operating frequency over the range:

(1) 25° C to 45° C in the case of medical implant transmitters; and

(2) 0° C to 55° C in the case of MedRadio programmer/control transmitters and MedRadio body-worn transmitters.

(f) *Shared access.* The provisions of this section shall not be used to extend the range of spectrum occupied over space or time for the purpose of denying fair access to spectrum for other MedRadio systems.

(g) *Measurement procedures.* (1) MedRadio transmitters shall be tested for frequency stability, radiated emissions and EIRP limit compliance in accordance with paragraphs (g)(2) and (g)(3) of this section.

(2) Frequency stability testing shall be performed over the temperature range set forth in (e) of this section.

(3) Radiated emissions and EIRP limit measurements limit may be determined by measuring the radiated field from the equipment under test at 3 meters and calculating the EIRP. The equivalent radiated field strength at 3 meters for 25 microwatts, 250 nanowatts, and 100 nanowatts EIRP is 18.2, 1.8, or 1.2 mV/meter, respectively, when measured on an open area test site; or 9.1, 0.9, or 0.6 mV/meter, respectively, when measured on a test site equivalent to free space such as a fully anechoic test chamber. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved peak power technique, or the following. Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

(i) For a transmitter intended to be implanted in a human body, radiated emissions and EIRP measurements for transmissions by stations authorized under this section may be made in accordance with a Commission-approved human body simulator and test technique. A formula for a suitable tissue substitute material is defined in OET Bulletin 65 Supplement C (01–01).

■ 13. Section 95.631 is amended by revising paragraph (h) to read as follows:

§ 95.631 Emission types.

* * * * *

(h) A MedRadio station may transmit any emission type appropriate for communications in this service. Voice communications, however, are prohibited.

* * * * *

■ 14. Section 95.633 is amended by revising paragraph (e) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(e) For transmitters in the MedRadio Service:

(1) For stations operating in 402–405 MHz, the maximum authorized emission bandwidth is 300 kHz. For

stations operating in 401–401.85 MHz or 405–406 MHz, the maximum authorized emission bandwidth is 100 kHz, and stations operating in 401.85–402 MHz, the maximum authorized emission bandwidth is 150 kHz.

(2) Lesser emission bandwidths may be employed, provided that the unwanted emissions are attenuated as provided in § 95.635. See §§ 95.628(g) and 95.639(f) regarding maximum transmitter power and measurement procedures.

(3) Emission bandwidth will be determined by measuring the width of the signal between points, one below the carrier center frequency and one above the carrier center frequency, that are 20 dB down relative to the

maximum level of the modulated carrier. Compliance with the emission bandwidth limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

* * * * *

■ 15. Section 95.635 is amended by revising the table to paragraph (b), and by revising paragraph (d) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(b) * * *

Transmitter	Emission type	Applicable paragraphs (b)
GMRS	A1D, A3E, F1D, G1D, F3E, G3E with filtering	(1), (3), (7).
	A1D, A3E, F1D, G1D, F3E, G3E without filtering	(5), (6), (7).
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (7).
FRS	F3E with filtering	(1), (3), (7).
	R/C:	
27 MHz	As specified in § 95.631(b)	(1), (3), (7).
72–76 MHz	As specified in § 95.631(b)	(1), (3), (7), (10), (11), (12).
CB	A1D, A3E	(1), (3), (8), (9).
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (8), (9).
	A1D, A3E type accepted before September 10, 1976	(1), (3), (7).
	H1D, J1D, R1D, H3E, J3E, R3E type accepted before September 10, 1986.	(2), (4), (7).
	LPRS	As specified in paragraph (c).
MedRadio	As specified in paragraph (d).	
DSRCS–OBU	As specified in paragraph (f) of this section.	

* * * * *

(d) For transmitters designed to operate in the MedRadio service, emissions shall be attenuated in accordance with the following: (paragraphs (d)(1) through (d)(5) pertain

to MedRadio transmitters operating in the 402–405 MHz band; paragraphs (d)(6) through (d)(10) pertain to MedRadio transmitters operating in the 401–402 MHz or 405–406 MHz bands).

(1) Emissions from a MedRadio transmitter more than 250 kHz outside of the 402–405 MHz band shall be attenuated to a level no greater than the following field strength limits:

Frequency (MHz)	Field strength (µV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note—At band edges, the tighter limit applies.

(2) The emission limits shown in the table of paragraph (d)(1) are based on measurements employing a CISPR quasi-peak detector except that above 1 GHz, the limit is based on measurements employing an average detector. Measurements above 1 GHz shall be performed using a minimum resolution bandwidth of 1 MHz. See also § 95.605.

(3) The emissions from a MedRadio transmitter must be measured to at least

the tenth harmonic of the highest fundamental frequency designed to be emitted by the transmitter.

(4) Emissions within the 402–405 MHz band more than 150 kHz away from the center frequency of the spectrum the transmission is intended to occupy will be attenuated below the transmitter output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak

detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(5) Emissions 250 kHz or less that are above or below the 402–405 MHz band will be attenuated below the maximum permitted output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak

detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(6) Emissions from a MedRadio transmitter operating in the 401–402 MHz or 405–406 MHz bands that are more than 100 kHz outside of either the 401–402 MHz or 405–406 MHz bands,

and all emissions from such transmitter in the band 406.000–406.100 MHz shall be attenuated to a level no greater than the following field strength limits:

Frequency (MHz)	Field strength (µV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note—At band edges, the tighter limit applies.

(7) The emission limits shown in paragraph (d)(6) are based on measurements employing a CISPR quasi-peak detector except that above 1 GHz, the limit is based on measurements employing an average detector. Measurements above 1 GHz shall be performed using a minimum resolution bandwidth of 1 MHz. *See also* § 95.605.

(8) The emissions from a MedRadio transmitter operating in the MedRadio bands (between 401–402 MHz or 405–406 MHz) must be measured to at least the tenth harmonic of the highest fundamental frequency designed to be emitted by the transmitter.

(9) Emissions between 401–401.85 MHz or 405–406 MHz within the MedRadio bands that are more than 50 kHz away from the center frequency of the spectrum the transmission is intended to occupy (or more than 75 kHz away from the center frequency of MedRadio transmitters operating between 401.85–402 MHz) shall be attenuated below the transmitter output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(10) Emissions 100 kHz or less below 401 MHz or above 406 MHz shall be attenuated below the maximum permitted output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

* * * * *

■ 16. Section 95.639 is amended by revising paragraph (f) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(f) In the MedRadio Service for transmitters that are not excepted under § 95.628(b) from the frequency monitoring requirements of § 95.628(a), the maximum radiated power in any 300 kHz bandwidth by MedRadio transmitters operating at 402–405 MHz, or in any 100 kHz bandwidth by MedRadio transmitters operating at 401–402 MHz or 405–406 MHz shall not exceed 25 microwatts EIRP. For transmitters that are excepted under § 95.628(b) from the frequency monitoring requirements of § 95.628(a), the power radiated by any station operating in 402–405 MHz shall not exceed 100 nanowatts EIRP confined to a maximum total emission bandwidth of 300 kHz centered at 403.65 MHz. For transmitters that are excepted under § 95.628(b) from the frequency monitoring requirements of § 95.628(a), the power radiated by any station operating in 401–401.85 MHz or 405–406 MHz shall not exceed 250 nanowatts EIRP in any 100 kHz bandwidth and in 401.85–402 MHz shall not exceed 25 microwatts in the 150 kHz bandwidth. *See* §§ 95.633(e). The antenna associated with any MedRadio transmitter must be supplied with the transmitter and shall be considered part of the transmitter subject to equipment authorization. Compliance with these EIRP limits may be determined as set forth in § 95.628(g).

* * * * *

■ 17. Section 95.649 is revised to read as follows:

§ 95.649 Power capability.

No CB, R/C, LPRS, FRS, MedRadio, MURS, or WMTS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

■ 18. Section 95.651 is revised to read as follows:

§ 95.651 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that

transmits in the 26–27 MHz frequency band, a FRS unit, a LPRS unit, a MURS unit, a MedRadio transmitter, or a WMTS unit.

■ 19. Appendix 1 to Subpart E of Part 95—Glossary of Terms is amended by removing the definition of “Medical Implant Communications Service (MICS) transmitter”, “MICS programmer/control transmitter” and “MICS”; and by revising the definitions of “EIRP”, “Medical implant transmitter”; and by adding the definitions of “Medical body-worn device”, “Medical body-worn transmitter”, “MedRadio programmer/control transmitter”, “MedRadio Service” and “MedRadio transmitter” in alphabetical order to read as follows:

APPENDIX 1 TO SUBPART E OF PART 95—GLOSSARY OF TERMS

* * * * *

EIRP. Effective Isotropic Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MedRadio, expressed in watts, where the gain is referenced to an isotropic radiator.

* * * * *

Medical body-worn device. Apparatus that is placed on or in close proximity to the human body (e.g., within a few centimeters) for the purpose of performing diagnostic or therapeutic functions.

Medical body-worn transmitter. A MedRadio transmitter intended to be placed on or in close proximity to the human body (e.g., within a few centimeters) used to facilitate communications with other medical communications devices for purposes of delivering medical therapy to a patient or collecting medical diagnostic information from a patient.

* * * * *

Medical implant transmitter. A MedRadio transmitter in which both the antenna and transmitter device are designed to operate within a human body for the purpose of facilitating communications from a medical implant device.

MedRadio programmer/control transmitter. A MedRadio transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver, or for triggering a transmitter,

connected to a medical implant device or to a medical body-worn device used in the MedRadio Service; and which also typically includes a frequency monitoring system that initiates a MedRadio communications session.

MedRadio Service. Medical Device Radiocommunication Service.

MedRadio transmitter. A transmitter authorized to operate in the MedRadio service.

* * * * *

■ 20. Revise Subpart I to read as follows:

Subpart I—Medical Device Radiocommunication Service (MedRadio)

Sec.

95.1201	Eligibility.
95.1203	Authorized locations.
95.1205	Station identification.
95.1207	Station inspection.
95.1209	Permissible communications.
95.1211	Channel use policy.
95.1213	Antennas.
95.1215	Disclosure policies.
95.1217	Labeling requirements.
95.1219	Marketing limitations.
95.1221	RF exposure.

Subpart I—Medical Device Radiocommunication Service (MedRadio)

§ 95.1201 Eligibility.

Operation in the MedRadio service is permitted by rule and without an individual license issued by the FCC. Duly authorized health care professionals are permitted to operate MedRadio transmitters. Persons may also operate MedRadio transmitters to the extent the transmitters are incorporated into implanted or body-worn medical devices that are used by the person at the direction of a duly authorized health care professional; this includes medical devices that have been implanted in that person or placed on the body of that person by or under the direction of a duly authorized health care professional. Manufacturers of medical devices that include MedRadio transmitters, and their representatives, are authorized to operate transmitters in this service for the purpose of demonstrating such equipment to duly authorized health care professionals. No entity that is a foreign government or which is acting in its capacity as a representative of a foreign government is eligible to operate a MedRadio transmitter. The term “duly authorized health care professional” means a physician or other individual authorized under state or federal law to provide health care services. Operations that comply with the requirements of this part may be conducted under manual or automatic control.

§ 95.1203 Authorized locations.

MedRadio operation is authorized anywhere CB station operation is authorized under § 95.405.

§ 95.1205 Station identification.

A station is not required to transmit a station identification announcement.

§ 95.1207 Station inspection.

Any non-implanted MedRadio transmitter must be made available for inspection upon request by an authorized FCC representative. Persons operating implanted or body-worn MedRadio transmitters shall cooperate reasonably with duly authorized FCC representatives in the resolution of interference.

§ 95.1209 Permissible communications.

(a) Except for the purposes of testing and for demonstrations to health care professionals, MedRadio programmer/control transmitters may transmit only non-voice data containing operational, diagnostic and therapeutic information associated with a medical implant device or medical body-worn device that has been implanted or placed on the person by or under the direction of a duly authorized health care professional.

(b) Except as provided in § 95.628(b) no MedRadio implant or body-worn transmitter shall transmit except in response to a transmission from a MedRadio programmer/control transmitter or in response to a non-radio frequency actuation signal generated by a device external to the body with respect to which the MedRadio implant or body-worn transmitter is used.

(c) MedRadio programmer/control transmitters may be interconnected with other telecommunications systems including the public switched telephone network.

(d) For the purpose of facilitating MedRadio system operation during a MedRadio communications session, as defined in § 95.628, MedRadio transmitters may transmit in accordance with the provisions of § 95.628(a) for no more than 5 seconds without the communications of data; MedRadio transmitters may transmit in accordance with the provisions of § 95.628(b)(3) for no more than 3.6 seconds in total within a one-hour time period without the communications of data; MedRadio transmitters may transmit in accordance with the provisions of § 95.628(b)(2) for no more than 360 milliseconds in total within a one-hour time period without the communications of data.

(e) MedRadio programmer/control transmitters may not be used to relay information to a receiver that is not

included with a medical implant or medical body-worn device. Wireless retransmission of information intended to be transmitted by a MedRadio programmer/control transmitter or information received from a medical implant or medical body-worn transmitter shall be performed using other radio services that operate in spectrum outside of the MedRadio band.

§ 95.1211 Channel use policy.

(a) The channels authorized for MedRadio operation by this part of the FCC Rules are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) To reduce interference and make the most effective use of the authorized facilities, MedRadio transmitters must share the spectrum in accordance with § 95.628.

(c) MedRadio operation is subject to the condition that no harmful interference is caused to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services. MedRadio stations must accept any interference from stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services.

§ 95.1213 Antennas.

No antenna for a MedRadio transmitter shall be configured for permanent outdoor use. In addition, any MedRadio antenna used outdoors shall not be affixed to any structure for which the height to the tip of the antenna will exceed three (3) meters (9.8 feet) above ground.

§ 95.1215 Disclosure policies.

Manufacturers of MedRadio transmitters must include with each transmitting device the following statement:

“This transmitter is authorized by rule under the Medical Device Radiocommunication Service (in part 95 of the FCC Rules) and must not cause harmful interference to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids (i.e., transmitters and receivers used to communicate weather data), the Meteorological Satellite, or the Earth Exploration Satellite Services and must accept interference that may be caused by such stations, including interference that may cause undesired operation. This transmitter shall be used only in accordance with the FCC Rules governing the Medical Device Radiocommunication Service. Analog

and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference or that any particular transmission from this transmitter will be free from interference.”

§ 95.1217 Labeling requirements.

(a) MedRadio programmer/control transmitters shall be labeled as provided in part 2 of this chapter and shall bear the following statement in a conspicuous location on the device:

“This device may not interfere with stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, and Earth Exploration Satellite Services and must accept any interference received, including interference that may cause undesired operation.”

The statement may be placed in the instruction manual for the transmitter where it is not feasible to place the statement on the device.

(b) Where a MedRadio programmer/control transmitter is constructed in two or more sections connected by wire and marketed together, the statement specified in this section is required to be affixed only to the main control unit.

(c) MedRadio transmitters shall be identified with a serial number. The FCC ID number associated with a medical implant transmitter and the information required by § 2.925 of this chapter may be placed in the instruction manual for the transmitter and on the shipping container for the transmitter, in lieu of being placed directly on the transmitter.

§ 95.1219 Marketing limitations.

Transmitters intended for operation in the MedRadio Service may be marketed and sold only for the permissible communications described in § 95.1209.

§ 95.1221 RF exposure.

MedRadio medical implant or medical body-worn transmitters (as defined in appendix 1 to subpart E of part 95 of this chapter) are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of implant devices operating under this section must contain a finite difference time domain (FDTD) computational modeling report showing compliance with these provisions for fundamental emissions. The Commission retains the discretion

to request the submission of specific absorption rate measurement data.

[FR Doc. E9–11063 Filed 5–13–09; 8:45 am]

BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–989; MB Docket No. 09–33; RM–11521]

Television Broadcasting Services; Derby, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Entravision Holdings, LLC, the permittee of station KDCU–DT, to substitute DTV channel 31 for post-transition DTV channel 46 at Derby, Kansas.

DATES: This rule is effective May 14, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 09–33, adopted April 27, 2009, and released April 30, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden “for small business concerns with fewer than

25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Kansas, is amended by adding DTV channel 31 and removing DTV channel 46 at Derby.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–11207 Filed 5–13–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XP20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the 2009 Commercial Fishery for Black Sea Bass in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for black sea bass in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the quota for the commercial

fishery for black sea bass will have been reached by May 15, 2009. This closure is necessary to protect the black sea bass resource.

DATES: Closure is effective 12:01 a.m., local time, May 15, 2009, until 12:01 a.m., local time, on June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727-824-5305, fax 727-824-5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for black sea bass in the South Atlantic at 309,000 lb (140,160 kg) for the current fishing year, June 1, 2008, through May 31, 2009.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 309,000 lb (140,160 kg) for black sea bass will be reached on or before May 15, 2009. Accordingly,

NMFS is closing the commercial fishery for black sea bass in the South Atlantic EEZ from 12:01 a.m., local time, on May 15, 2009, until 12:01 a.m., local time, on June 1, 2009. The operator of a vessel that is landing black sea bass for sale, including a charter vessel or headboat that has a commercial permit for snapper-grouper, must have landed and bartered, traded, or sold such black sea bass prior to 12:01 a.m., local time, May 15, 2009, and all sea bass pots must be removed from the EEZ as of that time and date.

During the closure, the applicable bag and possession limits specified in 50 CFR 622.39(d) apply to all harvest or possession of black sea bass in or from the South Atlantic EEZ, and the sale or purchase of black sea bass taken from the EEZ is prohibited. In addition, those bag and possession limits and the prohibition on sale or purchase of black sea bass apply regardless of where the black sea bass were harvested, i.e., in state waters or the EEZ, on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued. The prohibition on sale or purchase does not apply to sale or purchase of black sea bass that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 15, 2009, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: May 8, 2009.

Kristen C. Koch,

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

[FR Doc. E9-11298 Filed 5-11-09; 4:15 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 92

Thursday, May 14, 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-2009-0447; Directorate Identifier 2008-NM-172-AD]

RIN 2120-AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B 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 refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. * * *

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire. 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 June 15, 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 Saab Aircraft AB, SAAB Aerosystems, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail saab2000.techsupport@saabgroup.com; Internet <http://www.saabgroup.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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0447; Directorate Identifier 2008-NM-172-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 2008-0127R1, dated August 7, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. The design of the refuel/defuel panel illuminated placard was changed during 1997 from its original specification, to fill the cavity inside the placard with silicone to avoid moisture/fluid ingress. SAAB has reviewed the working procedure and has developed a placard filled with a bi-component silicone-based material to minimize the cavity inside the panels.

For the reasons described above, this EASA AD requires the identification of the manufacturing date of the affected placard, a visual inspection of the placard for heat and/or burn marks and the installation of a new placard in accordance with the instructions of SAAB Service Bulletin (SB) 340-28-027.

This AD has been revised to identify the affected VIBRACHOC (the part manufacturer) placard with Part Number (P/N) C4FL5031C001, instead of the corresponding SAAB P/N 9303719-001, which was (also) quoted inaccurately. In addition, it has been recognized that the original AD did not allow installation of the placards with a manufacturing date before 31/97; that has now been corrected.

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued Service Bulletin 340-28-027, Revision 01, dated July 7, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 141 products of U.S. registry. We also estimate that it would take about 2 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 \$1,500 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 \$234,060, or \$1,660 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, Incorporated 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:

Saab AB, Saab Aerosystems: Docket No. FAA-2009-0447; Directorate Identifier 2008-NM-172-AD.

Comments Due Date

- (a) We must receive comments by June 15, 2009.

Affected ADs

- (b) None.

Applicability

(c) Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes; certified in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. The design of the refuel/defuel panel illuminated placard was changed during 1997 from its original specification, to fill the cavity inside the placard with silicone to avoid moisture/fluid ingress. SAAB has reviewed the working procedure and has developed a placard filled with a bi-component silicone-based material to minimize the cavity inside the panels.

For the reasons described above, this EASA AD requires the identification of the manufacturing date of the affected placard, a visual inspection of the placard for heat and/or burn marks and the installation of a new placard in accordance with the instructions of SAAB Service Bulletin (SB) 340-28-027.

This AD has been revised to identify the affected VIBRACHOC (the part manufacturer) placard with Part Number (P/N) C4FL5031C001, instead of the corresponding SAAB P/N 9303719-001, which was (also) quoted inaccurately. In addition, it has been recognised that the original AD did not allow installation of the placards with a manufacturing date before 31/97; that has now been corrected.

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire.

Actions and Compliance

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

(1) Within 3 months after the effective date of this AD, inspect the illuminated placard of the refuel and defuel panel, part number (P/N) C4FL5031C001, for signs of heat and burn marks, in accordance with Saab Service Bulletin 340-28-027, Revision 01, dated July 7, 2008.

(2) If any sign of heat or burn marks are found, before further flight, replace the illuminated placard of the refuel and defuel panel with a new illuminated placard of the refuel and defuel panel, having part number C4FL5031C001, and marked with a manufacturer date before 31/97 (i.e., week 31 of 1997), or a manufacturing date of 37/07 (i.e., week 37 of 2007) or higher and marked 'Amdt:A.', in accordance with Saab Service Bulletin 340-28-027, Revision 01, dated July 7, 2008.

(3) If no signs of heat and burn marks are found, within 12 months after accomplishing the inspection required by (f)(1) of this AD is done, replace the illuminated placard of the fuel and defuel panel with a new illuminated placard of the refuel and defuel panel, having part number C4FL5031C001, and marked with a manufacturer date before

31/97 (i.e., week 31 of 1997) or a manufacturing date of 37/07 (i.e., week 37 of 2007) or higher and marked 'Amdt:A', in accordance with Saab Service Bulletin 340-28-027, Revision 01, dated July 7, 2008.

(4) As of 15 months after the effective date of this AD, installing an illuminated placard of the refuel and defuel panel is prohibited on any airplane, unless it has a manufacturing date before 31/97, or unless it has a manufacturing date of 37/07 or higher and is marked 'Amdt:A'.

(5) Actions accomplished before the effective date of this AD in accordance with Saab Service Bulletin 340-28-027, dated April 30, 2008, are considered acceptable for compliance with the corresponding actions specified in paragraphs (f)(1), (f)(2), and (f)(3) 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, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(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 2008-0127R1, dated August 7, 2008; and Saab Service Bulletin 340-28-027, Revision 01, dated July 7, 2008, for related information.

Issued in Renton, Washington, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-11281 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2008-0517; Notice No. 09-03]

RIN 2120-AJ48

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rescission.

SUMMARY: The FAA proposes to rescind the final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport*. The final rule established procedures to address congestion in the New York City area by assigning slots at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: Send your comments on or before June 15, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2008-0517 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3275; e-mail

molly.w.smith@faa.gov. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073; e-mail rebecca.macpherson@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble, under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further

directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

I. Background

The final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60544). The final rule established procedures to address congestion in the New York City area by assigning slots at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years and was to become effective December 9, 2008.

The rulemaking was highly controversial. Thirty-eight interested parties filed comments to the docket addressing the NPRM. The majority of comments were consistent in rejecting the proposal. Many commenters said that the FAA had failed to demonstrate how the proposal would achieve any significant relief from congestion. Rather, according to the commenters, a final rule would impose an untested and unproven auction process on airlines that would not address the fundamental airspace congestion issues in the New York metro area.

The final rule was challenged by several parties before it could take effect. Petitioners included the Port Authority of New York and New Jersey, the Air Transport Association of America, Inc. (ATA), the International Air Transport Association (IATA), Continental, and U.S. Airways. The petitioners sought a stay of the final rule pending judicial review, arguing that they would likely succeed on the merits of the underlying litigation, they would suffer irreparable harm, a stay would not harm other parties, and a stay was in the public interest. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit determined that the petitioners had satisfied the standards for a stay and issued an order staying the rule. Accordingly, the rule has never been implemented. On January 22, 2009, the ATA requested that the Secretary of Transportation, Ray LaHood, withdraw the final rule in light of the court's stay.

At present, operations at both airports remain capped by order at 81 scheduled operations per hour until October 2009. *Order Limiting Scheduled Operations at John F. Kennedy International Airport* (73 FR 3519 (Jan. 18, 2008), as amended 73 FR 8737 (Feb. 14, 2008)); *Order Limiting Scheduled Operations at Newark Liberty International Airport* (73 FR 29550 (May 21, 2008)). The FAA is in the process of considering its options with regard to managing congestion at the airport in ways that provide a means for carriers to either commence or expand operations at the airport, thereby introducing more competition and service options to benefit the traveling public.

On March 11, 2009, the President signed Public Law 111-8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that states in pertinent part:

No funds provided in this Act may be used by the Secretary of Transportation to promulgate regulations or take any action regarding the scheduling of airline operations at any commercial airport in the United States if such regulation or action involves:

(1) the auctioning by the Secretary or the FAA Administrator of rights or permission to conduct airline operations at such an airport, * * *

(3) either:
(A) withdrawal by the Secretary or Administrator of a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the terms or conditions of such operating right or permission), * * *

At the same time, the nation's economy has continued to suffer under the current recession, which is both deeper and longer than was first assumed. In recognition of the extent of the economic emergency, President Obama recently signed the American Recovery and Reinvestment Act of 2009¹ (ARRA), which provides an extraordinary amount of emergency funds to address the unprecedented global recession and to promote economic recovery.

The Omnibus Appropriations Act prevents the FAA from implementing the slot auction rule or conducting slot auctions. However, we recognize that the restriction in section 115 of the Act applies only until the end of this fiscal year, or September 30, 2009. The restriction in section 115 means the rule adopted last year can no longer operate

in the way that the agency had planned. The halt in funding for this fiscal year makes it impossible for the rule to have the 10-year life originally contemplated, even without considering the challenging and widespread change in current economic conditions that led to the adoption of ARRA.

Because of the complexity of the issues, the uncertainty caused by the Omnibus Appropriations Act, and the possible impact of the significantly changed economic circumstances on the slot auction program, the FAA believes it would be better to rescind the rule rather than propose to extend it. Rescission would also eliminate the potential for wasting resources of all parties in the pending litigation. We specifically request comments and data from affected interests on whether and how the changed circumstances bear on this proposed rescission.

The current orders for JFK and Newark airports presently address congestion and delay associated with scheduled operations. However, the orders do not address all issues associated with market access at capped airports. Accordingly, the FAA believes it may need further work to address these concerns and limit operations at the two airports.

The FAA seeks comment on this proposal. DOT's Regulatory Policies and Procedures contemplate at least a 60-day comment period for a significant rulemaking, unless otherwise justified. The final rule was subject to notice and comment less than 12 months ago, and those comments were fully considered by the agency in issuing that rule. Since comments should be limited to any change in circumstances, including the statutory restriction discussed above, the FAA believes that a 30-day comment period is sufficient in this instance.

II. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the

¹Public Law 111-5, 123 Stat. 115 (Feb. 17, 2009).

Unfunded Mandate Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

The FAA conducted all of these analyses when it originally issued the final rule. This proposed rescission is not economically significant under Executive Order 12866.

The paperwork burden anticipated under the rule would not be imposed on any parties. The FAA determined that the original final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the rule would likewise impose no such burden. The FAA has assessed the potential effect of this proposal and determined that it would impose no costs on international entities and thus would have no trade impact. Nor would the rescission impose a Federal mandate that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The proposed rescission of the final rule is not an economically "significant regulatory action" under Executive Order 12866; however, it is "significant" as defined in DOT's Regulatory Policies and Procedures. Accordingly, it has been reviewed by OST and OMB.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rescission under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or

environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA previously determined that the final rule qualified for the categorical exclusions identified in paragraph 312d "Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)" and paragraph 312f, "Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment." It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the Docket for the rule. The FAA has determined that the rescission of the final rule would also qualify for a categorical exclusion since it would have no impact on the environment.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this notice under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under executive order 12866 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the agency will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, it does not place it in the docket. The agency holds it in a separate file to which the public does not have access, and places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it is treated as any other request under the Freedom of Information Act (5 U.S.C. 552) and such requests are processed under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the

internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Recordkeeping and reporting requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Subpart N—[Removed and Reserved]

2. Remove and reserve Subpart N.

Issued in Washington, DC, on May 7, 2009.

Nan Shellabarger,

Director of Aviation Policy and Plans.

[FR Doc. E9-11293 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2006-25709; Notice No. 09-04]

RIN 2120-AJ49

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rescission.

SUMMARY: The FAA proposes to rescind the final rule *Congestion Management Rule for LaGuardia Airport*. The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: Send your comments on or before June 15, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2006-25709 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3275; e-mail molly.w.smith@faa.gov. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073; e-mail rebecca.macpherson@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

I. Background

The final rule *Congestion Management Rule for LaGuardia Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60574). The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years and was to become effective December 9, 2008.

The rulemaking was highly controversial. On August 29, 2006, the FAA had published a notice of proposed rulemaking (NPRM) proposing continuation of the cap on hourly operations at the airport as well as a new method of allocating capacity (71 FR 51360). The industry response to the new allocation method proposed in the NPRM was universally negative, although very few commenters argued that a cap on operations at the airport was unnecessary. The FAA received comments from 61 different commenters, with some commenters making multiple submissions. The FAA then published a supplemental notice of proposed rulemaking (SNPRM) on April 17, 2008 (73 FR 20846). Twenty-six interested parties filed comments to the docket addressing the SNPRM. The majority of comments were consistent in

rejecting the proposal. Many commenters said that the FAA had failed to demonstrate how the proposal would achieve any significant relief from congestion. Rather, according to the commenters, the SNPRM would impose an untested and unproven auction process on airlines that would not address the fundamental airspace congestion issues in the New York metro area. While other commenters did not completely object to an auction mechanism, they did note that the timing was not right or that the auction procedures needed to be fully developed prior to finalizing any rule.

The final rule was challenged by several parties before it could take effect. Petitioners included the Port Authority of New York and New Jersey, the Air Transport Association of America, Inc. (ATA), the International Air Transport Association (IATA), Continental, and US Airways. The petitioners sought a stay of the final rule pending judicial review, arguing that they would likely succeed on the merits of the underlying litigation, they would suffer irreparable harm, a stay would not harm other parties, and a stay was in the public interest. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit determined that the petitioners had satisfied the standards for a stay and issued an order staying the rule. Accordingly, the rule has never been implemented. On January 22, 2009, the ATA requested that the Secretary of Transportation, Ray LaHood, withdraw the final rule in light of the court's stay.

At present, operations at LaGuardia remain capped by order at 75 scheduled operations and three unscheduled operations per hour until October 2009.¹ The FAA is in the process of considering its options with regard to managing congestion at the airport, while providing a means for carriers to either commence or expand operations at the airport, thereby introducing more competition and service options to benefit the traveling public.

On March 11, 2009, the President signed Public Law 111–8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that states in pertinent part:

No funds provided in this Act may be used by the Secretary of Transportation to promulgate regulations or take any action regarding the scheduling of airline operations at any commercial airport in the United States if such regulation or action involves:

(1) The auctioning by the Secretary or the FAA Administrator of rights or permission to conduct airline operations at such an airport, * * *

(3) either:

(A) withdrawal by the Secretary or Administrator of a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the terms or conditions of such operating right or permission), * * *

At the same time, the nation's economy has continued to suffer under the current recession, which is both deeper and longer than was first assumed. President Obama recently signed the American Recovery and Reinvestment Act of 2009² (ARRA), which provides an extraordinary amount of emergency funds to address the unprecedented global recession and to promote economic recovery.

The Omnibus Appropriations Act prevents the FAA from implementing the slot auction rule or conducting slot auctions. However, we recognize that the restriction in section 115 of the Act applies only until the end of this fiscal year, or September 30, 2009. The restriction in section 115 means the rule adopted last year can no longer operate in the way that the agency had planned. The halt in funding for this fiscal year makes it impossible for the rule to have the 10-year life originally contemplated, even without considering the challenging and widespread change in current economic conditions that led to the adoption of ARRA.

Because of the complexity of the issues, the uncertainty caused by the Omnibus Appropriations Act, and the possible impact of the significantly changed economic circumstances on the slot auction program, the FAA believes it would be better to rescind the rule rather than propose to extend it. Rescission would also eliminate the potential for wasting resources of all parties in the pending litigation. We specifically request comments and data from affected interests on whether and how the changed circumstances bear on this proposed rescission.

The current order for LaGuardia presently addresses congestion and delay associated with scheduled operations. However, the order does not address all issues associated with market access at a capped airport. Accordingly, the FAA believes it may

need further work to address these concerns and limit operations at LaGuardia.

The FAA seeks comment on this proposal. DOT's Regulatory Policies and Procedures contemplate at least a 60-day comment period for a significant rulemaking, unless otherwise justified. The final rule was subject to notice and comment less than 12 months ago, and those comments were fully considered by the agency in issuing that rule. Since comments should be limited to any change in circumstances, including the statutory restriction discussed above, the FAA believes that a 30-day comments period is sufficient in this instance.

II. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

The FAA conducted all of these analyses when it originally issued the final rule. This proposed rescission is not economically significant under Executive Order 12866.

The paperwork burden anticipated under the rule would not be imposed on any parties. The FAA has already determined that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the rule would likewise impose no such burden. As the rescission of the rule would not impose any standard on any party, the FAA has

¹ *Operating Limitations at New York LaGuardia Airport* (LaGuardia Order), December 27, 2006 (71 FR 77854), as amended November 8, 2007 (72 FR 63224), August 19, 2008 (73 FR 48248), January 8, 2009 (74 FR 845), and January 15, 2009 (74 FR 2646).

² Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009).

assessed the potential effect of this proposal and determined that it would impose no costs on international entities and thus have a no trade impact. Nor would the rescission impose a Federal mandate that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The proposed rescission of the final rule is not economically “significant” under Executive Order 12866, however it is “significant” under DOT’s Regulatory Policies and Procedures. Accordingly, it has been reviewed by DOT and OMB.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rescission under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures” identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA previously determined that the final rule qualified for the categorical exclusions identified in paragraph 312d “Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)” and paragraph 312f, “Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment.” It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the

Docket for the rule. The FAA has determined that the rescission of the final rule would also qualify for a categorical exclusion since it would have no impact on the environment.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this notice under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under executive order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the agency will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific

information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, it does not place it in the docket. The agency holds it in a separate file to which the public does not have access, and places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it is treated as any other request under the Freedom of Information Act (5 U.S.C. 552) and such requests are processed under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office’s web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Subpart C—[Removed and Reserved]

2. Remove and reserve Subpart C.

Issued in Washington, DC, on May 7, 2009.

Nan Shellabarger,

Director of Aviation Policy and Plans.

[FR Doc. E9-11291 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 425

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Advance Notice of Proposed Rulemaking; Request for public comments.

SUMMARY: As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Trade Regulation Rule concerning “Use of Prenotification Negative Option Plans.”

DATES: Written comments must be received on or before July 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Prenotification Negative Option Rule Review, Matter No. P064202” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in

paper form and clearly labeled “Confidential.”¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-NegativeOptionRuleANPR>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://secure.commentworks.com/ftc-NegativeOptionRuleANPR>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Prenotification Negative Option Rule Review, Matter No. P064202” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the Commission makes every effort to remove home contact

¹ The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtml>).

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, (202) 326-3740 or Matthew Wilshire, (202) 326-2976, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A “negative option” is any type of sales term or condition that allows a seller to interpret the customer’s silence or failure to take an affirmative step as acceptance of an offer. One common “negative option” is the prenotification negative option plan. In such a plan, consumers receive periodic announcements of upcoming merchandise and have a set period to contact the company and decline the item. If they remain silent, the company sends them the merchandise.

The Rule Concerning the Use of Prenotification Negative Option Plans (“Negative Option Rule” or “Rule”) regulates prenotification negative option plans for the sale of goods. The Commission first promulgated the Rule (then titled the “Negative Option Rule”) in 1973 under the FTC Act, 15 U.S.C. 41 *et seq.*, after finding that prenotification negative option marketers had committed unfair and deceptive marketing practices violative of Section 5 of the Act. 15 U.S.C. 45.² In 1986, the Commission reviewed the Rule pursuant to Section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the impact of the Rule on small entities. The Commission concluded that the Rule had not had a significant impact on a substantial number of small entities and should not be changed.³ In 1997, the Commission reviewed the Rule again and solicited comments on whether there was a continuing need for the Rule and whether it should be changed to increase its benefits or reduce its costs or other burdens.⁴ Based on the response, in August 1998, the Commission concluded that the Rule “continue[d] to be of value to consumers and firms, and [was] functioning well in the marketplace at

² The Rule became effective on June 4, 1974.

³ 51 FR 42087 (Nov. 21, 1986).

⁴ 62 FR 15135 (Mar. 31, 1997).

minimal cost.”⁵ The Commission retained the Rule but announced three technical, non-substantive amendments to clarify it and conform its language to amendments in the FTC Act.⁶

The Rule requires sellers to clearly and conspicuously disclose the material terms of a prenotification negative option plan to consumers before they subscribe and to follow certain procedures in operating the plan. The Rule enumerates seven material terms that sellers must disclose clearly and conspicuously.⁷ In addition, the Rule requires sellers to follow certain procedures, including: abiding by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send; giving consumers a specified time period to respond to announcements; providing instructions for rejecting merchandise in announcements; and honoring promptly written requests to cancel from consumers who have met any minimum purchase requirements.⁸

II. Regulatory Review Program

The Commission reviews its rules and guides periodically. These reviews seek information about the costs and benefits of the rules and guides as well as their regulatory and economic impact. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Negative Option Rule; the benefits of the Rule to consumers purchasing goods through prenotification negative option plans; and the burdens the Rule places on firms subject to its requirements. The Commission also solicits comment on

whether it should expand the Rule to cover additional types of negative option offers.

The Rule covers only a subset of negative option offers—prenotification negative option plans. There are, however, several other types of commonly used negative option offers. One such offer is called a continuity plan. In this type of offer, consumers receive regular shipments of merchandise until they cancel the agreement. A second common offer is the trial conversion. Consumers who accept such an offer agree to receive products or services for a trial period at no charge or for a reduced price. If the consumers do not cancel their agreement before the end of the trial period, the product shipments or provision of services continue and they incur charges. A third familiar negative option is the automatic renewal. In an automatic renewal, a magazine seller, for example, may automatically renew consumers' subscriptions when they expire and charge for them, unless the consumers cancel their subscriptions.

The Commission seeks comment on whether there is a basis to expand the Rule to cover these additional offers, and, if so, what requirements the Rule should include. The Commission's goal in seeking comment is to determine the best way to protect consumers from deceptive or unfair practices in negative option marketing. Possible alternative and/or additional methods of achieving that goal include consumer education campaigns, industry guidance, and continued law enforcement actions.

III. Request for Comment

The Commission solicits comments on the following specific questions related to the Negative Option Rule:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? What evidence supports the asserted impact?

(5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Please provide any evidence that has become available since 1998 concerning consumer perception of, or experience with, negative option offers, including offers for prenotification negative option plans, continuity plans, trial conversions, or automatic renewals. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(9) What modifications, if any, should be made to the Rule to increase its benefits to businesses, particularly small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(10) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(11) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, particularly small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(12) What evidence is available concerning the degree of compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(13) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(14) Should the Rule define “clearly and conspicuously,” given that it

⁵ 63 FR 44555 (Aug. 20, 1998).

⁶ The Commission: deleted a Note that had become obsolete; amended two paragraphs to read “in or affecting commerce” in lieu of “in commerce” to conform the Rule to the FTC Act; and changed the title from “Negative Option Rule” to “Use of Prenotification Negative Option Plans” to better describe the Rule's coverage.

⁷ These terms are: the aspect of the plan under which subscribers must notify the seller if they do not wish to purchase the selection; any minimum purchase obligations; the subscribers' right to cancel; whether billing charges include postage and handling; that subscribers will be given at least ten days to reject a selection; that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and the frequency with which announcements and forms will be sent, and the maximum number of announcements subscribers should expect to receive during a twelve-month period. 16 CFR 425.1(a)(1)(i-vii).

⁸ 16 CFR 425.1(a)(2)(3); 425.1(b).

requires marketers to make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?

(15) What potentially unfair or deceptive practices concerning the marketing of prenotification negative option plans, if any, are not covered by the Rule?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(16) What potentially unfair or deceptive practices concerning the marketing of negative option plans, not covered by the Rule, are occurring in the marketplace?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(17) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(18) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the marketing and operation of prenotification negative option plans? If so, please provide that evidence.

(19) Are there foreign or international laws, regulations, or standards with respect to negative option plans that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these international laws, regulations, or

standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(20) Do current or impending changes in technology affect whether and how the Rule should be modified?

List of Subjects in 16 CFR Part 306

Negative Options, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9-11226 Filed 5-13-09; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0139]

RIN 1625-AA11

Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes for a rule to prohibit all floating vessels from being within an area in the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area would also apply to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. This action is necessary to protect the high-risk areas in the flood protection for New Orleans. The proposed rule will protect the floodwalls in the designated areas of the Inner Harbor Navigation Canal and the Harvey Canal from damage caused by drifting vessels by excluding vessels from the area under certain weather conditions.

DATES: Comments and related material must be received by the Coast Guard on or before June 15, 2009. Requests for public meetings must be received by the Coast Guard on or before June 15, 2009.

ADDRESSES: You may submit comments identified by docket number USCG-2009-0139 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Commander (LCDR) Eva Van Camp, Coast Guard; telephone (504) 846-5923; e-mail Eva.VanCamp@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0139), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by

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

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0139" 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 comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0139 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before June 15, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one

would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During Hurricanes Katrina and Gustav, multiple barges and vessels were moored next to or nearby floodwalls surrounding the city of New Orleans. Following the 2008 hurricane season, the Coast Guard determined there are areas in the New Orleans area that are at high risk of potential damage to floodwalls. If a vessel breaks away and hits a floodwall, there is the possibility for the vessel to damage the floodwall and cause a breach resulting in flooding of areas of New Orleans. This regulated navigation area is needed to protect the floodwalls within the Inner Harbor Navigation Canal (IHNC) and Harvey Canal from potential hazards associated with vessels being in this area during a storm.

Discussion of Proposed Rule

All floating vessels are prohibited from being within an area in the IHNC from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area would also apply to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. This rule would be in effect 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

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.

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 moor, transit or anchor in the defined area effective 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

This regulated navigation area would not have a significant economic impact on a substantial number of small entities for the following reasons. This regulated navigation area would be activated 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA. Vessels intending to moor, transit, or anchor in the defined area are subject to enforcement. Vessel traffic could find an alternate route for transit or depart the area before the regulated navigation area goes into effect.

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.

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 LCDR Eva Van Camp. 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 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an

environmental impact statement is required. This rule involves the establishing, disestablishing, or changing a regulated navigation area. A preliminary “Environmental Analysis Check List” supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information that may lead to 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.816 to read as follows

§ 165.816 Regulated Navigation Area: New Orleans Area of Responsibility, New Orleans, LA

(a) Regulated navigation area. The following is a regulated navigation area for the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area also applies to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. It will be in effect 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall, or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

(b) Unless otherwise authorized by the Captain of the Port New Orleans, LA, all floating vessels are prohibited from being in the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner

Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. Also, all floating vessels are prohibited from the Harvey Canal between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway.

(c) These designated areas shall not be used a safe haven.

(d) *Definitions.* As used in this section.

(1) *The COTP* means The Captain of the Port New Orleans, LA.

(2) *Person in Charge* includes any owner, agent, pilot, master, officer, operator, supervisor, crewmember, dispatcher, or other person navigating, controlling, directing, or otherwise

responsible for the movement, action, securing or security of any vessel, barge, tier, fleet, or fleeting facility subject to the regulation in this section.

(e) *Waivers:* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this subsection, waive any regulation in this section if it is found that the proposed operation can be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time constraints the person in charge may orally request an immediate waiver from the COTP. The written request

must be submitted within five working days of the oral request.

(4) The COTP may at any time terminate any waiver issued under this subsection.

(f) The COTP will notify the maritime community of periods during which this regulated navigation area will be enforced by providing advance notice through a Marine Safety Information Bulletin and Safety Broadcast Notice to Mariners.

Dated: 29 April 2009.

J.R. Whitehead,

*Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.*

[FR Doc. E9-11303 Filed 5-13-09; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 74, No. 92

Thursday, May 14, 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

Forest Service

Cibola National Forest, Mount Taylor Ranger District, NM, La Jara Mesa Mine

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Laramide Resources (USA) Inc. has submitted a Plan of Operations (the Plan) proposing to develop and conduct underground uranium mining operations on their mining claims on La Jara Mesa on the Mount Taylor Ranger District of the Cibola National Forest. La Jara Mesa is located approximately 10 miles northeast of the town of Grants in Cibola County, New Mexico. The mine portal facilities would be located on claims controlled by the applicant on national forest lands at the base of the La Jara Mesa at an elevation of 7,300 feet in the NE1/4, Section 15, T12N, R9W, NMPM. The mineralized zones that would be accessed from the portal are located in portions of Sections 1, 2, 11, 12, 13, and 14, T12N, R9W, NMPM. The escape shaft would be located on Forest Service administered lands on top of La Jara Mesa in Section 11, T12N, R9W, NMPM. The Cibola National Forest will prepare an environmental impact statement to assess the development of a uranium exploration and mining operation on the Mount Taylor Ranger District.

DATES: Comments concerning the scope of the analysis must be received by 30 days after the publication of the NOI. Public scoping open houses will be held during the scoping period in Grants and Gallup New Mexico. The schedule for the open houses is as follows: Wednesday, May 20, 2009 in Grants, New Mexico, from 6 p.m. to 9 p.m. at the Cibola County Convention Center and Thursday, May 21, 2009 in Gallup, New Mexico from 6 p.m. to 9 p.m. at the Gallup Community Service Center.

Times and locations of these meetings will be announced by public notice and will be available on the Cibola National Forest Web site. The draft environmental impact statement is expected before the end of 2009 and the final environmental impact statement and Record of Decision (ROD) is expected in spring/summer, 2010.

ADDRESSES: Send written comments to Rodney Byers, Minerals Program Manager, Cibola National Forest, 2113 Osuna Road NE., Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to Rodney Byers, Minerals Program Manager, Cibola National Forest, 2113 Osuna Road NE., Albuquerque, NM 87113.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Laramide Resources (USA), Inc. has submitted a Plan of Operations for development of a uranium mine at the La Jara Mesa property. The purpose of the EIS is to evaluate the environmental impacts of the proposed Plan of Operations and determine whether to approve the Plan as proposed or to require additional mitigation measures to protect the environment (in accordance with Forest Service regulations for locatable minerals).

The need for action is to allow Laramide Resources (USA), Inc. to exercise their rights under U.S. mining laws. Laramide Resources (USA), Inc. has a right to develop and remove the mineral resources as set forth by the General Mining Law of 1872 as amended. These laws provide that the public has a statutory right to conduct prospecting, exploration, development and production activities (1872 Mining Law and 1897 Organic Act), provided they are reasonably incident (1955 Multiple Use Mining Act and case law) to mining and comply with other Federal laws.

The Forest Service has the responsibility to protect surface resources. Mining regulations state that "operations shall be conducted so as, where feasible, to minimize adverse

environmental effects on National Forest System surface resources (36 CFR 228.8)" provided such regulation does not endanger or materially interfere with prospecting, mining, or processing operations or reasonably incidental uses (1955 Multiple Use Mining Act and case law).

Laramide Resources (USA), Inc.'s need is to provide uranium ore for processing to meet national and international market demands for uranium on the open market. Such demand is created by a current need for uranium for nuclear power plant fuel to generate electricity or for commercial and other uses. The Forest Service has concluded that the underlying need for this mining activity is to provide uranium for U.S. and world markets.

Proposed Action

The proposed action is an underground uranium mine consisting of a 15-16 acre footprint on the surface which will be comprised of waste rock, temporary ore storage, a new water line and electrical transmission line following the existing private and Forest roads to the site. The mine will include two adit portals and, after active mining is initiated, a vertical escape shaft to the top of the mesa to provide air circulation and an escape route in the event of an accident. The shaft opening and supporting power and equipment will lie inside a fenced area of approximately 0.1 acre. Additional facilities at the mine include a locked explosives storage shed, lighting, ventilation fans, one or more stormwater ponds, and a field office. The proposed federal action is to approve Laramide Resources (USA), Inc.'s Plan of Operations with mitigations needed to protect other non-mineral surface resources consistent with Forest Plan, regulations, and other applicable laws.

Possible Alternatives

1. No Action. 2. Approve the Plan as presented. 3. Approve the Plan as presented by Laramide Resources (USA), Inc., with stipulations necessary to protect the non-mineral resources of the area.

Responsible Official

Nancy Rose, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Albuquerque, NM 87113.

Nature of Decision To Be Made

The Forest Supervisor will use the EIS process to develop the necessary information to make an informed decision on whether or not to approve the proposed Plan as submitted, or to decide what additional mitigations are needed to protect other resources as provided for in 36 CFR 228.8.

Scoping Process

Scoping will include this NOI, listing in the Quarterly Schedule of Proposed Actions, letters to interested and affected individuals, agencies, and organizations, and legal notices, and the open houses in Grants and Gallup, New Mexico. Additional information about the project, schedule, permits and approvals, and opportunities for public involvement will be available at the open houses. The intent of scoping is to solicit comments on issues and alternatives that agencies and the public feel should be addressed in the EIS.

Preliminary Issues

One preliminary issue has been identified: the development of the La Jara Mesa Mine may affect the characteristics that make the Mount Taylor Traditional Cultural Property eligible for the National Register of Historic Places. Other issues may include groundwater contamination, natural resources, economics and health and safety issues.

Permits or Licenses Required

The approved Plan of Operations authorizes mining. Operations must be consistent with Forest Service Conditions of Approval, and other applicable laws and regulations, including state permits for mining in New Mexico.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments are solicited and are welcome for the 30 day comment period initiating on the publication date of this notice.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Authority: 40 CFR 1501.7 and 1508.22; 36 CFR 220.4.

Dated: May 8, 2009.

Nancy Rose,

Forest Supervisor, Cibola National Forest.

[FR Doc. E9-11265 Filed 5-13-09; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE**Forest Service****Fresno County Resource Advisory Committee**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Clovis, California on May 27th. The purpose of the meeting will be to discuss monitoring for the projects submitted for funding.

DATES: The meeting will be from 6 p.m. to 8:30 p.m. in Clovis, CA.

ADDRESSES: The meeting will be held at the Sierra National Forest Supervisor's Office, 1600 Tollhouse Rd., Clovis, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to rekman@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855-5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Agenda items to be covered include (1) Monitoring.

Dated: May 7, 2009.

Ray Porter,

District Ranger.

[FR Doc. E9-11160 Filed 5-13-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of Idaho Panhandle Resource Advisory Committee Meeting**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110-343) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, May 15, 2009, at 9 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: May 7, 2009.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765-7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing proposals for forest projects and recommending funding during the business meeting.

The public forum begins at 1 p.m.

Dated: May 7, 2009.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. E9-11157 Filed 5-13-09; 8:45 am]

BILLING CODE 3410-11-M

AGENCY FOR INTERNATIONAL DEVELOPMENT**Notice of Public Information Collection Requirements Submitted to OMB for Review**

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this

notification. Comments should be sent via e-mail to Chad_A_Lallemand@omb.eop.gov or fax to 202-395-7285. Copies of submission may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-0011.

Form Number: AID 1010-2.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Type of Submission: Renewal of Information Collection.

Purpose: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from the Office of American Schools and Hospitals Abroad (ASHA) on behalf of their institutions overseas. ASHA is a competitive grants program. The Office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes.

To aid in such determination, the Office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register**, 79-36221.

Annual Reporting Burden:

Respondents: 85.

Total annual responses: 85.

Total annual hours requested: 900 hours.

Dated: May 7, 2009.

Sylvia Lankford,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9-11161 Filed 5-13-09; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

Office of Administration

[Docket No. 090326470-9472-01]

Commerce Alternative Personnel System

AGENCY: Office of Administration, Office of Human Resources Management, Department of Commerce.

ACTION: Notice of Modifications to the Department of Commerce Alternative Personnel System.

SUMMARY: This notice announces changes made to the provisions of the Commerce Alternative Personnel System, formerly the Department of Commerce Personnel Management Demonstration Project, published in the **Federal Register** on December 24, 1997.

Also, this notice adds a new occupational series of 2150, Transportation Operations series to the system, and moves the Consumer Safety 696 occupational series in the (ZP) Scientific and Engineering career path from the Administrative (ZA) career path.

DATES: The changes announced in this notice are implemented as of May 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Department of Commerce: Sandra Thompson, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5004, Washington, DC 20230, (202) 482-3725 or Pamela Boyland at (202) 482-1068.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the Department of Commerce (DoC) Demonstration Project (project) and published the final plan in the **Federal Register** Wednesday, December 24, 1997 (62 FR Pages 67434-67463). The project pursued several key objectives of the National Performance Review. The project was designed to simplify current classification systems for greater flexibility in: (1) Classifying work and paying employees; (2) establishing a performance management and rewards system for improving individual and organizational performance; and (3) improving recruiting and examining to attract highly-qualified candidates. The purpose of the project was to strengthen the contribution of human resources management and test whether the same innovations conducted under the National Institute of Standards and Technology alternative personnel system would produce similarly successful results in other DoC environments. The project was implemented on March 29, 1998. The project plan has been modified six times to clarify certain DoC Demonstration Project authorities, and to extend and expand the project (64 FR Pages 52810-52812 (September 30, 1999), 68 FR Pages 47948-47949 (August 12, 2003), 68 FR Pages 54505-54507 (September 17, 2003), 70 FR Pages 38732-38733 (July 5, 2005), 71 FR Pages 25615-25616 (May 1, 2006), and 71 FR Pages 50950-50952 (August 28, 2006)). With the passage of the Consolidated Appropriations Act, 2008, Public Law 110-161, on December 26, 2007, the project was made permanent (extended indefinitely) and renamed the Commerce Alternative Personnel System (CAPS).

The CAPS provides for modifications to be made as experience is gained, results are analyzed and conclusions are reached on how the system is working. This notice announces that the DoC modifies CAPS to add a new occupational series 2150, Transportation Operations series to the system, and moves the Consumer Safety 696 occupational series in the (ZP) Scientific and Engineering career path from the Administrative (ZA) career path.

The DoC will follow the CAPS plan as published in the **Federal Register** dated December 24, 1997, and subsequent modifications as listed in the Background Section of this notice.

Deborah A. Jefferson,

Deputy Chief Human Capital Officer and Director for Human Resources Management.

Table of Contents

- I. Executive Summary
- II. Basis for CAPS Modification
- III. Changes to the Project Plan

I. Executive Summary

CAPS is designed to (1) improve hiring and allow DoC to compete more effectively for high-quality candidates through direct hiring, selective use of higher entry salaries, and selective use of recruitment incentives; (2) motivate and retain staff through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention incentives; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through the installation of a simpler and more flexible classification system based on pay banding through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

II. Basis for CAPS Modification

CAPS is designed to provide managers at the lowest organizational level the authority, control and flexibility to recruit, retain, develop, recognize, and motivate its workforce, while ensuring adequate accountability and oversight.

The National Oceanic and Atmospheric Administration (NOAA), Office of Marine and Aviation Operations has requested to add the Transportation Operations Series, 2150 to the Administrative (ZA) career path. The series covers duties of which are to administer, supervise, or perform work involving the planning, directing, or operating of rail, motor, air, or water transportation systems and service,

including positions involving responsibility for operation of both transportation service and terminal facilities.

NOAA has requested that the 696 Consumer Safety Series be removed from the Administrative (ZA) career path and placed in the Scientific and Engineering (ZP) career path as the 696 occupational series is a professional and scientific position and has its own OPM Individual Occupational Requirements to be used in conjunction with OPM's Group Coverage Qualification Standards for Professional and Scientific Work. The change of this series to the (ZP) career path will have no impact on the pay, series, or pay band classification of employees in this series. A copy of this approved **Federal Register** notice will be provided to the affected employees prior to making the change effective.

III. Changes to the Project Plan

The CAPS at DoC, published in **Federal Register** (FR) Volume 62, Number 247, on Wednesday, December 24, 1997 is amended as follows:

1. The following series is added to Table 2
Administrative (ZA) Career Path, 2150, Transportation Operations Series.
2. The following series is moved from the Administrative (ZA) Career Path and placed in the
Scientific and Engineering (ZP) Career Path, 696, Consumer Safety Series.

[FR Doc. E9-11213 Filed 5-13-09; 8:45 am]
BILLING CODE 3510-03-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, May 20, 2009, 12:30 p.m.–2:30 p.m.

PLACE: The Almas Shriner Center, 1315 K St., NW., Washington, DC 20005. Call in number: (202) 898-1688.

STATUS: Open.

MATTERS TO BE CONSIDERED:

12:30–1:15 p.m.

I. Chair's Opening Remarks.

II. Consideration of Prior Meeting's Minutes.

III. CEO Report.

IV. *Committee Reports:* Management, Audit and Governance Committee; Program and Evaluation Committee; Strategic Partnerships Committee
1:15–2:30 p.m.

V. Public Testimony on the Implementation of the Serve America Act.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, February 4, 2008.

CONTACT PERSON FOR MORE INFORMATION:

Emily Samose, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 9613C, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606-7564. Fax (202) 606-3460. TDD: (202) 606-3472. *E-mail:* esamose@cns.gov.

Dated: May 12, 2009.

Frank R. Trinity,

General Counsel.

[FR Doc. E9-11416 Filed 5-12-09; 4:15 pm]

BILLING CODE 6050-SS-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Vocational Rehabilitation Services Projects for American Indians with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250A.
Applications Available: May 19, 2009.
Deadline for Transmittal of Applications: July 23, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide vocational rehabilitation (VR) services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741).

Competitive Preference Priority: For FY 2009, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of vocational rehabilitation service programs that have been funded under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 369 and 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$6,079,350.

Estimated Range of Awards: \$315,000–\$412,000.

Estimated Average Size of Awards: \$380,000.

Maximum Award: For applicants that are proposing to continue a program that is currently funded under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program, the maximum award amount for the first project year is the greater of (a) \$365,000 or (b) an amount equal to 103 percent of the applicant's approved budget for the applicant's FY 2008 grant (an increase of 3 percent). For applicants that are proposing to establish a new program under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program, the maximum award amount for the first project year is \$365,000.

In addition, the Secretary may limit any proposed increases in funding for project years two through five to the annual estimated percentage change in the Consumer Price Index for all Urban Consumers (CPIU).

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The governing bodies of Indian Tribes (and consortia of those governing bodies) located on Federal and State reservations.

Note: *Indian Tribe* is defined in the program regulations at 34 CFR 371.4 as "any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act)."

2. *Cost Sharing or Matching: See 34 CFR 371.40.*

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone, toll free: 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: edpubs@inet.ed.gov.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: May 19, 2009. Deadline for Transmittal of Applications: July 23, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application, accessible available through the Department's e-Grants portal page at: <http://e-grants.ed.gov>.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date.

Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all

necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

- Print SF 424 from e-Application.

- The applicant's Authorizing Representative must sign this form.

- Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

- Fax the signed SF 424 to the Application Control Center at (202) 245-6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability. If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

- You are a registered user of e-Application and you have initiated an electronic application for this competition; and

- (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

- (b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either

(1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If the e-Application system is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or

a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and
- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The selection criteria may total 100 points, plus the 10 competitive preference priority points (see section I. *Competitive Preference Priority*).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial

information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established three performance measures for the Vocational Rehabilitation Services Projects for American Indians with Disabilities program. The measures are (1) the percentage of individuals who leave the program with an employment outcome, (2) the percentage of projects that demonstrate an average annual cost per employment outcome of no more than \$35,000, and (3) the percentage of projects that demonstrate an average annual cost per participant of no more than \$10,000. Each grantee must annually report its performance on these measures through the Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services program (APR Form).

Job Training and Employment Common Measures

In addition, this program is part of the job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are (1) entered employment (percentage employed in the first quarter after program exit); (2) retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit); (3) average weekly earnings (average earnings of those participants who are employed in the first, second, and third quarters after the exit quarter); and (4) the annual cost per participant.

The AIVRS Annual Progress Reporting Form, approved by the Office of Management and Budget (OMB) on September 5, 2008, has been revised to collect data needed to assess the Vocational Rehabilitation Services Projects for American Indians with Disabilities program's performance on supplemental measures that are comparable to the job training and employment common measures. Each grantee will be required to collect the report data for these supplemental measures as part of the annual

performance report requirement, including information on: (1) The number of individuals whose case record has not been closed, but have not received project services for 90 consecutive calendar days, (2) the number of eligible individuals who were employed three months after achieving the employment outcome, (3) the number of eligible individuals who were employed six months after achieving an employment outcome, (4) the average weekly earnings at entry, and (5) the average weekly earnings of the individuals whose employment outcomes resulted in earnings.

Note: For purposes of this section VI. 4., the term “*employment outcome*” has the meaning provided in 34 CFR 369.4.

VII. Agency Contact

For Further Information Contact: August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5088, PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–7410 or by *e-mail:* august.martin@ed.gov.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive

Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: May 8, 2009.

Andrew J. Pepin,

Executive Administrator for the Office of Special Education and Rehabilitative Services.

[FR Doc. E9–11202 Filed 5–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Transmission Infrastructure Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Program.

SUMMARY: The Western Area Power Administration (Western) hereby announces its Transmission Infrastructure Program (Program). The Program implements section 402 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the purpose of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by Western, and for delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date this section was enacted. The Program will use authority granted under this section to borrow funds from the U.S. Treasury Department to accomplish these purposes.

DATES: The Program is effective upon May 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Please contact Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail txprogram@wapa.gov. The Program is also available on Western’s Web site at <http://www.wapa.gov/recovery>.

SUPPLEMENTARY INFORMATION:

Background

Western markets and transmits wholesale hydroelectric power generated at Federal dams across the western United States. This power is sold to customers in accordance with Federal law. Western’s transmission system was developed to deliver the Federal hydro-power to those

customers. Western owns and operates an integrated 17,000 circuit-mile, high-voltage transmission system and markets power across 15 western states and a 1.3 million square-mile service area. Western’s service area encompasses all of the following states: Arizona, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming; as well as parts of Iowa, Kansas, Montana, Minnesota, and Texas. Today, Western makes capacity on its transmission system excess to that needed to serve its preference customers available through the policies and procedures outlined in its Open Access Transmission Tariff (OATT). Western offers nondiscriminatory access to its transmission system, including requests to interconnect new generating resources to that transmission system under its OATT on file with the Federal Energy Regulatory Commission (FERC).

Western sought public comment on the proposed principles, policies and practices it will use to implement its new Recovery Act authority in a 30-day consultation and comment period as announced in a March 4, 2009, **Federal Register** notice (74 FR 9391). A formal public comment forum was held in Lakewood, Colorado, on March 23, 2009, and a transcript and meeting video were made available through Western’s external Web site at <http://www.wapa.gov/recovery>. Western received comments from 40 customers and other stakeholders. All comments were reviewed and, where appropriate, incorporated into the Program. The Discussion of Comments section provides Western’s response to the comments. Where possible, comments and related responses were consolidated. In defining the proposed Program, Western identified a series of principles to provide overarching guidance. Western further identified a series of policies and practices it will follow in implementing the Program. Those principles, policies and practices are set forth in this notice.

With this notice, Western is making its Program effective upon publication in the **Federal Register**. The procedures and statements of policies set forth in Western’s Program are consistent with the Recovery Act and other statutes, and the Program does not include additional substantive requirements. Therefore, Western’s program is not subject to the Administrative Procedure Act’s delayed effective date provision (5 U.S.C. 553(d)).

Discussion of Comments

Western received 40 submittals related to its proposed Program. To

facilitate presentation and discussion of the comments, Western categorized the comments into four general categories: (1) Comments on set-up, operation, and management of the Program; (2) comments on project identification, evaluation, selection, and certification criteria; (3) comments on project funding, financing, and repayment criteria; and (4) other comments.

1. Comments on Set-Up, Operation, and Management of the Program

a. Time and Information Comments

Summary Comment: Western received numerous comments regarding extending the comment period, sequencing of the Request for Information and the Program comment periods, and overall need to spend more time developing Program procedures and criteria.

Response: The comment period will not be extended. The purpose of the Recovery Act, which authorized this Program, is to stimulate job creation in the near term.

The Program also supports the Obama Administration's goal of rapid development of infrastructure to deliver renewable resources. Therefore, Western is moving expeditiously, while following the intent and purpose of the law and balancing the need of stakeholders for substantive and procedural input. Western will implement the Program as defined in this notice. However, Western is committed to continually evaluating the Program and is open to the possibility of making further changes as appropriate through open and transparent public processes.

b. Process Comments

Summary Comment: Western received numerous comments on the need for an open, transparent, fair, and meaningful process to allow stakeholders to assist Western in identifying, prioritizing, selecting, and funding projects, either for further study or for implementation, and to determine these projects' repayment methodology. Several commenters asked for more public meetings. Commenters also expressed interest in serving on an advisory board to assist Western in managing the Program.

Response: Western has a long history of partnering with other entities in developing new additions to the transmission system, and will continue this business model in implementing the Program. In fact, Western is adopting a principle of ensuring the Program provides an opportunity, where appropriate, for the participation of

other entities in constructing, financing, owning, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines. The **Federal Register** notices titled "Notice of Availability of Request for Interest" and "Notice of Proposed Program and Request for Public Comments" published on March 4, 2009, provided interested parties opportunities to suggest projects for Western's consideration and to comment on the practices and policies of the Program. Where appropriate, Western intends to open projects to additional participation so other entities can contribute meaningfully.

Public meetings, and opportunities for public comment, will be scheduled for specific project proposals during each project's National Environmental Policy Act compliance process. Commenters' interest in serving on a Program advisory board is noted; however, Western believes its long history of ad hoc collaborative engagement with stakeholders will adequately meet the needs of the Program.

c. Laws/Rules Comments

Summary Comment: Numerous comments were received asking for the Program to not impact the statutory obligations of Western. Additional comments requested that the Program comply with all applicable Federal laws, regulations, policies, and state laws.

Response: It is Western's intention to fully comply with all of its statutory obligations, including its Reclamation Law obligations and those contained in the new Recovery Act statute. In particular, Western's Program activities will be implemented to assure compliance with all applicable National Environmental Policy Act requirements.

Summary Comment: Several commenters asked that all transmission capacity excess to Western's needs be posted and made available on a non-discriminatory basis.

Response: Available transfer capability surplus to Western's needs will continue to be made available in a nondiscriminatory manner consistent with FERC open access transmission rules, Federal statute, and Western policies.

Summary Comment: Some commenters recommended that Western should give priority to projects already in its interconnection and/or transmission queues when conflicts exist between the Program's projects and projects in the queues. Other commenters suggested that the Program's projects be handled

separately from projects in Western's queues.

Response: Where possible, Western will pursue projects that simultaneously satisfy queue requests and meet the requirements of the Program. However, where that is not possible, Western will give priority to projects developed under section 402 of the Recovery Act.

2. Comments on Project Identification, Evaluation, Selection, and Certification Criteria.

a. Renewable Comments

Summary Comment: Western received comments indicating that the Program should assist in bringing renewable energy sources on line and delivering those resources to market, and that encouraged Western to consider a diverse range of renewable generation resources.

Response: Western agrees with these comments. As the statute indicates, transmission projects that Western participates in under the Program will facilitate the development of renewable energy resources, and the delivery of those resources to market. Western is not focused on any particular source of renewable energy, and will consider transmission projects that meet the Program's criteria from all sources of renewable energy generation. By statute, these renewable energy resources must be constructed or reasonably expected to be constructed after the statute's enactment date.

Summary Comment: Some commenters asked that Western remain flexible and willing to consider the development of new products and services to assist the integration of renewables into the existing transmission system.

Response: Western will remain open to the development of new products and services that assist in integrating renewables into the existing transmission system that do not conflict with statutory requirements.

b. Public Interest Comments

Summary Comment: Western received comments indicating that the Program, and the projects selected by the Program, should serve the public interest, and asked for clarification on how Western will determine what is in the public interest.

Response: Western agrees the Program and the projects selected under the Program should serve the public interest. Although the Recovery Act specifically does not define what constitutes "public interest", when selecting projects, Western believes that it has discretion to balance the merits of

each proposed project on a case-by-case basis and on the circumstances of each situation.

Summary Comment: Some commenters stated that adding transmission lines does not serve the public interest.

Response: Section 402 of the Recovery Act clearly indicates that Congress desires Western to build transmission projects to facilitate the delivery of renewable energy. Western intends to carry out its Program to fulfill this Congressional direction.

c. System Impact Comments

Summary Comment: Western received numerous comments that it should develop evaluation criteria so that projects selected for implementation will not result in the creation of any negative reliability, operational, or financial impacts to neighboring transmission systems, but also protect against the diminution of any rights and obligations of existing transmission users.

Response: Additions, modifications, and/or upgrades to the nation's electric transmission infrastructure will be coordinated so that the interests of the affected parties are represented. As proposed projects are considered for possible implementation under the Program, Western intends to seek input from the appropriate stakeholders, including regional planning forums and/or processes on a case-by-case basis, to ensure that the relevant interests and issues are identified, represented, and appropriately considered.

Summary Comment: Western received a comment that it should select projects for implementation that enhance reliability.

Response: Western will not limit itself to just projects that enhance reliability. The Recovery Act allows Western to build projects as long as they will not adversely impact system reliability or operations. Whenever additions, modifications, and/or upgrades to the nation's electric transmission infrastructure are undertaken, they are coordinated through regional planning forums and/or processes where all stakeholders have the opportunity to have their issues and concerns raised and discussed. Western intends to seek input from the appropriate stakeholders, including regional planning forums and/or processes on a case-by-case basis, to ensure that the relevant interest and issues are identified, represented, and appropriately considered as projects are considered for possible implementation.

d. Project Priority Comments

Summary Comment: Western received several comments indicating that, when considering projects for implementation, Western should give a higher priority to those projects that upgrade and modernize the existing transmission infrastructure to increase its capacity for integrating more renewables into the grid; promote more public/private partnerships; are further along in their developmental prerequisites; confront less financial, technological, and regulatory hurdles; or can be quickly constructed.

Response: Western always appreciates suggestions from stakeholders which enhance the effective and efficient management of its programs. The Program anticipates a combination of new transmission construction and upgrades to existing infrastructure, and will use public/private partnerships to the extent practicable in order to meet the objectives of the Recovery Act to create jobs in the near term and rapidly develop infrastructure to deliver renewable resources.

e. Criteria Comments

Summary Comments: Western received numerous comments regarding project evaluation criteria. Suggestions included the development of a comprehensive list to include consideration of the creditworthiness of any potential partner; not funding projects that are fundamentally unsound; job creation and the long-term economic benefits of any project; and other project eligibility criteria.

Response: Western's expectation is that unsound projects will be screened out through a rigorous evaluation process. Prior to committing borrowed funds to any selected project, as mandated, the Administrator must certify that the project is in the public interest; it will not adversely impact system reliability or operations, or other statutory obligations; and it is reasonable to expect that revenue from the project will be adequate to repay the project loan, expenses for ancillary services and the ongoing operation and maintenance costs of the project. In addition to these criteria, Western will also assess the technical merits and feasibility of a project; its ability to deliver power generated by renewable resources; the financial stability and capability of all potential project partners; project readiness (e.g., permitting, local, state and/or regional approvals); and the economic developmental benefits of the project. The Program's project evaluation criteria will be applied to provide the

basis for the Administrator's certification.

Summary Comment: Western received several comments requesting that it allow participation in transmission projects through long-term contracts, including an open season period, e.g., Bonneville Power Administration's (BPA) open season.

Response: Western is open to considering the concept of allowing participation in transmission projects through long-term contracts, including the use of an open season period to select counterparties to those contracts, similar to that used by BPA.

Summary Comment: Western received a comment that it should not consider refinancing as a part of the original feasibility analyses of the new projects.

Response: The Recovery Act authorizes Western to refinance loans taken pursuant to section 402. Refinancing would not be part of the original feasibility analyses of new projects, but will be considered during the useful life of projects and will be used when it makes good business sense.

f. Coordination Comments

Summary Comment: Western received numerous comments advising it to take advantage of studies and work (previous, current, future) on potential transmission projects, coordinate the Program's projects through regional planning forums and processes, possibly lead regional planning efforts, and consider coordination of regional grid operations to integrate renewable resources.

Response: Western is involved in many regional and subregional transmission planning groups, collaborating with transmission entities on proposed transmission additions to coordinate and efficiently plan for transmission line development. For example, Western is a member of the WestConnect transmission planning group, which provides an annual 10-year regional transmission plan, coordinating all transmission plans across the WestConnect planning area. Western also participates in the Mid-Continent Area Power Pool (MAPP) Regional Plan that integrates the transmission plans developed by individual MAPP members through the MAPP's Transmission Planning Subcommittee and by sub-regional planning groups, in order to meet the transmission needs in the MAPP Region of Members and interested parties. Western will continue to be involved in these and other transmission planning groups to coordinate projects, and will

use existing and future studies and analyses to enhance its decision process.

g. Ancillary Services Comments

Summary Comment: Western received several comments related to the provision of ancillary services. Some commenters felt Western should use Federal hydro-power resources to provide ancillary services to the Program projects; others were equally opposed. Other commenters suggested that any customers using the Program projects should be fully responsible for any ancillary services required in conjunction with that transmission service. Also, some commenters were unsure of what Principle 5 meant when Western stated that each Program project “[h]as the necessary capabilities to provide generation related ancillary services.” (Emphasis added.)

Response: Nothing in the provisions of the Recovery Act “confers on the Administrator any additional authority or obligation to provide ancillary services to users of transmission facilities developed under this section.” Under normal industry operation procedures, it is the responsibility of the recipient of the transmission service to undertake the necessary arrangements to secure the provisioning of the required ancillary services. Under the Recovery Act, and as part of the Administrator’s certification responsibilities, the Administrator must also ensure a proposed new Program project does not conflict with his responsibilities to existing transmission and preference power customers of the Federal power system.

In order to clarify any misunderstanding that stakeholders may have, Western has changed Principle 5 to use the words “obtain and deliver” rather than “provide” to clarify that a Program project must have the ability to obtain and deliver ancillary services.

3. Comments on Project Funding, Financing, and Repayment Criteria

a. Use of Funds Comments

Summary Comment: Several commenters requested that Western be flexible and open to alternative financing options to leverage its borrowing authority to gain the most benefit.

Response: Western is open to considering alternative financing options on a case-by-case basis in order to maximize utilization of its new borrowing authority.

Summary Comment: Western received several comments regarding the funding of studies and

environmental analyses, including setting the criteria for the repayment of those costs when a project does not get completed.

Response: Western welcomes proposals from any entity who may seek funding through Western to undertake the necessary planning and environmental studies to determine the feasibility of a project. However, in order to assure the public that its funds are being used prudently, Western will evaluate the probability of each proposal leading to a successful outcome on a case-by-case basis before making any commitment to advance funds. Funds expended to study projects that are not constructed shall be handled in accordance with provisions of the Recovery Act.

Summary Comment: Western received some comments regarding the need to set the terms and conditions of funds borrowed in conjunction with the selection of the projects to be able to fully analyze the repayment ability of the project.

Response: Western has executed a Memorandum of Understanding with the U.S. Treasury Department that establishes the terms and conditions under which Western can borrow funds. Thus, Western will have access to adequate financing information when analyzing the repayment terms of each Program project.

b. Recovery of Costs Comments

Summary Comment: Western received numerous comments that selected projects must generate sufficient revenues to assure repayment of its costs, as required by the Recovery Act, including the suggestion of a policy that project beneficiaries pay for all project costs.

Response: Western plans to develop a repayment program that complies with the Recovery Act. Western’s Administrator stated in his testimony before the Subcommittee on Water and Power, Committee on Natural Resources, and U.S. House of Representatives, on March 10, 2009, that “Western will * * * use revenues from project beneficiaries as the only source of repayment of all associated project costs, and * * * All selected projects, including upgrades to Western’s existing transmission lines, must meet the requirement that there is a reasonable likelihood that it will generate enough transmission service revenue to repay the principal investment, all operating costs and the accrued interest.” Pursuant to the Recovery Act, Western will evaluate each project and, if selected, the Administrator will certify that it is

reasonable to expect that the proceeds from the project shall be adequate to repay the loan. In addition, Western will modify its Program-related Principles to ensure that project beneficiaries repay project costs.

Summary Comment: Western received some comments that selected projects use generally accepted accounting principles for financial accounting and reporting so beneficiaries know their repayment obligations.

Response: To elaborate on a statement in the **Federal Register** notice, published on March 4, 2009, in Section III.C.1., Program Funding—Policies and Practices, Western will use current business practices and accounting policies (based on generally accepted accounting principles) to record and track all expenses and revenues and other financial transactions for each project selected.

Summary Comment: Western received numerous comments that rates for selected projects are kept separate and not financially integrated for the purposes of repayment with any existing or potential future transmission system so that there is no impact to existing users.

Response: To comply with the Recovery Act, and as stated in the Principles section of the **Federal Register** notice published on March 4, 2009, Western will isolate the accounting transactions of the new projects in Western’s existing financial management system. In response to a question submitted for the record of the hearing before the Subcommittee on Water & Power, Committee on Natural Resources, U.S. House of Representatives, on March 10, 2009, Western stated, “Section 402 of the Recovery Act clearly requires, for repayment purposes, Western to treat each project funded with Treasury borrowings as separate and distinct from all other Western transmission facilities * * *”

Summary Comment: Western received comments that it needs to have a strategy for interconnection-wide cost-sharing for projects designed to achieve national renewable energy goals.

Response: Interconnection-wide cost-sharing is not a requirement of the Recovery Act or the Program. Western may consider interconnection-wide cost-sharing, as well as other cost-sharing concepts, if appropriate, as it evaluates project proposals on a case-by-case basis. If national renewable energy goals are established and changes to Program processes and procedures are required, they will be modified as appropriate.

Summary Comment: Western received a comment that it should adopt rate setting methodologies consistent with Department of Energy (DOE) Order RA6120.2 (RA6120.2).

Response: RA6120.2 establishes financial reporting requirements for Power Marketing Administrations. RA6120.2 was developed primarily for financial reporting of hydroelectric power projects using Federal appropriations. This Program is for transmission projects funded using treasury borrowing and transmission service revenue. Even though these differences exist, they tend to be minor and Western believes that it can comply with the applicable portions of RA6120.2.

Summary Comment: Western received a comment that the specific provisions of the Recovery Act related to “participation” do not provide how a third-party participant will recover its costs.

Response: Rates and repayment for projects funded through the Program will be determined on a case-by-case basis. Western anticipates that its rates and repayment methods will apply only to those portions of a project that are under Western’s operational control. For projects that are not under Western’s operational control, Western will use contract provisions with the third-party participant to require that rates be established to assure a sufficient revenue stream to repay project costs. In addition, one of Western’s objectives is to encourage nonfederal participation to leverage Western’s borrowing authority. Depending upon the roles and responsibilities agreed to by the parties, the transmission rates charged by another entity may be subject to FERC rate jurisdiction, or that of a public utility commission or other rate setting body.

Summary Comment: Western received several comments regarding the acceptability of the pancaking of transmission rates. Conversely, several commenters were opposed to pancaking of transmission rates.

Response: Western has noted these comments. The Program’s policies and procedures are flexible and may provide for either “pancaking” or “non-pancaking” of rates as the situation requires. Rate design for transmission capacity that Western markets will be determined using Western’s appropriate rate setting processes.

Summary Comment: Western received a comment that after Federal loan obligations are paid off, right holders can migrate to a common tariff charge as a part of a larger network.

Response: Western has noted this comment. Nothing in the Recovery Act or the Program policies and procedures precludes migration to a common tariff charge as a part of a larger network.

Summary Comment: Some commenters requested that Western clarify when the forgiveness of loan balances will be used and that firm power customers will not be liable for any unforgiven loan balance.

Response: The Recovery Act clearly states that balances owed to Treasury at the end of the useful life of a project, or funds expended to study projects that are not constructed, shall be forgiven. It further states that revenue from the use of the project shall be the only source of funds for repayment of project loans and payment of ancillary services and operation and maintenance costs.

Summary Comment: Western received a comment that before projects are implemented, Western should ensure that contracts with customers for renewables are executed.

Response: Western acknowledges this comment and will endeavor to ensure, where appropriate, that renewable energy generators have executed the necessary contracts with their customers.

4. Other Comments Received

Summary Comment: Western received a number of other miscellaneous comments which requested clarification on a number of items as well as providing suggestions on the overall management and operation of the Program.

Response: Western always appreciates suggestions from stakeholders which enhance the effective and efficient management of its programs. Western will consider each of the comments provided under this section and as appropriate, integrate them into its management and operation of the Program. In addition, should there be any changes that require further notification of stakeholders, Western will communicate those changes in a timely manner.

Summary Comment: Western received a comment that access to all information submitted for project information should be available without using the Freedom of Information Act (FOIA).

Response: Formal FOIA procedures need not necessarily be followed in order to request project information. A functional request can be submitted that does not invoke FOIA. However, Western does not generally have the ability, nor does the Recovery Act specifically grant Western ability, to waive protections afforded to parties

under “Exemption 4” of FOIA. Exemption 4 provides protections for trade secrets or commercial or financial information submitted on a privileged or confidential basis. In this regard, Western has also received comments asking for greater confidentiality protections for project information. FOIA and Exemption 4 provide an adequate framework, and balancing of interests, by which Western will treat requests for both disclosure and nondisclosure.

Summary Comment: Western received several comments that it needs to provide more detail to ensure how confidential information will be protected.

Response: In protecting confidential information, Western will look to the law related to FOIA, and in particular to Exemption 4.

Summary Comment: Western received some comments that all potential conflicts of interest of project participants shall be disclosed and reported to Western.

Response: Western appreciates the fact that if it contracts for support in evaluating projects that these contractors may have worked for one or more project proponents in the past. Western is also concerned with conflicts of interest, and therefore will use its current acquisition practices to retain contractors based on specific requirements in the Federal Acquisition Regulations (FAR) to address any organizational conflicts of interest or “OCIs.”

Summary Comment: Western received a comment that the term “entity” is too narrowly defined and may exclude public power.

Response: Western includes public power in its definition of “entity.”

Summary of Changes From Proposed Program

Western has revised the proposed Program in response to public comments to the **Federal Register** notice (FRN) published on March 4, 2009. The more significant changes made to the Program include:

All references to the “proposed” Program were deleted, and now refer to the “Program.” The Definition section was revised to refine the definition of entity as “any individual or organization that seeks to participate with Western under the Program’s authority.” The section was expanded to include a definition of “beneficiary” as any individual or organization that receives an economic, financial, operational, or physical benefit from the construction and/or operation of a project funded by the Program.

The Program elements of Project Development and Project Operations and Maintenance were combined. In addition, Western added a Principles section as part of the Program to evaluate potential projects. Specifically, Principles are categorized as being either project- or Program-related.

Initially, nine Principles (six project-related, three Program-related) were previously identified in the Background section of the FRN. Principles were expanded to ten. A fourth Program principle was added and reads: "Ensures that project beneficiaries repay project costs." The inclusion of this project Principle and related definition will clarify repayment responsibility for individual Program project costs. In addition, the fifth project Principle was revised as follows: "Has the necessary capabilities to obtain and deliver generation-related ancillary services." The Principle as previously worded required the project provide generation-related ancillary services. All references in the Program criteria to "provide . . . ancillary services" were subsequently changed to "obtain and deliver . . . ancillary services." The Project Funding section was changed to reflect revision of the definition of Applicability as follows: "All projects selected for funding under this authority will be governed by the principles, policies, and practices outlined in this notice." Also, the Criteria element was deleted.

The Project Funding Policies and Practices element was expanded to incorporate a third component to read: "Western will look for public-private partnerships to maximize the leveraging of funds."

Under Project Evaluation, Applicability was changed to read: "All Projects to be considered for funding under this authority will be evaluated against minimum criteria outlined below." Criteria were changed significantly, expanded to include six additional criteria and the revision of two. Policies and Practices was changed to include narrative on Western's adherence to the Federal Acquisition Regulation in addressing potential organizational conflicts of interest when contracting for outside expertise to assist in evaluating proposed projects seeking funding under the Program.

The Project Development and Operations and Maintenance, Policies and Practices was revised. Specifically, Western will give priority to projects that satisfy OATT or related requests. This has been moved to Project Evaluation criteria. In addition, narrative referencing applicable Federal laws, regulations and policies was expanded to include: "* * * the

National Environmental Policy Act, the FAR, and other applicable provisions of the Recovery Act."

The Project Rates and Repayment, Policies and Practices section now contains an expanded definition of Program project costs to include overhead. In addition, the development of Program project transmission rates for transmission capacity was changed from Western owns and controls to simply controls. Western will adopt applicable requirements contained in DOE Order RA6120.2 as part of its repayment and reporting processes.

Western's Transmission Infrastructure Program

Western's Transmission Infrastructure Program will implement the Program authorized in section 402 of the Recovery Act. The Program will identify, prioritize and participate in the study, facilitation, financing, planning, operating, maintaining, and construction of new or upgraded transmission facilities and additions that will help bring renewable energy resources to market across the West. One objective is to encourage non-Federal participation so as to leverage Western's borrowing authority. The Program consists of several major components: Program Principles; Project Funding, Project Evaluation, Project Development and Operation and Maintenance, and Project Rates and Repayment.

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I. Definitions

- A. The term "Administrator" means the Administrator of Western.
- B. The term "entity" means any individual or organization that seeks to participate with Western under the Program's authority.
- C. The term "beneficiary" means any individual or organization that receives an economic, financial, operational, or physical benefit from the construction

and/or operation of a project funded by the Program.

II. Principles

In implementing the authority granted to Western in section 402, Western will use the following principles which provide overarching guidance:

A. Project-Related Principles:

Western will ensure each project approved for funding using Treasury borrowing authority:

1. Is in the public interest.
2. Will not adversely impact system reliability or operations, or other statutory obligations.
3. Offers a reasonable expectation that the proceeds from such project shall be adequate to meet Western's financial repayment obligations.
4. Uses a public process when Western sets the rates for any transmission capacity resulting from new facilities developed from Western's participation in such projects.
5. Has the necessary capability to obtain and deliver generation-related ancillary services.

6. Uses the proceeds from the sale of the transmission capacity from such project for the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as Western determines are necessary,

- a. to pay for the ancillary services that are obtained and delivered; and
- b. to meet the costs of operating and maintaining the new project.

B. Program-Related Principles:

Western will ensure the Program:

1. Provides an opportunity, where appropriate, for participation by other entities in constructing, financing, owning, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines under this authority.
 2. Uses revenues from projects developed under this authority as the only source of revenue for,
 - a. repayment of the associated loan for the project;
 - b. payment of expenses for ancillary services, and operation and maintenance; and
 - c. payments for ancillary services that will be credited to the existing power system providing these services, when the existing Federal power system is the source of the ancillary services.
 3. Maintains appropriate controls to ensure, for accounting and repayment purposes, each transmission line and related facility project in which Western participates under this authority is treated as separate and distinct from,
 - a. each other such project; and

b. all other Western power and transmission facilities.

4. Ensures that project beneficiaries repay project costs.

III. Project Funding

A. Applicability: All projects selected for funding under this authority will be governed by the principles, policies, and practices outlined in this notice.

B. Policies and Practices:

1. Western will use generally accepted accounting principles and practices in recording and tracking all expenses and revenue transactions for each project selected.

2. Western will isolate these financial accounting transactions in its existing financial management system.

3. Western will look for public-private partnerships to maximize the leveraging of funds.

IV. Project Evaluation

A. Applicability: All projects to be considered for funding under this authority will be evaluated against the minimum criteria outlined below.

B. Criteria: Project evaluation includes feasibility of developing a project that meets the following minimum criteria:

1. Facilitates the delivery to market of power generated by renewable resources constructed or reasonably expected to be constructed;

2. is in the public interest;

3. will not adversely impact system reliability or operations, or other statutory obligations;

4. establishes the reasonable expectation that the project will generate enough transmission service revenue to repay the principal investment; all operating costs, including overhead; and the accrued interest by the end of the project's service life;

5. has at least one terminus located within Western's service territory;

6. describes the economic developmental benefits of the project, including an estimate of how many and the type, how fast, and where in the country jobs are created;

7. gives priority to projects that satisfy Western's Open Access Transmission Tariff or related requests;

8. addresses the technical merits and feasibility of a project;

9. demonstrates the financial stability and capability of all potential project partners;

10. describes project readiness (e.g., permitting, local, state and/or regional approval); and

11. describes all project partners' participation in a region-wide interconnection-wide planning group or forum.

C. Policies and Practices:

1. Western will establish additional criteria to evaluate proposed projects as necessary.

2. Western may, at its discretion, use outside expertise to assist in evaluating proposed projects seeking funding under this authority. Western will use its current acquisition practices to retain any contractors to assist in project evaluation and will use the specific regulations in the FAR to address any organizational conflicts of interest.

3. Western will treat data submitted by project participants related to this authority, including project descriptions, participation and financing arrangements by other parties, as available to the public through the FOIA. However, participants may request confidential treatment of all or part of a submitted document under FOIA's exemption for "Confidential Business Information." Materials so designated and which meet the criteria stipulated in the FOIA will be treated as exempt from FOIA inquiries.

V. Project Development and Operations and Maintenance

A. Applicability: All projects funded under this authority.

B. Policies and Practices:

1. For study, facility development, construction and any other related purposes, where applicable, Western will consider projects that are constructed pursuant to its authority under section 402 of the Recovery Act separately from procedures and requirements for arranging for transmission service or interconnection under its OATT, or related interconnection agreements. Western will use the appropriate project management methods to initiate, plan, execute, monitor, control and close all transmission projects approved for funding under this authority.

2. Available transfer capability surplus to Western's need will be made available in a nondiscriminatory manner consistent with FERC open access transmission rules, Federal statute, and Western policies.

3. Western will comply with all other applicable Federal laws, regulations and policies, including the National Environmental Policy Act, the FAR, and other applicable provisions of the Recovery Act.

VI. Project Rates and Repayment

A. Applicability: All projects funded under this authority.

B. Criteria: The repayment requirements and applicable transmission rates will be designed so

that proceeds from the project meet the repayment obligation.

C. Policies and Practices:

1. Before project development, Western will confirm the reasonable likelihood that the project will generate enough transmission service revenue to meet Western's financial repayment obligations including principal investment, operating costs including overhead, accrued interest, and other appropriate costs.

2. Transmission rates for transmission capacity Western controls will be developed in a public process following the applicable requirements outlined in 10 CFR part 903 and RA6120.2, and set by the Administrator as specified in relevant DOE orders.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Western has determined that this action is categorically excluded from further NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: April 21, 2009.

Timothy J. Meeks,
Administrator.

[FR Doc. E9–11299 Filed 5–13–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2008–0728; FRL–8905–2]

Adequacy Status of Motor Vehicle Emissions Budgets in Submitted Early Progress Plan for Clark County 8-hour Ozone for Transportation Conformity Purposes; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budgets for 8-hour ozone in the *8-hour Ozone Early Progress Plan for Clark County, Nevada (June 2008)* ("Clark County Ozone EPP") are adequate for transportation conformity purposes. The Clark County Ozone EPP was submitted to EPA on July 28, 2008 by the Nevada Division of Environmental Protection (NDEP) as a revision to the Nevada State Implementation Plan (SIP). As a result

of our adequacy findings, the Southern Nevada Regional Transportation Commission (RTC) and the U.S. Department of Transportation must use these budgets in future transportation conformity analyses once the finding becomes effective.

DATES: This finding is effective May 29, 2009.

FOR FURTHER INFORMATION CONTACT:

Karina O'Connor, U.S. EPA, Region IX, Air Division AIR-2, 75 Hawthorne Street, San Francisco, CA 94105-3901; (775) 833-1276 or occonnor.karina@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to NDEP on May 5, 2009 stating that the motor vehicle emissions budgets in the submitted Clark County Ozone EPP for the year 2008 are adequate. Receipt of the motor vehicle emissions budgets in the Clark County Ozone EPP was announced on EPA's transportation conformity Web site on August 19, 2008. We received no comments in response to the adequacy review posting. The finding is available at EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

The adequate motor vehicle emissions budgets are provided in the following table:

Motor vehicle emissions budgets (Ozone season)		
Budget year	Volatile organic compounds (tons per day)	Nitrogen oxides (tons per day)
2008	64.2	76.1

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to an SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether an SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40

CFR 93.118(e)(4) which was promulgated in our August 15, 1997 final rule (62 FR 43780, 43781-43783). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 preamble starting at 69 FR 40038 and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudice EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: May 5, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9-11278 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0156; FRL-8905-1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Use of Consumer Research in Developing Improved Labeling for Pesticide Products, EPA ICR No. 2297.01, OMB Control No. 2070-NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 15, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-OPP-2008-0156, to (1) EPA Online to <http://www.regulations.gov> (our preferred method), or by mail to: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Cameo Smoot, Field and External Affairs Division, 7506P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (703) 305-5454; *fax number:* (703) 305-5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 2, 2008 (73 FR 17971), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OPP-2008-0156, which is available for Online viewing at <http://www.regulations.gov>, or in person viewing at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Use of Consumer Research in Developing Improved Labeling for Pesticide Products.

ICR Numbers: EPA ICR No. 2297.01, OMB Control No. 2070-New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**

when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency (EPA or the Agency) is proposing to initiate a new information collection activity. EPA intends to initiate a voluntary information collection for consumer research involving the conduct of surveys, focus groups and one-on-one interviews to test various versions of pesticide product labels and other informational materials developed for the general public. The pesticide label provides critical information about how to handle and safely use the pesticide product and avoid harm to human health and the environment. Every pesticide product must bear a label containing the information specified by FIFRA as established in EPA's labeling regulations at 40 CFR 156.10. The purpose for such consumer research is to identify the consumer's understanding of the information on a pesticide product label. EPA would use this information to formulate decisions and policies affecting the labeling of pesticide products. The ultimate goal of this activity is to assure that the consumer can effectively use this information to select the pesticide product most likely to meet their needs and readily understand label instructions regarding product use.

The collected information would be used to revise pesticide product labels and to create other user friendly consumer information materials. It is anticipated that several surveys, focus groups, and/or one-on-one interviews would be conducted over the life of the ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.89 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: General Public.

Estimated Number of Respondents: 2,922.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 381.

Estimated Total Annual Cost: \$9,587.

Changes in the Estimates: None. This is a new ICR request.

Dated: May 8, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-11273 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8904-9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566-1682, or e-mail at westlund.rick@epa.gov and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1130.09; NSPS for Grain Elevators (Renewal); in 40 CFR

part 60, subpart DD; was approved 04/09/2009; OMB Number 2060-0082; expires 04/30/2012.

EPA ICR Number 2100.03; Reporting Requirements under EPA's Climate Leaders Partnership (Renewal); was approved 04/16/2009; OMB Number 2060-0532; expires 04/30/2012.

EPA ICR Number 1432.29; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transshipment, and Feedstock Use of Ozone-Depleting Substances (Renewal); was approved 04/16/2009; OMB Number 2060-0170; expires 04/30/2012.

EPA ICR Number 2170.03; Air Emissions Reporting Requirements (AERR) (Final Rule); in 40 CFR part 51; was approved 04/16/2009; OMB Number 2060-0580; expires 04/30/2012.

EPA ICR Number 1895.04; Microbial Rules (Renewal); in 40 CFR parts 141 and 142; was approved 04/17/2009; OMB Number 2040-0205; expires 04/30/2012.

EPA ICR Number 2185.03; State Review Framework (Revision); in 40 CFR 271.17(a), 40 CFR 70.4 and 40 CFR 123.41; was approved 04/23/2009; OMB Number 2020-0031; expires 04/30/2011.

EPA ICR Number 2081.04; Health Effects of Microbial Pathogens in Recreational Waters; National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal); was approved 04/23/2009; OMB Number 2080-0068; expires 04/30/2012.

EPA ICR Number 1230.26; Prevention of Significant Deterioration and Non-Attainment New Source Review (Final Rule for Flexible Air Permits); in 40 CFR 51.160-51.166, 40 CFR part 51, appendix S, 40 CFR 52.24, and 40 CFR 52.21; was preapproved 04/22/2009; OMB Number 2060-0003; expires 04/30/2012.

EPA ICR Number 1587.10; State Operating Permit Regulations (Final Rule for Flexible Air Permits); in 40 CFR part 70; was preapproved 04/22/2009; OMB Number 2060-0243; expires 04/30/2012.

EPA ICR Number 1748.08; Annual Reporting Form for State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP); was approved 04/23/2009; OMB Number 2060-0337; expires 04/30/2012.

EPA ICR Number 2203.02; Revisions to the Emissions Monitoring Rule Under the Acid Rain Program, NO_x Budget Trading Program, and Clean Air Interstate Programs (Final Rule); in 40 CFR parts 72 and 75; was approved 04/23/2009; OMB Number 2060-0626; expires 04/30/2012.

EPA ICR Number 1127.09; NSPS for Hot Mix Asphalt Facilities (Renewal); in 40 CFR part 60, subpart I; was approved 04/23/2009; OMB Number 2060-0083; expires 04/30/2012.

EPA ICR Number 1167.09; NSPS for Lime Manufacturing (Renewal); in 40 CFR part 60, subpart HH; was approved 04/23/2009; OMB Number 2060-0063; expires 04/30/2012.

EPA ICR Number 1055.09; NSPS for Kraft Pulp Mills (Renewal); in 40 CFR part 60, subpart BB; was approved 04/23/2009; OMB Number 2060-0021; expires 04/30/2012.

EPA ICR Number 2159.03; Background Checks for Contractor Employees (Renewal); in 40 CFR parts 731, 732 and 736; was approved 04/23/2009; OMB Number 2060-0043; expires 04/30/2012.

EPA ICR Number 0940.22; Ambient Air Quality Surveillance (Final Rule for Lead); in 40 CFR part 58; was approved 04/23/2009; OMB Number 2060-0084; expires 04/30/2012.

EPA ICR Number 1867.04; Voluntary Aluminum Industrial Partnership (VAIP) (Renewal); was approved 04/27/2009; OMB Number 2060-0411; expires 04/30/2012.

EPA ICR Number 1849.05; Landfill Methane Outreach Program (Reinstatement); was approved 04/27/2009; OMB Number 2060-0446; expires 04/30/2012.

EPA ICR Number 2293.01; National-Scale Activity Survey (N-SAS); was approved 04/27/2009; OMB Number 2060-0627; expires 12/31/2009.

EPA ICR Number 1688.06; RCRA Expanded Public Participating (Renewal); in 40 CFR 124.31-124.33 and 40 CFR 270.62-270-66; was approved 04/27/2009; OMB Number 2050-0149; expires 04/30/2012.

EPA ICR Number 1789.06; NESHAP for Natural Gas Transmission and Storage (Renewal); in 40 CFR part 63, subpart HHH; was approved 04/27/2009; OMB Number 2060-0418; expires 04/30/2012.

EPA ICR Number 1039.12; Monthly Progress Reports (Renewal); in 48 CFR 1552.211; was approved 04/28/2009; OMB Number 2030-0005; expires 04/30/2012.

EPA ICR Number 0938.16; General Administrative Requirements for Assistance Programs (Renewal); in 40 CFR parts 30 and 31; was approved 04/28/2009; OMB Number 2030-0020; expires 04/30/2012.

EPA ICR Number 1823.04; Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Reduction/Climate Partnership for the Semiconductor Industry (Reinstatement); was approved 04/29/

2009; OMB Number 2060-0382; expires 04/30/2012.

EPA ICR Number 1856.06; NESHAP for Primary Lead Smelters (Renewal); in 40 CFR part 63, subpart TTT; was approved 05/01/2009; OMB Number 2060-0414; expires 05/31/2012.

EPA ICR Number 1081.09; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Renewal); in 40 CFR part 61, subpart N; was approved 05/01/2009; OMB Number 2060-0043; expires 05/31/2012.

EPA ICR Number 1362.08; National Emissions Standards for Coke Oven Batteries (Renewal); in 40 CFR part 63, subpart L; was approved 05/01/2009; OMB Number 2060-0253; expires 05/31/2012.

EPA ICR Number 1811.06; NESHAP for Polyether Polyol Production; in 40 CFR part 63, subpart PPP; was approved 05/01/2009; OMB Number 2060-0415; expires 05/31/2012.

EPA ICR Number 0160.09; Pesticide Registration Application, Notification and Report for Pesticide Producing Establishments (Renewal); in 40 CFR part 167; was approved 05/01/2009; OMB Number 2070-0078; expires 05/31/2012.

EPA ICR Number 2310.01; Revisions to the RCRA Definition of Solid Waste (Final Rule); in 40 CFR parts 260 and 261; was approved 05/04/2009; OMB Number 2050-0202; expires 05/31/2012.

EPA ICR Number 0246.10; Contractor Cumulative Claim and Reconciliation (Renewal); was approved 05/06/2009; OMB Number 2030-0016; expires 05/31/2012.

OMB Comments Filed

EPA ICR Number 1730.07; NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ec) (Proposed Rule); OMB filed comment on 04/09/2009.

EPA ICR Number 2318.01; Data Requirements for Antimicrobial Pesticides (Proposed Rule); OMB filed comment on 04/21/2009.

EPA ICR Number 2324.01; Amendment to the Universal Waste Rule: Addition of Pharmaceuticals (Proposed Rule); OMB filed comment on 05/01/2009.

EPA ICR Number 2308.01; OECD SLAB Revisions (Proposed Rule); OMB filed comment on 05/01/2009.

EPA ICR Number 2335.01; EG for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ce) (40 CFR Part 62, HHH) (Proposed Rule); OMB filed comment on 05/01/2009.

EPA ICR Number 2327.01; Electronic Submission of Certain TSCA Section 5

Notices (Proposed Rule); OMB filed comment on 05/01/2009.

Dated: May 8, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-11274 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2009-0225; FRL-8904-4]

Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation of a meeting.

SUMMARY: The Environmental Protection Agency, Office of Research and Development (ORD), announces the cancellation of a meeting of the Board of Scientific Counselors (BOSC) Clean Air Subcommittee. This meeting, a teleconference on April 30, 2009, was announced in a **Federal Register** Notice published on April 8, 2009 (74 FR 15967). The purpose of this meeting was to provide an overview of ORD and the Clean Air program, and to prepare for the June 8-10, 2009 face-to-face meeting of the subcommittee. The proposed agenda topics will be covered during the May 21, 2009 meeting (telecon).

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Code 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564-8239; via fax at: (202) 565-2911; or via e-mail at: drumm.heather@epa.gov.

Dated: May 5, 2009.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E9-11222 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8904-8]

Notice To Terminate the National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has decided to terminate the National Environmental Performance Track Program.

DATES: The Performance Track Program is terminated effective May 14, 2009.

FOR FURTHER INFORMATION CONTACT: Chuck Kent, Office of Policy, Economics and Innovation, 202-566-2805 or by e-mail at Kent.Chuck@epa.gov.

SUPPLEMENTARY INFORMATION: On June 26, 2000, EPA announced the launch of the National Environmental Performance Track, "Performance Track", which was initially designed to have two levels, the "Achievement Track," and the "Stewardship Track." On July 6, 2000, EPA published in the **Federal Register** (65 FR 41655) the design of the Achievement Track level of the Performance Track program. The Achievement Track was subsequently renamed the National Environmental Performance Track Program and the development of the Stewardship Track led instead to the creation of the Performance Track Corporate Leader designation.

On March 16, 2009, EPA Administrator Lisa P. Jackson issued a memorandum halting the Performance Track Program. The Administrator's memorandum was followed by a memorandum from Chuck Kent, Director, Office of Policy Economics, and Innovation, dated March 25, 2009, which provided more details about the termination, including that the low priority for routine inspections incentive is no longer in effect. This notice announces that EPA's decision to terminate the Performance Track Program is effective as of the date of this publication, and provides public notice that the low priority for routine inspections incentive for Performance Track facilities is hereby terminated.

Dated: May 11, 2009.

Marcia E. Mulkey,

Acting Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. E9-11272 Filed 5-13-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 5, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by July 13, 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202-395-5167, or via the Internet at Nicholas.A.Fraser@omb.eop.gov and to Judith-B.Herman@fcc.gov, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: PRA@fcc.gov.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review", (3) click the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0259.
Title: Section 90.263, Substitution of Frequencies Below 25 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, local or Tribal government.

Number of Respondents: 35 respondents; 35 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 18 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement) of this information collection. The Commission is reporting a decrease of 12 total annual burden hours since this information collection was last submitted to OMB in 2006 for review and approval. The reason for the decrease is fewer respondents (now 35 respondents rather than 60 in 2006). Thus, the total annual burden hours has been adjusted now to 18 total annual burden hours.

Section 90.263 requires applicants proposing operations in certain frequency bands below 25 MHz to submit precise information concerning transmitter output power, type and directional characteristics, if any, and the antenna, and the minimum necessary hours of operation.

OMB Control Number: 3060-0264.

Title: Section 80.413, On-board Station Equipment Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, local or Tribal government.

Number of Respondents: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 303, 307(e), 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the recordkeeping requirement) of this information collection. There is no change in the hourly burden estimate.

Section 80.413 requires the licensee of an on-board station to keep equipment records which show: (1) The ship name and identification of the on-board station; (2) the number of and type of repeater and mobile units used on-board the vessel; and (3) the date the type of equipment which is added or removed from the on-board station.

The information is used by FCC personnel during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel. If this information were not collected, no means would be available to determine if this type of radio equipment is authorized or who is responsible for its operation. Enforcement and frequency management programs would be negatively affected.

OMB Control Number: 3060-0297.

Title: Section 80.503, Cooperative Use of Facilities.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 16 hours.

Frequency of Response:

Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 303, 307(e), 309, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the recordkeeping requirement) of this information collection. There is no change in the hourly burden estimate.

Section 80.503 states that a person engaged in the operation of one or more commercial transport vessels or government vessels may receive maritime mobile service from a private coast station or a marine utility station on shore even though not the licensee of the private coast station or the marine utility station. Restrictions on cooperative arrangements are as follows:

(1) Foreign persons must be the licensees of the radio stations installed on board their vessels.

(2) The licensee of a private coast station or marine utility station on shore may install ship radio stations on board United States commercial transport vessels of other persons. In each case these persons must enter into a written agreement verifying that the ship station licensee has the sole right of control of the ship stations, that the vessel operators must use the ship stations subject to the orders and instructions of the coast station or marine utility station on shore, and that the ship station licensee will have sufficient control of the ship station to enable it to carry out its responsibilities under the ship station license.

(a) Cooperative arrangements are limited concerning cost and charges as follows:

(1) The arrangement must be established on a non-profit, cost-sharing basis by written contract. A copy of the contract must be kept with the station records and made available for inspection by Commission representatives.

(2) Contributions to capital and operating expenses are to be prorated on an equitable basis among all persons who are parties to the cooperative arrangement. Records which reflect the cost of the service and its non-profit, cost-sharing nature must be maintained by the licensee of the station and made available for inspection by Commission representatives.

The information is used by FCC personnel during inspection and investigations to insure compliance with applicable rules. If this information were not available, enforcement efforts could be hindered, frequency

congestion in certain bands could increase, and the financial viability of some public coast radiotelephone stations could be threatened.

OMB Control Number: 3060-0387.

Title: Sections 15.201(d), 15.211, 15.213, and 15.221, On-Site Verification of Field Disturbance Sensors.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200 respondents; 200 responses.

Estimated Time per Response: 18 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 303(s), 304, and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,600 hours.

Total Annual Cost: \$40,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Applicants may request that information be withheld from public inspection pursuant to 47 CFR 0.457(d) for trade secrets which may be submitted to the Commission as part of the documentation of test results. No other assurance of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or recordkeeping requirements) of this information collection. There is no change in the burden estimates.

OMB Control Number: 3060-0441.

Title: Section 90.621, Selection and Assignment of Frequencies and Section 90.693, Grandfathering Provisions for Incumbent Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 20 respondents; 20 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory

authority for this information collection is contained in 47 U.S.C. Sections 154 and 309(j) of the Communications Act of 1934, as amended.

Total Annual Burden: 30 hours.

Total Annual Cost: \$2,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or recordkeeping requirements) of this information collection. There is a change in the number of respondents since this was last submitted to OMB for approval. The estimated number of respondents has decreased by 980 fewer respondents; and 1,470 hourly burden reduction adjustments. The Commission is also reporting a \$98,000 annual cost decrease since the 2006 submission.

Section 90.621(b)(4) allows stations to be licensed at distances less than those prescribed in the Short-Spacing Separation Table where applicants "secure a waiver". Applicants seeking a waiver in these circumstances are still required to submit with their application an interference analysis, based upon any of the generally-accepted terrain-based propagation models, demonstrating that co-channel stations would receive the same or greater interference protection than provided in the Short-Spacing Separation Table.

Section 90.621(b)(5) permits stations to be located closer than the required separation, so long as the applicant provides letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between systems. Applicants are still required to file such concurrence letters with the Commission. Additionally, the Commission did not eliminate filings required by provisions such as international agreements, its environmental (National Environmental Protection Act (NEPA)) rules, its antenna structure registration rules, or quiet zone notification/filing procedures.

Section 90.693 requires that 800 MHz incumbent Specialized Mobile Radio (SMR) service licensees "notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria." It has

been standard practice for incumbents to notify the Commission of all changes and additional stations constructed in cases where such stations are in fact located less than the required 70 mile distance separation, and are therefore technically "short-spaced", but are in fact fully compliant with the parameters of the Commission's Short-Spacing Separation Table.

The Commission uses this information to determine whether to grant licenses to applicants making "minor modifications" to their systems which do not satisfy mileage separation requirements pursuant to the Short-Spacing Separation Table.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9-11209 Filed 5-13-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Acting Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three

years, without revision of the following reports:

1. *Report title:* The Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency form number: FR 2018.

OMB control number: 7100-0058.

Frequency: Up to six times a year.

Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks.

Annual reporting hours: 1,008 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 84.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a)(2), and 3105(c)(2)) and is given confidential treatment (5 U.S.C. 552 (b)(4)).

Abstract: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally through a telephone interview, up to six times a year. The purpose of the survey is to provide qualitative and limited quantitative information on credit availability and demand, as well as evolving developments and lending practices in the U.S. loan markets. Consequently, a portion of the questions in each survey typically covers special Topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or other financial entities) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

Current Actions: On February 26, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 8794) requesting public comment for 60 days on the extension, without revision, of the Senior Loan Officer Opinion Survey. The comment period for this notice expired on April 27, 2009. No comments were received.

2. *Report title:* Senior Financial Officer Survey.

Agency form number: FR 2023.

OMB control number: 7100-0223.

Frequency: Up to four times a year.

Reporters: Large commercial banks.

Annual reporting hours: 240 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 60.

Small businesses are not affected.

General description of report: This information collection is voluntary (U.S.C. 225a, 248(a), and 263). It has been anticipated that most, if not all, of the information to be collected on the FR 2023 would be exempt from

disclosure under subsection (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)). However, the confidentiality status of the survey would be determined on a case-by-case basis, when the specific questions to be asked on each particular survey are formulated but before respondents are contacted. Respondents will be informed of the confidentiality status of that particular survey, each time the survey would be conducted.

Abstract: The 2023 requests qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets from a selection of up to sixty large commercial banks (or, if appropriate, from other depository institutions or major financial market participants). Responses are obtained from a senior officer at each participating institution through a telephone interview. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest. The survey helps pinpoint developing trends in bank funding practices, enabling the Federal Reserve to distinguish these trends from transitory phenomena.

Current Actions: On February 26, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 8794) requesting public comment for 60 days on the extension, without revision, of the Senior Financial Officer Survey. The comment period for this notice expired on April 27, 2009. No comments were received.

3. *Report titles:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and Quarterly Report of Credit Card Plans.
Agency form numbers: FR 2835 and FR 2835a.
OMB control number: 7100-0085.
Frequency: Quarterly.
Reporters: Commercial banks.
Annual reporting hours: FR 2835, 132 hours; and FR 2835a, 100 hours.
Estimated average hours per response: FR 2835, 13.2 minutes; and FR 2835a, 30 minutes.

Number of respondents: FR 2835, 150; and FR 2835a, 50.

Small businesses are not affected.
General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)), the FR 2835 data however, is not given confidential treatment.

Abstract: The FR 2835 collects information from a sample of commercial banks on interest rates charged on loans for new vehicles and loans for other consumer goods and personal expenses. The FR 2835a collects information on two measures of credit card interest rates from a sample of commercial banks with \$1 billion or more in credit card receivables and a representative of smaller issuers.

Current Actions: On February 26, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 8794) requesting public comment for 60 days on the extension, without revision, of the Senior Financial Officer Survey. The comment period for this notice expired on April 27, 2009. The Federal Reserve received one comment from a federal agency describing its use of the FR 2835 and FR 2835a data to prepare

monthly, quarterly, and annual estimates of personal interest payments, a component of personal outlays in the national income and product accounts.

Board of Governors of the Federal Reserve System, May 11, 2009.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E9-11275 Filed 5-13-09; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/20/2009			
20090390	Sterling Capital Partners III, L.P	Nova Records Management, LLC	Capital Records Management, Incorporated; Garden State Consulting, LLC; Nova Records, Inc.; Nova Records, LLC; Records Management Corporation; Release of Information Solutions, Inc.
Transactions Granted Early Termination—04/21/2009			
20090380	Deloitte LLP	BearingPoint, Inc	BearingPoint, Inc.
Transactions Granted Early Termination—04/22/2009			
20090378	Sanofi-Aventis	BiPar Sciences, Inc	BiPar Sciences, Inc.
20090386	James R. Leininger, M.D.	BioNumerik Pharmaceuticals, Inc	BioNumerik Pharmaceuticals, Inc.
Transactions Granted Early Termination—04/24/2009			
20090393	Williams Companies, Inc	Atlas Pipeline Partners, L.P	Atlas Pipeline McKean, LLC; Atlas Pipeline New York, LLC.

Trans #	Acquiring	Acquired	Entities
20090396	Advent-Kong Blocker Corp	Fifth Third Bancorp	Fifth Third Processing Solutions, LLC.
20090400	Spectra Energy Corp.	Atlas Pipeline Partners, L.P.	Atlas Pipeline Pennsylvania, LLC; Laurel Mountain Midstream Operating, LLC; Atlas Arkansas Pipeline LLC; Mid-Continent Arkansas Pipeline, LLC; NOARK PIPELINE System, Limited Partnership; Ozark Gas Gathering, LLC; Ozark Gas Transmission, LLC.
20090407	Rosa Anna Magno Garavoglia	Pemod Ricard S.A.	Austin Nichols & Co., Inc.; Pemod Ricard USA, LLC.

Transactions Granted Early Termination—04/27/2009

20090254	Big Rivers Electric Corporation	E.ON AG	LG&E Energy Marketing Inc.; Western Kentucky Energy Corp.
20090408	Stichting Pensioenfonds ABP	Hammerstein Properties LLC	Hammerstein Properties LLC.
20090414	Stichting Pensioenfonds ABP	Richard Rodgers Family Trust	Richard Rodgers Family Trust

Transactions Granted Early Termination—04/28/2009

20090368	Community Health Systems, Inc.	Wyoming Valley Health Care System, Inc.	Wyoming Valley Health Care System, Inc.
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Transactions Granted Early Termination—04/29/2009

20090329	INS, Inc.	VenSign, Inc.	VenSign, Inc.
20090367	National Oilwell Varco, Inc.	Lee Barberito	Dynamic Drilling Fluids, LLP; Spirit Completion Fluids, Ltd.; Spirit Drilling Fluids, Ltd.; Spirit Drilling Fluids Sub, LLC; Spirit Minerals, L.P.
20090413	Hudson Clean Energy Partners, L.P.	Calisolar Inc.	Calisolar Inc.

Transactions Granted Early Termination—05/01/2009

20090415	MatlinPatterson Global Opportunities Partners III L.P.	D.E. Shaw Composite International Fund.	Foamex International, Inc.
20090420	GS Capital Partners VI, L.P.	Global Hyatt Corporation	Global Hyatt Corporation.

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.
Donald S. Clark,
Secretary.

[FR Doc. E9-11249 Filed 5-13-09; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92-463, notice is hereby given of the nineteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health

Service. The meeting will be held from 8:30 a.m. to approximately 5 p.m. on Thursday, June 11, 2009, and from 8:30 a.m. to approximately 3 p.m. on Friday, June 12, 2009, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

At the meeting, the Committee will continue its exploration of genetics and the future health care system by hearing presentations on anticipated changes in health care and the role genetics and genomics can play in achieving an effective, affordable, and equitable health care system. In addition, the Committee will discuss its work on genetics education and training and consider a draft report on direct-to-consumer genomic services. Updates will be provided as well on regulations implementing the Genetic Information Nondiscrimination Act and on the Committee's Public Consultation Draft Report on Gene Patents and Licensing

Practices and Their Impact on Patient Access to Genetic Tests.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301-496-9838 or e-mail at carrs@od.nih.gov. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these

issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: http://oba.od.nih.gov/SACGHS/sacghs_about.html

Dated: May 7, 2009.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E9-11241 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Objective Work Plan (OWP), Objective Progress Report (OPR) and Project Abstract

OMB No.: 0980-0204.

Description: Content changes are being made to the OPR ONLY. The information in the OPR is being

collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The standardized format will allow ANA to report results across all its program areas and flag grantees that may need additional training and/or technical assistance to successfully implement their projects.

Following are content changes being made within specific sections of the OPR form:

OBJECTIVE WORK PLAN UPDATE Section: Adding 1st through 4th Quarter (Q1,Q2,Q3,Q4) results for Activities within each Objective. The grantee can continue to add to this form each quarter (rather than on to a new form), reflecting cumulative results throughout the project period rather than just the quarter.

FINANCIAL Section: Add 2 Questions: (1) Provide details on any income generated as a result of ANA project activities; (2) Provide details on any changes made to the budget during the reporting period.

NATIVE AMERICAN YOUTH AND ELDER OPPORTUNITIES Section: Add Question: (1) Request details on any

intergenerational activities between grandparents and their grandchildren.

Finally, add a new section (last section) to the form:

PROJECT SUSTAINABILITY: (1) Request details on the grantee's intention to continue the project benefits and/or services after the project period has ended.

End of Content Changes to the OPR. No changes are being made to the OWP or to the Project Abstract (below).

The information collected by the OWP is needed to properly administer and monitor the Administration for Native Americans (ANA) programs within the Administration for Children and Families (ACF). The OWP assists applicants in describing their projects' objectives and activities, and also assists independent panel reviewers, ANA staff and the ANA Commissioner during the review and funding decision process.

The Project Abstract provides crucial information in a concise format that is utilized by applicants, independent reviewers, ANA staff and the ANA Commissioner.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	500	1	3	1,500
OPR	275	4	1	1,100
Project Abstract	500	1	0.50	250

Estimated Total Annual Burden Hours: 2,850

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address:* infocollection@acf.hhs.gov.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed

information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9-11151 Filed 5-13-09; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start/Early Head Start Emergency Preparedness Survey.

OMB No.: New Collection.

Description: The Office of Head Start, within the Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS), is planning a survey to collect data on Head Start and Early Head Start programs' emergency preparedness policies and procedures. Section 649(m)(2) of Public Law 110-134, "The Improving Head Start for School Readiness Act of 2007" states, "The Secretary shall evaluate the Federal, State, and local preparedness of Head Start programs, including Early Head Start programs to respond appropriately in the event of a large-scale emergency, * * *." The Head Start/Early Head Start Emergency Preparedness Survey was created in response to this request and will gather uniform data about current emergency preparedness policies and procedures for responding to large-scale emergencies of Head Start and Early Head Start programs.

Respondents: Head Start and Early Head Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Per respondent	Average burden hours per response	Total annual burden hours
Head Start/Early Head Start Emergency Preparedness Survey Informational Material	1,604	1	0.03	48
Head Start/Early Head Start Emergency Preparedness Survey	1,604	1	0.50	802

Estimated Total Annual Burden Hours: 850.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: OPREinfocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: May 8, 2009.

Seth F. Chamberlain,

OPRE Reports Clearance, Officer.

[FR Doc. E9-11287 Filed 5-13-09; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Tribal TANF (Temporary Assistance for Needy Families) Financial Report, Form ACF-196T.

OMB No.: 0970-0345.

Description: Tribes use Form ACF-196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193. Tribal entities with approved Tribal plans for implementation of the TANF program are required by Section 412(h) of the Social Security Act to report financial data. Form ACF-196T provides for the collection of data regarding Federal expenditures. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected.

45 CFR Part 286 Subpart E requires the strictest controls on funding requirements, which necessitates review of documentation in support of Tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF report Form ACF-196T were used to guide ACF in the development of the product presented with this submittal.

The American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5 has authorized emergency TANF funds to be awarded to States, Tribes, and Territories who meet certain eligibility requirements written in the legislation. TANF Policy Announcement TANF-ACF-PA-2009-O1 provides additional guidance on eligibility requirements. Recipients of ARRA funds are to report spending and performance data to Federal agencies quarterly for posting on the public Web site, "Recovery.gov". Federal agencies are required to collect ARRA expenditures data and the data must be clearly distinguishable from the regular TANF (non-ARRA) funds. Therefore, in order to meet this data collection requirement, the ACF-196T has been modified with the addition of two line items and a column to report ARRA expenditures. The collection and posting of this data is to allow the public to see where their tax dollars are spent.

Respondents: All Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Tribal Plan	56	4	8	1,792

Estimated Total Annual Burden Hours: 1,792.

Additional Information: ACF is requesting that OMB grant a 90-day approval for this information collection under procedures for emergency processing by August 1, 2009. A copy of this information collection, with

applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of

Information and Regulatory Affairs, *Attn:* OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, FAX (202) 395-6974.

Dated: May 6, 2009.
Robert Sargis,
Reports Clearance Officer.
 [FR Doc. E9-11150 Filed 5-13-09; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Impact of Continuing Medical Education on Physician Practice

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Clinical Center, the National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

Proposed Collection: Title: The impact of Continuing Medical Education on physician practice: *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This study will assess the value of the Continuing Medical Education conferences held at the NIH. The primary objective of the survey is to determine if conferences have had an impact on whether the

physician has changed their practice as a result of the information presented in the conference. *Frequency of response:* On occasion. *Affected Public:* Physicians, dentists, nurses, and other health care providers. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Doctoral Level	7,500	2	0.017	255
Other Health Care Provider	2,500	2	0.017	85
Total				340

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Linda Wisniewski, Nurse Consultant, Office of Clinical Research Training and Medical Education, CC, NIH, Building 10, Room 1N252B, 9000 Rockville Pike, Bethesda, MD 20892 or 301-496-9425 or e-mail

your request, including your address to: wisniewskil@cc.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Laura Lee,
Project Clearance Liaison, Warren Grant Magnuson Clinical Center, National Institutes of Health.
 [FR Doc. E9-11308 Filed 5-13-09; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Title IV-E Programs Quarterly Financial Report.

OMB No.: 0970-0205.

Description: Historically, State agencies have administered programs under title IV-E of the Social Security Act for the Foster Care and Adoption Assistance Programs. The Administration for Children and Families provides Federal funding at the rate of 50 percent for most of the

administrative costs of these programs and at other rates for other specific categories of costs as detailed in Federal statute and regulations.

The enactment of Public Law 110-351, the "Fostering Connections to Success and Increasing Adoptions Act of 2008" introduced two major changes to the title IV-E programs: (1) The inception of the Guardianship Assistance Program for all grantees, effective October 1, 2008 and, (2) the availability of these programs to Tribes and Tribal Organizations, effective October 1, 2009.

We anticipate that this form will be revised and redesigned to be applicable to both State and Tribal grantees.

This form is submitted quarterly by each State or Tribe to estimate its funding needs for the upcoming fiscal quarter and to report expenditures for the fiscal quarter just ended. The information collected in this report is used by this agency to calculate quarterly Federal grant awards and to enable oversight of the financial management of the programs.

Respondents: State agencies (including the District of Columbia and Puerto Rico) and Tribal agencies (starting in FY 2010) administering the Foster Care, Adoption Assistance and Guardianship Assistance programs under Title IV-E of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV–E Programs Quarterly Financial Report	70	4	20	5,600

Estimated Total Annual Burden Hours: 5,600.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address:* grjohnson@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 6, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–11149 Filed 5–13–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2004–E–0266 (formerly 2004E–0446), FDA–2004–E–0270 (formerly 2004E–0391), and FDA–2004–E–0332 (formerly 2004E–0399)]

Determination of Regulatory Review Period for Purposes of Patent Extension; SENSIPAR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SENSIPAR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and

an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SENSIPAR (cinacalcet hydrochloride). SENSIPAR is indicated for the treatment of secondary hyperparathyroidism in patients with chronic kidney disease on dialysis and for the treatment of hypercalcemia in patients with parathyroid carcinoma. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for SENSIPAR (U.S. Patent Nos. 6,011,068; 6,211,244; and 6,313,146) from NPS Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibilities for patent term restoration. In a letter dated October 19, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SENSIPAR represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SENSIPAR is 2,089 days. Of this time, 1,906 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* June 21, 1998. The applicant claims June 19, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 21, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* September 8, 2003. The applicant claims September 5, 2003, as the date the new drug application (NDA) for SENSIPAR (NDA 21-688) was initially submitted. However, FDA records indicate that NDA 21-688 was submitted on September 8, 2003, which is considered to be the initially submitted date.

3. *The date the application was approved:* March 8, 2004. FDA has verified the applicant's claim that NDA 21-688 was approved on March 8, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 449 days of patent term extension for U.S. Patent Nos. 6,011,068 and 6,313,146, and 627 days of patent term extension for U.S. Patent No. 6,211,244.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted,

except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 6, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research

[FR Doc. E9-11219 Filed 5-13-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0188]

Determination That DECADRON Tablets and Nine Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 10 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993-0002, 301-796-3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA

sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 18-821 for REGLAN (metoclopramide) Oral Solution in the **Federal Register** of October 10, 2002 (67 FR 63107).)

Application No.	Drug	Applicant
NDA 11-664	DECADRON (dexamethasone) Tablets, 0.5 milligram (mg) and 0.75 mg	Merck & Co., P.O. Box 4, BLA-20, West Point, PA 19486
NDA 15-229	AMICAR (aminocaproic acid) Injection, 250 mg/milliliter (mL)	Xanodyne Pharmaceuticals, Inc., One Riverfront Pl., Newport, KY 41071-4563

Application No.	Drug	Applicant
NDA 16-636	NARCAN (naloxone hydrochloride (HCl)) Injection, 0.02 mg/mL, 0.4 mg/mL, and 1 mg/mL	Endo Pharmaceuticals, Inc., 100 Painters Dr., Chadds Ford, PA 19317
NDA 16-929	FUDR (floxuridine) Injection, 500 mg/vial	Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045
NDA 18-538	LOZOL (indapamide) Tablets, 1.25 mg and 2.5 mg	Sanofi-Aventis U.S., 55 Corporate Blvd., P.O. Box 5925, Bridgewater, NJ 08807
NDA 18-821	REGLAN (metaclopramide HCl) Oral Solution, equivalent to (EQ) 5 mg base/5 mL	A.H. Robins Co., c/o Wyeth-Ayerst Research, P.O. Box 8299, Philadelphia, PA 19101-8299
NDA 18-831	TRACRIUM (atracurium besylate) Injection, 10 mg/mL	Hospira, Inc.
NDA 18-831	TRACRIUM (atracurium besylate) Preservative Free Injection, 10 mg/mL	Do.
NDA 19-080	PROSOM (estazolam) Tablets, 1 mg and 2 mg	Abbott Laboratories, 200 Abbott Park Rd., D-491, AP30-1E, Abbott Park, IL 60064-6157
NDA 20-397	ZANAFLEX (tizanidine HCL) Tablets, EQ 2 mg base	Acorda Therapeutics, 15 Skyline Dr., Hawthorne, NY 10532

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: May 6, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-11217 Filed 5-13-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-D-0189]

Guidance for Industry: Animal Generic Drug User Fees and Fee Waivers and Reductions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry (#199) entitled "Animal Generic Drug User Fees and Fee Waivers and Reductions." The purpose of this document is to provide guidance to industry on the Animal Generic Drug User Fee Act of 2008 (AGDUFA). FDA is issuing this final guidance document for immediate implementation consistent with the agency's good guidance practices (GGPs). Interested persons may submit comments on agency guidances at any time.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance document to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

David Newkirk, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8307, e-mail: dnewkirk@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2008, AGDUFA (Public Law 110-316) was enacted. AGDUFA amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and requires FDA to assess and collect user fees for certain applications, products, and sponsors. It also requires the agency to grant a waiver from or a reduction of fees in certain circumstances. Under section 741(d) of the FD&C Act, when certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication.

The purpose of the guidance document is to provide guidance on the types of fees FDA is authorized to collect under AGDUFA and how to request waivers and reductions of these fees. It describes the types of fees, the type of fee waiver or reduction

available, what information FDA recommends you submit in support of a request for a fee waiver or reduction, how to submit such a request, and FDA's process for reviewing requests.

FDA is issuing this level 1 final guidance document for immediate implementation consistent with FDA's GGP's regulation (21 CFR 10.115). Prior public participation is not feasible because the guidance concerns statutory requirements that FDA must implement immediately. AGDUFA's user fee provisions are already in effect, and it is essential for the agency to provide guidance on how to request fee waivers and reductions as quickly as possible. If FDA receives comments on this final guidance, it will review the comments and revise the guidance if appropriate.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's GGP's regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the fee waiver provisions of AGDUFA. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

FDA concludes that there are no collections of information under the Paperwork Reduction Act of 1995.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the internet may obtain the guidance at either <http://www.fda.gov/cvm> or <http://www.regulations.gov>.

Dated: May 7, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-11218 Filed 5-13-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

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 the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board Subcommittee on Cancer Centers.

Open: June 10, 2009, 6 p.m. to 7:30 p.m.

Agenda: Discussion on Cancer Centers.

Place: Bethesda Hyatt Regency Hotel, One Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Linda K. Weiss, Executive Secretary, NCAB Subcommittee on Cancer Centers, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 700, Bethesda, MD 20892-8345, (301) 496-8531.

Name of Committee: National Cancer Advisory Board.

Open: June 11, 2009, 8 a.m. to 4 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327. (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Closed: June 11, 2009, 4 p.m. to adjournment.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Open: June 12, 2009, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/ncab.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11236 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cellular Signaling and Kidney Function.

Date: June 17, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-2242, sahaia@nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes, Endocrinology, and Metabolic Disease Fellowships.

Date: June 17-18, 2009.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4721, rw175w@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DP3 Reviews.

Date: July 15-16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7682, pateldg@nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11238 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Life Course and Cognitive Impairment in Mexican Americans.

Date: June 25, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301-402-7705.

JOHNSONJ9@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel, Proteinopathies in ALS-Dementia.

Date: June 29, 2009.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C-212, 7201 Wisconsin Ave., Bethesda, MD 20814. 301-402-7704. crucew@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, US-UK Collaborations in the Biology of Aging.

Date: July 9-10, 2009.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC-9205, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301-402-7707. elainelewis@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Gene Therapy for AD.

Date: July 9, 2009.

Time: 1:15 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person:

Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301-402-7703. PARSADANIANA@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Disease.

Date: July 28, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301-402-7703. PARSADANIANA@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pathways to Health and Illness.

Date: July 28, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301-402-7705. JOHNSONJ9@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel, Mobility Biology and Intervention Study.

Date: August 13, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes

on Aging, National Institute of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301-402-7705.
JOHNSONJ9@NIA.NIH.GOV.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: May 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11240 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; CEBRA Review.

Date: May 28, 2009.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892-8401, 301-402-6626, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Biosignatures of Chronic Drug Exposure.

Date: June 5, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Washington DC Lafayette Square, 806 15th Street, Washington, DC 20005.

Contact Person: Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301-451-3086, ruizjf@nida.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; P50 and P60 Centers Review.

Date: June 9-11, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-451-4530, elazarwe@nida.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11248 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, May 27, 2009, 9 a.m. to May 27, 2009, 2 p.m., Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850 which was published in the **Federal Register** on April 24, 2009, Volume 74, Number 78.

The date of the meeting was changed from May 19, 2009 to May 27, 2009. The meeting is closed to the public.

Dated: May 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11247 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Revision: Cognitive Neuroscience Study Section.

Date: May 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301-435-1249, finkelsj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.

Date: May 28-29, 2009.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CMIB ARRA Competitive Revision: Immunobiology.

Date: May 29, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Imaging Technology Study Section.

Date: May 31-June 2, 2009.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301)435-1171, rosenl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

Date: June 1-2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435-1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Revision: Somatosensory and Chemosensory Systems, Study Section.

Date: June 1-2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301-435-1255, kenshalod@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Neuropharmacology.

Date: June 2, 2009.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301-435-1224, lewisdeb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCOM: Review of Competitive Revisions.

Date: June 2, 2009.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel and Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip) Bethesda, MD 20892, (301) 435-1507, niw@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Addiction and Psychopathology.

Date: June 2, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20015.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435-1252, cinquej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Disease Prevention: ARRA Renewal Applications.

Date: June 2, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Tyson's Corner, 1960 Chain Bridge Road, McLean, VA 22202.

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301-435-3575, faradaym@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Healthcare Delivery and Methodologies Biomedical Computing and Health Informatics Study Section.

Date: June 3-5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bill Bunnag, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435-1177, bunnagb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Revisions: Biological Rhythms and Sleep Study Section.

Date: June 3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 E. Lombard Street, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301-435-1119, msemanoff@csr.nih.gov.

Name of Committee: Epidemiology and Population Studies Integrated Review Group Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: June 3-4, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott at the Convention Center, 859 Convention Center Boulevard, New Orleans, LA 70130.

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Arthritis, Connective Tissue and Skin (ACTS), Small Business Applications.

Date: June 3, 2009.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301-594-6376, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel NSAA Revisions.

Date: June 3, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melinda Tinkle, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, tinklem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPIC Member Conflict Panel.

Date: June 3, 2009.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: J. Scott Osborne, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435-1782, osbornes@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MIST Supplementals.

Date: June 3, 2009.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301-402-8228, rayam@csr.nih.gov.

Name of Committee: Epidemiology and Population Studies, Integrated Review Group Behavioral, Genetics and Epidemiology Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435-1721, kosse@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Revision: Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 E. Lombard Street, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301-435-1119, mselmanoff@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Biophysics of Neural Systems Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040-A, MSC 7850, Bethesda, MD 20892, 301-435-1235, geoffreys@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function A Study Section.

Date: June 4, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)-435-1722, joltieda@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group, Innate immunity and inflammation Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301-594-6375, mcintyrt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology of Motivated Behavior.

Date: June 4-5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402-1304, claytone@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, 1 Washington Circle, NW., Washington, DC 20037.

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301-435-1052, laip@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Synapses, Cytoskeleton and Trafficking Study Section.

Date: June 4-5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594-1245, ivinsj@csr.nih.gov.

Name of Committee: Epidemiology and Population Studies, Integrated Review Group Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: June 4-5, 2009.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301-435-1721, hfriedman@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology of Psychiatric Disorders.

Date: June 4-5, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301-435-1197, bsokolov@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HAI ARRA Competitive Revision Applications: Autoimmune.

Date: June 4, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301-435-1225, gametchb@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11246 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Exploratory Studies of Induced Pluripotent Stem (IPS) Cells From Healthy & MH Patient Populations.

Date: June 8, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Downtown, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892-9608. 301-443-9734. millerda@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11244 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Centers for Behavioral Intervention Development to Reduce Obesity (U01);

Date: June 1-2, 2009;

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892-7924, 301-435-0277, lismarin@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Demonstration and Dissemination Projects (R18's).

Date: June 2, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Holly K Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0280, krullh@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence Award (K99's).

Date: June 3, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

Contact Person: Holly K Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0280, krullh@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Immunomodulatory, Inflammatory, and Vasoregulatory Properties of Transfused Red Blood Cell Units as a Function of Preparation and Storage.

Date: June 8-9, 2009.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892-7924, 301-435-0725, johnsonw@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Production Assistance for Cellular Therapies (PACT) Program.

Date: June 11, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Westin Baltimore Washington Airport (BWI), 1110 Elkridge Landing Road, Linthicum, MD 21090.

Contact Person: Katherine M Malinda, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room

7198, Bethesda, MD 20892-7924, 301-435-0297, malindakm@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Coordinating Center to Administer the NHLBI Production Assistance for Cellular Therapies (PACT) Program.

Date: June 11, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Westin Baltimore Washington Airport (BWI), 1110 Old Elkridge Landing Road, Linthicum, MD 20892.

Contact Person: Katherine M Malinda, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892-7924, 301-435-0297, malindakm@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Exploratory Studies in the Neurobiology of Pain in Sickle Cell Disease.

Date: June 12, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892-7924, 301-435-0277, yoh@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11243 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92-463, notice is hereby given of the nineteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5 p.m. on Thursday, June 11, 2009, and from 8:30 a.m. to approximately 3 p.m. on Friday, June 12, 2009, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

At the meeting, the Committee will continue its exploration of genetics and the future health care system by hearing presentations on anticipated changes in health care and the role genetics and genomics can play in achieving an effective, affordable, and equitable health care system. In addition, the Committee will discuss its work on genetics education and training and consider a draft report on direct-to-consumer genomic services. Updates will be provided as well on regulations implementing the Genetic Information Nondiscrimination Act and on the Committee's Public Consultation Draft Report on Gene Patents and Licensing Practices and Their Impact on Patient Access to Genetic Tests.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301-496-9838 or e-mail at carrs@od.nih.gov. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: http://oba.od.nih.gov/SACGHS/sacghs_about.html.

Dated: May 7, 2009.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E9-11242 Filed 5-13-09; 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. HIV Microbicides and Prevention.

Date: May 20, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Adams Room, Rockville, MD 20852.

Contact Person: Eric Lorenzo, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616. 301-451-2640. lorenzoe@niaid.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. NIAID Science Education Awards (R25).

Date: May 22, 2009.

Time: 9:30 a.m. to 12:30 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: Edward W. Schroder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301-435-8537. eschroder@niaid.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group. Microbiology and Infectious Diseases B Subcommittee.

Date: June 3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301-496-3528. gm12w@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Novel Diagnostics and Therapeutics for Caliciviruses.

Date: June 3, 2009.

Time: 1 p.m. to 4:30 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: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301-496-0695. gjarosik@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: May 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11239 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; ARRA Competitive Supplements—Brain.

Date: June 5, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications,

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C-212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301-402-7704, crucew@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11237 Filed 5-13-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Customs Modernization Act Recordkeeping Requirements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0076.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Modernization Act Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5670) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 15, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to

the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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.

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651-0076.

Form Number: None.

Abstract: This recordkeeping requirement is to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 4,695.

Estimated Average Annual Time per Respondent: 1,037 hours.

Estimated Total Annual Burden Hours: 4,870,610.

If additional information is required contact: Tracey Denning, U.S. Customs

and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: May 6, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11188 Filed 5-13-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activity; USGS National Coal Resources Data System (NCRDS)

AGENCY: United States Geological Survey (USGS).

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to the Office of Management and Budget (OMB) a new information collection request (ICR) for approval of the paperwork requirements for the National Coal Resources Data System (NCRDS). To submit a proposal for the NCRDS three standard OMB forms and project narrative must be completed and submitted via Grants.gov. This notice provides the public an opportunity to comment on the paperwork burden of these forms.

DATES: You must submit comments on or before July 13, 2009.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via e-mail [OIRA_DOCKET@omb.eop.gov] or fax (202) 395-5806; and identify your submission as 1028-NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150-C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226-9230 (fax); or pponds@usgs.gov (e-mail). Please reference Information Collection 1028-NEW, NCRDS in the subject line.

FOR FURTHER INFORMATION CONTACT: Susan Tewalt by mail at U.S. Geological Survey, MS956 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 or by telephone at 703-648-6437.

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary objective of the NCRDS is to advance the understanding of the energy endowment of the United States (U.S.) through the gathering and organization of digital geologic information related to coal, coalbed gas, shale gas and other energy resources. Standardized information on the location, quality, quantity, and availability of U.S. energy resources is necessary for policy makers to optimize energy development within an economic context; to implement wise land use planning, as well as to minimize environmental impacts from energy utilization. The primary partners, for the past 33 years of NCRDS, have been the State geological surveys, which function as the basic scientific information sources for their governments. Data submitted to NCRDS by States or Universities constitute more than two-thirds of USTRAT, a USGS point-source stratigraphic database on coal occurrence. This database provides the geologic basis for resource assessment calculations at federal and State levels. Assistance in other Energy Program research efforts is also provided by State survey geologists through the NCRDS cooperative agreements.

Awards to a State geological survey are through a competitive process via submittal to <http://www.grants.gov>. Although no mandate exists, dollars are matched or in-kind services provided at some level by the States. Data compilation and submittal are continuous, building onto prior years of work, thus multi-year proposals are submitted, but are funded annually based on availability. In 2009, NCRDS supported 26 projects in 23 States. The program is conducted under various authorities, including 30 U.S.C. 208–1, 42 U.S.C. 15801, and 43 U.S.C. 31 *et seq.*

II. Data

OMB Control Number: 1028–New.
Title: National Coal Resources Data System (NCRDS).

Respondent Obligation: Voluntary; necessary to receive benefits.

Frequency of Collection: Annually.

Estimated Annual Number of and Description of Respondents: 30 total State Geological Surveys or Universities are canvassed for a multi-year period.

Estimated Annual Number of Responses: 25.

Estimated Completion Time: 20 hours per response.

Estimated Annual Burden Hours: 750 hours.

Estimated Annual Reporting and Recordkeeping “Hour” Burden: We

estimate the public reporting burden will average 20 hours per response. This includes time to develop project goals, write the statement of work, perform internal proposal reviews, and submit the proposal through grants.gov.

Estimated Annual Reporting and Recordkeeping “Non-Hour Cost”: There are no “non-hour cost” burdens associated with this collection of information.

III. Request for Comments

To comply with the public consultation process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period. We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publically available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 7, 2009.

Brenda Pierce,

Program Coordinator, USGS Energy Resources Program.

[FR Doc. E9–11256 Filed 5–13–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOROR957000–L62510000–PM000: HAG09–0176]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on February 20, 2009.

Willamette Meridian

Oregon

T. 32 S., R. 8 W., accepted December 18, 2008.

T. 32 S., R. 7 W., accepted December 18, 2008.

T. 8 S., R. 7 W., accepted January 6, 2009.

T. 31 S., R. 3 W., accepted January 8, 2009.

T. 3 S., R. 5 E., accepted January 30, 2009.

T. 11 S., R. 1 E., accepted January 30, 2009.

Washington

T. 30 N., R. 10 E., accepted January 26, 2009.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on March 20, 2009.

Willamette Meridian

Oregon

T. 4 S., R. 3 E., accepted February 20, 2009.

T. 27 S., R. 12 W., accepted February 27, 2009.

T. 22 S., R. 10 E., accepted March 3, 2009.

T. 30 S., R. 4 W., accepted March 12, 2009.

Washington

T. 27 N., R. 12 W., accepted February 20, 2009.

T. 27 N., R. 13 W., accepted February 20, 2009.

T. 31 N., R. 6 W., accepted March 3, 2009.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on March 31, 2009.

Willamette Meridian

Oregon

T. 3 S., R. 8 W., accepted March 16, 2009.

T. 21 S., R. 7 W., accepted March 16, 2009.

T. 32 S., R. 5 W., accepted March 16, 2009.

T. 2 S., R. 5 E., accepted March 16, 2009.

T. 6 S., R. 3 E., accepted March 20, 2009.

T. 14 S., R. 7 W., accepted March 20, 2009.

Washington

T. 32 N., R. 31 E., accepted March 20, 2009.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on April 17, 2009.

Willamette Meridian

Oregon

T. 33 S., R. 5 W., accepted March 20, 2009.

T. 33 S., R. 6 W., accepted March 20, 2009.

T. 34 S., R. 6 W., accepted March 20, 2009.

T. 8 N., R. 10 W., accepted April 3, 2009.
T. 31 S., R. 14 W., accepted April 3, 2009.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Dated: May 7, 2009.

Pamela J. Chappel,

Acting Chief, Lands Section.

[FR Doc. E9-11266 Filed 5-13-09; 8:45 am]

BILLING CODE 4310-33-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 2, 2009, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, June 2, 2009, 12 p.m.-1 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (*Telephone:* 301-415-7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the

meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 7, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9-11260 Filed 5-13-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on June 1-2, 2009, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows: Monday, June 1, 2009-8:30 a.m. until the conclusion of business. Tuesday, June 2, 2009-8:30 a.m. until the conclusion of business.

The Subcommittee will review Draft Regulatory Guide 1.205, "Risk-Informed Performance-Based Fire Protection," and proposed Standard Review Plan Section 9.5.1.2, "Risk-Informed Performance-Based Fire Protection." The Subcommittee will also discuss Human Reliability Analysis (HRA) models and development of guidelines for performing HRA in fire probabilistic risk assessments. In addition, the Subcommittee will discuss risk metrics for new light-water reactor risk-informed applications. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officials, Girija Shukla and Yoira Diaz-Sanabria, (*Telephones:* 301-415-6855 and 301-415-8064) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 7, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9-11261 Filed 5-13-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission

DATE: Week of May 18, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 18, 2009

Monday, May 18, 2009
10 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL and 52-023-COL, Progress Energy and NRC Staff Appeals from LBP-08-21; NC WARN's Motion to Hold the Proceeding in Abeyance (Tentative).

b. Crow Butte Resources, Inc. (License Renewal), LBP-08-24 and LBP-08-27 (Staff and Applicant Appeals of Order Granting Hearing) (Tentative).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. CONTACT PERSON FOR MORE INFORMATION: Rochelle Baval, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at rohn.brown@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to darlene.wright@nrc.gov.

May 11, 2009.

Rochelle C. Baval,

Office of the Secretary.

[FR Doc. E9-11387 Filed 5-12-09; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-27; NRC-2009-0205]

Notice of Docketing of Amendment Request for Materials License SNM-2514; Pacific Gas and Electric Company; Humboldt Bay Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Docketing of Amendment Request for Materials License SNM-2514.

FOR FURTHER INFORMATION CONTACT:

Shana R. Helton, Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB-3D-02M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 492-3284; e-mail: shana.helton@nrc.gov.

SUPPLEMENTARY INFORMATION: On April 20, 2009, Pacific Gas and Electric Company (PG&E) submitted an application to the U.S. Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10

CFR part 72, requesting an amendment to Materials License SNM-2514 for the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI), located in Humboldt County, California. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Humboldt Bay Power Plant in an ISFSI at the power plant site for a term of 20 years.

PG&E's license amendment request proposes modifying License Condition 14, to indicate that the Humboldt Bay ISFSI quality assurance (QA) requirements have been relocated from the Diablo Canyon Power Plant Part 50 QA Program to the Humboldt Bay Power Plant Part 50 QA Plan.

Pursuant to 10 CFR 72.16, the NRC has docketed the proposed Amendment No. 2 to Materials License No. SNM-2514 held by PG&E for the receipt, possession, transfer, and storage of spent fuel at the Humboldt Bay ISFSI, and is hereby publishing a notice of docketing in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further details with respect to this action, see the application dated April 20, 2009, which is available electronically at NRC's Electronic Reading Room, at: <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the application is ML091190693. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 6th day of May 2009.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9-11267 Filed 5-13-09; 8:45 am]

BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11722 and #11723]

Georgia Disaster Number GA-00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA-1833-DR), dated 04/23/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

Incident Period: 03/26/2009 through 04/13/2009.

DATES: Effective Date: 05/07/2009.

Physical Loan Application Deadline Date: 06/22/2009.

EIDL Loan Application Deadline Date: 01/23/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Georgia, dated 04/23/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Ben Hill, Camden, Montgomery, Tattnall.

Contiguous Counties: (Economic Injury Loans Only):

Georgia: Candler, Emanuel, Evans, Liberty, Long, Toombs, Wilcox.

Florida: Nassau.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11286 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11709 and # 11710]

Minnesota Disaster Number MN-00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Minnesota (FEMA—1830—DR), dated 04/10/2009 .
Incident: Severe Storms and Flooding.
Incident Period: 03/16/2009 and continuing.

DATES: *Effective Date:* 05/06/2009.
Physical Loan Application Deadline Date: 06/09/2009.
EIDL Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Minnesota , dated 04/10/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Beltrami, Marshall, Polk.

Contiguous Counties: (Economic Injury Loans Only):

Minnesota: Cass, Clearwater, Hubbard, Itasca, Kittson, Koochiching, Lake of the Woods, Pennington, Red Lake, Roseau.
North Dakota: Grand Forks, Pembina, Walsh.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11277 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION **[Disaster Declaration #11726 and #11727]**

Arkansas Disaster Number AR-00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-1834-DR), dated 04/27/2009.

Incident: Severe Storms and Tornadoes.
Incident Period: 04/09/2009.

DATES: *Effective Date:* 05/07/2009.
Physical Loan Application Deadline Date: 06/26/2009.

EIDL Loan Application Deadline Date: 01/27/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 04/27/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Ashley

Contiguous Counties/Parishes:

(Economic Injury Loans Only):

Arkansas: Bradley, Chicot, Drew, Union

Louisiana: Morehouse, Union

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11288 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION **[Disaster Declaration # 11724 and # 11725]**

Georgia Disaster Number GA-00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA-1833-DR), dated 04/23/2009.

Incident: Severe Storms, Flooding, Tornadoes and Straight-line Winds.
Incident Period: 03/26/2009 through 04/13/2009.

DATES: *Effective Date:* 04/13/2009.
Physical Loan Application Deadline Date: 06/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/23/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 04/23/2009, is hereby amended to establish the incident period for this disaster as beginning 03/26/2009 and continuing through 04/13/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11292 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11724 and #11725]

Georgia Disaster Number GA-00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA-1833-DR), dated 04/23/2009.

Incident: Severe Storms, Flooding, Tornadoes and Straight-line Winds.
Incident Period: 03/26/2009 through 04/13/2009.

DATES: *Effective Date:* 05/07/2009.
Physical Loan Application Deadline Date: 06/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/23/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 04/23/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Brantley, Lee, McIntosh, Seminole.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11296 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11732 and #11733]

Florida Disaster Number FL-00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-1831-DR), dated 04/28/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.
Incident Period: 03/26/2009 through 05/05/2009.

DATES: *Effective Date:* 05/06/2009.

Physical Loan Application Deadline Date: 06/29/2009.

EIDL Loan Application Deadline Date: 01/28/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 04/28/2009 is hereby amended to establish the incident period for this disaster as beginning 03/26/2009 and continuing through 05/05/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11295 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11716 and # 11717]

Florida Disaster Number FL-00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA-1831-DR), dated 04/21/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.
Incident Period: 03/26/2009 through 05/05/2009.

DATES: *Effective Date:* 05/05/2009.

Physical Loan Application Deadline Date: 06/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 04/21/2009, is hereby amended to establish the incident period for this disaster as beginning 03/26/2009 and continuing through 05/05/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11290 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11705 and # 11706]

Minnesota Disaster Number MN-00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA-1830-DR), dated 04/09/2009.

Incident: Severe Storms and Flooding.
Incident Period: 03/16/2009 and continuing.

DATES: *Effective Date:* 05/06/2009.

Physical Loan Application Deadline Date: 06/08/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/09/2010.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 04/09/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Area: The Red Lake Band of Chippewa Indians

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11282 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11722 and #11723]

Georgia Disaster Number GA-00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA-1833-DR), dated 04/23/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.
Incident Period: 03/26/2009 through 04/13/2009.

DATES: *Effective Date:* 04/13/2009.

Physical Loan Application Deadline Date: 06/22/2009.

EIDL Loan Application Deadline Date: 01/23/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Georgia, dated 04/23/2009 is hereby amended to establish the incident period for this disaster as beginning 03/26/2009 and continuing through 04/13/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11285 Filed 5-13-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 17a-6; OMB Control No. 3235-0489; SEC File No. 270-433.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-6 (17 CFR 240.17a-6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, "SROs") to destroy or convert to microfilm or other recording media records maintained under Rule 17a-1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are currently 27 SROs: 17 national securities exchanges, 1 national securities association, and 9 registered clearing agencies. Of the 27 SROs, 2 SRO respondents have filed a record destruction plan with the Commission. The staff calculates that the preparation and filing of a new record destruction plan should take 160 hours. Further, any existing SRO record destruction plans may require revision, over time, in response to, for example, changes in document retention technology, which the Commission estimates will take much less than the 160 hours estimated for a new plan. Thus, the total annual compliance burden is estimated to be 60 hours per year. The approximate cost

per hour is \$305, resulting in a total cost of compliance for these respondents of \$18,300 per year (30 hours @ \$305 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to PRA_Mailbox@sec.gov.

Dated: May 7, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11170 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28722; File No. 812-13598]

Flaherty & Crumrine Preferred Income Fund Incorporated, et al.; Notice of Application

May 8, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(a)(1)(A) and (B) of the Act.

APPLICANTS: Flaherty & Crumrine Preferred Income Fund Incorporated ("PFI"), Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated ("PFI"), Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated ("FFC"), and Flaherty & Crumrine/Claymore Total Return Fund Incorporated ("FLC") (each, a "Fund" and collectively, "Funds").

SUMMARY OF APPLICATION: Applicants request an order ("Order") granting an

exemption from sections 18(a)(1)(A) and (B) of the Act for a period from the date of the Order until October 31, 2010. The Order would permit each Fund to issue or incur debt that would be used to redeem the Fund's auction preferred shares ("APS Shares") issued prior to February 1, 2008 that are outstanding at the time of such issuance or incurrence ("post-Order debt"), and to refinance such post-Order debt, subject to the 200% asset coverage requirement ordinarily applicable to a senior security that is stock. The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that any such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction.

FILING DATES: The application was filed on November 4, 2008, and amended on March 23, 2009 and April 23, 2009.

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 May 29, 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: Donald F. Crumrine, Flaherty & Crumrine Incorporated, 301 E. Colorado Boulevard, Suite 720, Pasadena, CA 91101.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Attorney Adviser, at (202) 551-6826, 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. Each of the Funds is organized as a Maryland corporation. PFD, PFO, and FLC are registered under the Act as diversified, closed-end management investment companies. FFC is registered under the Act as a non-diversified, closed-end management investment company. Each Fund is advised by Flaherty & Crumrine Incorporated ("Flaherty & Crumrine") and has issued and outstanding a class of common shares and a class of one or more series of APS Shares.

2. Applicants state that the Funds issued their APS Shares for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return related to investments made with proceeds from leverage) that exceeds the leverage costs. Applicants represent that owners of APS Shares of FFC and FLC are entitled to receive a stated liquidation preference amount of \$25,000 per share (plus any accumulated but unpaid dividends), and owners of APS Shares of PFD and PFO are entitled to receive a stated liquidation preference amount of \$100,000 per share (plus any accumulated but unpaid dividends), in any liquidation, dissolution, or winding up of the relevant Fund before any distribution or payment to holders of the Fund's common shares. They state that dividends declared and payable on APS Shares have a similar priority over dividends declared and payable on the Fund's common shares. In addition, applicants state that APS Shares are "perpetual" securities and are not subject to mandatory redemption by a Fund so long as certain asset coverage tests are met. Further, applicants state that APS Shares are redeemable at each Fund's option.

3. Applicants state that prior to February 2008, dividend rates on the APS Shares for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy APS Shares, and holders of APS Shares, who sought to sell their APS Shares. Applicants represent that each Fund's Articles Supplementary provide that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period is set at a specified maximum applicable rate

(the "Maximum Rate") determined by reference to a short-term market interest rate (i.e., a commercial paper rate). Applicants state that an unsuccessful auction is not a default; the relevant Fund continues to pay dividends to all holders of APS Shares, but at the specified Maximum Rate rather than a market clearing rate. Applicants represent that the Funds experienced no unsuccessful auctions prior to February 2008.

4. Applicants state that if investors did not purchase all of the APS Shares tendered for sale at an auction prior to the failure of the auction market, dealers historically would enter into the auction and purchase any excess shares to prevent the auction from failing. Applicants represent that this auction mechanism had generally provided readily available liquidity to holders of APS Shares for more than twenty years. Applicants state that they understand that many investors may have invested short-term cash balances in APS Shares believing they were safe short-term investments and, in many cases, the equivalent of cash.

5. Applicants state that in February 2008, the financial institutions that historically provided "back stop" liquidity to APS Shares auctions stopped participating in them and the auctions began to fail. Applicants further state that, beginning in February 2008, the Funds experienced auction failures due to an imbalance between buy and sell orders. Applicants believe that there is no established secondary market that would provide holders of the Funds' APS Shares with the liquidation preference of \$25,000 or \$100,000, as the case may be, per share. As described more fully in the application, Applicants state that they believe they have redeemed as much of the Funds' APS Shares as appropriate and feasible. Applicants state, however, that none of the Funds would be able to replace its APS Shares entirely with new debt without the requested Order providing temporary relief from the 300% asset coverage test. As a result, applicants state that there is currently no reliable mechanism for holders of their APS Shares to obtain liquidity, and believe that the current lack of liquidity is causing distress and creating severe hardship for holders of their APS Shares.

6. Applicants seek relief for a temporary period from the date on which the Order is granted until October 31, 2010 ("Exemption Period"). The proposed replacement of the Funds' APS Shares with debt would provide liquidity for holders of the Funds' APS Shares, while Applicants continue their

diligent efforts to obtain a more permanent form of financing, such as a new type of senior security that is equity.¹ Applicants submit that the gradual reduction of leverage through the use of proceeds of any common share issuances or the development of an alternative form of preferred stock might take several months, if at all, after the Order has been issued. Applicants state that it is uncertain when, or if, the securities and capital markets will return to conditions that would enable the Funds to achieve compliance with the asset coverage requirements that would apply in the absence of the Order. Given the uncertainty and the current and continuing unsettled state of the securities and capital markets, applicants believe that the Exemption Period is reasonable and appropriate. Each Fund's incurrence of debt to redeem its APS Shares would be subject to approval by the Fund's board of directors ("Board").

Applicants' Legal Analysis

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.²

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300%

¹ See, e.g., Eaton Vance Management, SEC No-Action Letter (June 13, 2008) (permitting the issuance of "liquidity protected preferred shares" to supplement or replace Eaton Vance funds' auction rate preferred stock).

² Section 18(h) of the Act defines asset coverage of a senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the aggregate amount the class of senior security would be entitled to on involuntary liquidation.

immediately after deducting the amount of such dividend, distribution or purchase price.³ Section 18(a)(2)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, applicants seek relief to permit each Fund, for the Exemption Period, to issue or incur post-Order debt for the purpose of redeeming all or a portion of its APS Shares that were issued prior to February 1, 2008 and that are outstanding at the time of such issuance or incurrence, as well as any refinancing of such debt until the expiration of the Exemption Period, subject to asset coverage of 200% ordinarily applicable to a senior security that is stock, rather than the asset coverage of 300% ordinarily applicable to a senior security constituting indebtedness. Applicants also seek relief to permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the Exemption Period, provided that any such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction. Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage

³ An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. See section 18(a)(1)(B) of the Act. Further, section 18(g) of the Act provides, among other things, that "senior security," for purposes of section 18(a)(1)(B), does not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed.

requirements of section 18(a) of the Act. In addition, applicants state that within the Exemption Period each Fund that borrows in reliance on the Order will either pay down or refinance the post-Order debt so that the Fund would, then and thereafter, have asset coverage of at least 300% for each class of senior security representing indebtedness to the extent required by the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

6. Applicants note that the illiquidity of APS Shares is a unique, exigent situation that is posing severe hardships on APS Shares shareholders. Applicants represent that the proposed replacement of the APS Shares with debt would provide liquidity for the Funds' APS Shares shareholders while the Funds continue their efforts to obtain a more permanent form of financing (such as through the issuance of preferred equity-based instruments) that fully complies with the asset coverage requirements of section 18.⁴

7. Applicants represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment⁵ or that could result if a reduction in investment return reduced the market price of common shares. Applicants also state that the requested Order would permit the Funds to continue to provide their common shareholders with the enhanced returns that leverage may provide.

8. Applicants believe that the interests of both classes of the Funds' current investors would be well served by the requested order—the APS Shares shareholders because they would

⁴ See *supra* note 1.

⁵ Applicants state that each Fund's portfolio consists primarily of preferred securities. Applicants further state that Flaherty & Crumrine concluded that preferred securities were significantly undervalued and traded at historically wide spreads to benchmark fixed-income asset classes. Applicants state they believe that further deleveraging in the current market environment would not be a reasonable method to provide liquidity to their remaining APS Shares shareholders.

achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares), and the common shareholders because the adverse consequences of forced deleveraging would be avoided and each Fund's investment return would be enhanced to the extent that the cost of the new form of leverage is lower than the cost of continuing to pay the Maximum Rate on outstanding APS Shares.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing APS Shares with borrowing.⁶ Applicants also state that the proposed liquidity solution actually could simplify the Funds' capital structures, and would not make them more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected the APS Shares, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for limited, quick, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund that borrows subject to 200% asset coverage under the order

⁶ Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to forcibly deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred equity-based instruments as a possible longer-term replacement source of portfolio leverage.

will do so only if such Fund's Board, including a majority of the directors who are not "interested persons" (as defined in section 2(a)(19) of the Act ("Independent Directors")), shall have determined that such borrowing is in the best interests of such Fund, its common shareholders, and its APS Shares shareholders. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Directors) regarding and assessing the efforts that the Fund has undertaken, and the progress that the Fund has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Directors, will make such adjustments as it deems necessary or appropriate to ensure that the applicant comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-11234 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28721; File No. 812-13594]

Cohen & Steers Advantage Income Realty Fund, et al.; Notice of Application

May 8, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(a)(1)(A) and (B) of the Act.

Applicants: Cohen & Steers Advantage Income Realty Fund, Inc., Cohen & Steers Global Income Builder, Inc., Cohen & Steers Premium Income Realty Fund, Cohen & Steers Quality Income Realty Fund, Inc., Cohen & Steers REIT and Preferred Income Fund, Inc., Cohen & Steers REIT and Utility Income Fund, Inc., Cohen & Steers Select Utility Fund, Inc. and Cohen & Steers Worldwide Realty Income Fund, Inc. (each, a "Fund" and collectively, "Funds").

SUMMARY: *Summary of Application:* Applicants request an order ("Order") granting an exemption from sections 18(a)(1)(A) and (B) of the Act for a period from the date of the Order until October 31, 2010. The Order would permit each Fund to issue or incur debt subject to asset coverage of 200% that would be used to refinance the Fund's auction preferred shares ("APS Shares") issued prior to February 1, 2008 that are outstanding at the time such post-Order debt is issued or incurred. The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that any such debt has asset coverage of at least 200% after deducting the amount of such transaction.

DATES: *Filing Dates:* The application was filed on October 27, 2008, and amended on March 26, 2009 and May 7, 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 May 29, 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 Francis C. Poli, Esq., Cohen & Steers Capital Management, 280 Park Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Julia Kim Gilmer, 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. Each of the Funds is organized as a Maryland corporation and is a non-diversified, closed-end management investment company registered under the Act. Each Fund is advised by Cohen & Steers Capital Management, Inc. and has issued and outstanding a class of common shares and a class of one or more series of APS Shares.

2. Applicants state that the Funds issued their outstanding APS Shares for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of return from securities that are purchased from the proceeds of APS Share offerings that exceeds the dividend rate that the applicants pay to holders of the APS Shares. Applicants represent that APS shareholders are entitled to receive a stated liquidation preference amount of \$25,000 per share (plus any accumulated but unpaid dividends) in any liquidation, dissolution, or winding up of the relevant Fund before any distribution or payment to holders of the Fund's common shares. Applicants also state that dividends declared and payable on APS Shares have a similar priority over dividends declared and payable on the

Funds' common shares. In addition, applicants state that APS Shares are "perpetual" securities and are not subject to mandatory redemption by a Fund so long as the Fund meets certain asset coverage tests. Further, applicants state that APS Shares are redeemable at each Fund's option.

3. Applicants state that prior to February 2008, dividend rates on the APS Shares for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy APS Shares, and holders of APS Shares, who sought to sell their APS Shares. Applicants explain that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period was set at a specified maximum applicable rate (the "Maximum Rate") determined by reference to a short-term market interest rate. Applicants state that an unsuccessful auction is not a default; the relevant Fund continues to pay dividends to all holders of APS Shares, but at the specified Maximum Rate rather than a market clearing rate. Prior to February 2008, the Maximum Rate had never been triggered due to failed auctions for any of the Funds.

4. Applicants state that if investors did not purchase all of the APS Shares tendered for sale at an auction prior to the failure of the auction market, dealers would enter into the auction and purchase any excess shares to prevent the auction from failing. Applicants represent that APS Shares traded successfully in the auction market with, so far as the applicants are aware, very few exceptions for approximately twenty years. Applicants believe that investors invested short-term cash balances in APS Shares believing they were safe, short-term, liquid investments and, in many situations, the equivalent of cash.

5. Applicants state that in February 2008, the financial institutions that historically provided "back stop" liquidity for the APS Share auction markets stopped participating in APS Share auctions and the auctions began to fail. Applicants state that, beginning in February 2008, all of the Funds have experienced unsuccessful auctions due to an imbalance between buy and sell orders. Applicants believe that there is no established secondary market that would provide holders of APS Shares with the liquidation preference of \$25,000 per share. Applicants state that three of the eight Funds to date have redeemed, or have publicly announced the redemption of, approximately 80%, 83% and 52%, respectively, of their

APS Shares with borrowings from a secured credit facility with the Funds' custodian and/or with cash proceeds from the sale of portfolio securities. The other five Funds have redeemed, or publicly announced the redemption of approximately 85%, 83%, 78%, 71% and 56% of their APS Shares, respectively, with borrowings from a secured credit facility with a third party and with cash proceeds from the sale of portfolio securities. The Funds were, and are, prohibited from redeeming all of their APS Shares because they would not have the 300% asset coverage required by section 18(a)(1) of the Act after a full redemption of the APS Shares. Applicants state that there is currently no reliable mechanism for holders of APS Shares to obtain liquidity, and believe that, industry-wide, the current lack of liquidity is causing distress for a substantial number of APS shareholders and creating severe hardship for many investors.

6. Applicants seek relief for the period from the date of any Order until October 31, 2010 ("Exemption Period") to facilitate temporary borrowings by the Funds that would enhance their ability to provide a liquidity solution to the holders of their APS Shares in the near term while also seeking a more permanent form of replacement leverage that complies in full with the asset coverage requirements of Section 18 of the Act.¹ Because of the limited availability of debt financing in the current, severely constrained capital markets, the applicants believe that the negotiation, execution and closing of borrowing transactions to replace all or a portion of the leverage currently represented by the Funds' outstanding APS Shares, might take, at a minimum, several months following the issuance of the Order. Applicants further state that it is uncertain when, or if, the Funds will be able to issue a new type of preferred stock to replace borrowings, or how quickly the securities and capital markets will return to conditions that would enable the Funds to achieve compliance with the asset coverage requirements that would apply in the absence of the Order. Given the uncertainty and the current and continuing unsettled state of the securities and capital markets, the applicants believe that the Exemption Period is reasonable and appropriate.

¹ Applicants state that the requested relief would be beneficial to the Funds' common shareholders because in each case in which a Fund will redeem APS Shares, the cost of replacement leverage, over time, is expected to be lower than or equal to the total cost of APS Shares if they remained outstanding.

Any refinancing of APS Shares would be subject to the Funds' negotiation of agreements with acceptable counterparties, any necessary approval of changes to each Fund's fundamental investment policies and approval of such arrangements by the Fund's board of directors ("Board").

Applicants' Legal Analysis

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.²

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or purchase price.³ Section 18(a)(2)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately

² Section 18(h) of the Act defines asset coverage of a class of senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of a class of senior security of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the amount the class of senior security would be entitled to on involuntary liquidation.

³ An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. See section 18(a)(1)(B) of the Act. Further, section 18(g) of the Act provides, among other things, that "senior security," for purposes of section 18(a)(1)(B), does not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed.

after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, the Funds seek relief from the section 18 asset coverage requirements for senior securities representing indebtedness for the Exemption Period to permit the Funds to refinance any APS Shares⁴ issued prior to February 1, 2008 that are outstanding at the time of the Order with debt subject, on a temporary basis, to the 200% asset coverage requirement for stock, rather than the 300% asset coverage that would ordinarily apply under section 18 to senior securities representing indebtedness, (a) when they incur that debt, and (b) when they declare dividends or any other distributions on, or purchase, their capital stock, after deduction of the amount of such dividend, distribution or purchase price. Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, applicants state that within the Exemption Period each Fund that borrows in reliance on the Order will either pay down or refinance the debt so that the Fund would, then and thereafter, comply with the applicable asset coverage requirements (200% for

⁴ For purposes of the Order, the Applicants' refinancings of APS Shares also include any refinancings of post-Order debt entered into for the purpose of redeeming APS Shares outstanding at the time the Funds entered into such post-Order debt (and not any other debt). In connection with the reorganization of one or more Funds with another Fund, the Funds also would be permitted to refinance their post-Order debt to the extent necessary to permit the surviving Fund to assume or incur borrowings equal to the post-Order debt incurred by the acquired Fund(s). Applicants also request that the Order permit each Fund to refinance any APS Shares issued solely in connection with the reorganization of the Fund (and not for the purpose of incurring additional leverage) with another Fund after the issuance of the Order.

equity or 300% for debt) under section 18 of the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

6. Applicants note that the illiquidity of APS Shares is a unique, exigent situation that is posing urgent, and in some cases devastating, hardships on APS shareholders. Applicants represent that the proposed replacement of the APS Shares with debt would provide additional liquidity for the applicants' APS shareholders while the applicants continue their efforts to obtain a more permanent form of financing that fully complies with the asset coverage requirements of section 18.⁵

7. Applicants represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment or that could result if a reduction in investment return reduced the market price of common shares. Applicants also state that the requested Order would permit the Funds to continue to provide their common shareholders with the enhanced returns that leverage may provide.

8. Applicants believe that the interests of both classes of the Funds' current investors would be well served by the requested order—the APS shareholders because they may achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares), and the common shareholders because the cost of the new form of leverage would, over time, be lower than that of the total cost of the APS Shares based on their Maximum Rates and the adverse consequences of deleveraging would be avoided.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also

⁵ See *supra* note 2.

state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing APS Shares with borrowing.⁶ Applicants also state that the proposed liquidity solution would not make the Funds' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected the APS Shares, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for limited, quick, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund that borrows subject to 200% asset coverage under the order will do so only if such Fund's Board, including a majority of the directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) ("Independent Directors"), shall have determined that such borrowings are in the best interests of such Fund, its common shareholders, and the holders of its APS Shares. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

⁶ Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred stock as a possible longer-term replacement source of portfolio leverage.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the Order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Directors) regarding and assessing the efforts that the Fund has undertaken, and the progress that the Fund has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 of the Act by the expiration of the Exemption Period. The Board, including a majority of the Independent Directors, will make such adjustments as it deems necessary or appropriate to ensure that the Fund comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years from the date of such determination, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-11233 Filed 5-13-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28723; File No. 812-13555]

Pacific Investment Management Company LLC and PIMCO ETF Trust; Notice of Application

May 11, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies whose portfolios will consist of the component securities of certain domestic, global or international fixed income securities indexes to issue shares ("Shares") redeemable in large aggregations only ("Creation Unit Aggregations"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Pacific Investment Management LLC (the "Adviser") and PIMCO ETF Trust (the "Trust").

DATES: *Filing Dates:* The application was filed on July 29, 2008 and amended on April 29, 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 May 29, 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, 840 Newport Center Drive, Newport Beach, California 92600.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel at (202) 551-6873, or Marilyn Mann, Branch Chief, at (202) 551-6820 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust that will offer an unlimited number of series. The Trust will initially offer one series ("Initial Fund") whose performance will correspond generally to the total return of a specified fixed income securities index ("Underlying Index").¹

2. Applicants request that the order apply to the Initial Fund and any additional series of the Trust and any other open-end management investment companies or series thereof, that may be created in the future and that track a specified fixed income securities Underlying Index ("Future Funds").² Any Future Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application. Future Funds may be based on Underlying Indexes comprised of domestic fixed income securities ("Domestic Funds") or Underlying Indexes comprised on global or international fixed income securities ("Global Funds"). The Initial Fund and Future Funds, together, are the "Funds."

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and will be the investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a "Subadviser"). Each Subadviser will be registered under the Advisers Act. Allianz Global Investors Distributors LLC ("Distributor") is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and will act as the principal

¹ The Index for the Initial Fund is Merrill Lynch 1-3 Year U.S. Treasury IndexSM.

² All entities that currently intend to rely on the order have been named as Applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

underwriter and distributor for the Creation Unit Aggregations of Shares.

4. Each Fund will consist of a portfolio of securities ("Portfolio Securities") selected to correspond generally to the total return of a specified fixed income securities Index. No entity that creates, compiles, sponsors or maintains an Index ("Index Provider") is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Subadviser, or promoter of a Fund, or of the Distributor.

5. The investment objective of each Fund will be to provide investment results that closely correspond to the total return of its Underlying Index.³ The total return of the Underlying Index will be disseminated once each "Business Day," which is defined as any day that a Fund is required to be open under section 22(e) of the Act, at the end of the Business Day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus ("Prospectus").⁴ A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in approximately the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will attempt to match the risk and return characteristics of a Fund's portfolio to the risk and return characteristics of its Underlying Index.⁵ Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of

the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

6. Creation Unit Aggregations are expected to consist of 100,000 Shares and to have an initial price in the range of \$1,000,000 to \$10,000,000. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be a participant in the Depository Trust Company ("DTC", and such participant, "DTC Participant"). Shares of the Fund generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of fixed-income securities designated by the Adviser to correspond generally to the total return of the relevant Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment ("Cash Amount" and collectively with the Deposit Securities, "Creation Deposit"). The Cash Amount is an amount equal to the difference between (a) the net asset value ("NAV") (per Creation Unit Aggregation) of a Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.⁶ Each Fund may permit a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the Deposit Securities if the method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency. To preserve maximum efficiency and flexibility, a Fund reserves the right to accept and deliver Creation Unit Aggregations entirely for cash ("All-Cash Payment").

7. An investor acquiring or redeeming a Creation Unit Aggregation from a Fund will be charged a fee

("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Unit Aggregations.⁷ The maximum Transaction Fees relevant to each Fund and the method of calculating such Transaction Fees will be fully disclosed in the Prospectus of such Fund or statement of additional information ("SAI"). The Distributor also will be responsible for delivering the Fund's Prospectus to those persons acquiring Shares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

8. Purchasers of Shares in Creation Unit Aggregations may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of a Listing Exchange will be designated to act as a specialist or a market maker (each, an "Exchange Specialist") and maintain a market for Shares trading on the Listing Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). Authorized Participants also may purchase Creation Unit Aggregations for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.⁸ Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable, and owners of Shares may

³ Applicants represent that each Fund will invest at least 80% of its total assets (exclusive of collateral held from securities lending) in the component securities that comprise its Underlying Index ("Component Securities"). Each Fund also may invest up to 20% of its total assets in futures contracts, options on future contracts, options and swaps, cash, cash equivalents, other investment companies, and securities that are not Component Securities but which the Adviser believes will assist the Fund in tracking the performance of its Underlying Index.

⁴ All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

⁵ Under the representative sampling strategy, the Adviser will seek to construct a Fund's portfolio so that its duration, sector, credit rating, coupon and option characteristics closely correlate to those characteristics of the Underlying Index.

⁶ Each Fund will sell and redeem Creation Unit Aggregations only on a Business Day. Each Business Day, prior to the opening of trading on the "Primary Listing Exchange" (defined below), a list of securities and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund or cash information for each Fund, including when the purchase of Creation Unit Aggregations from the Fund is an All-Cash Payment will be made available. In addition, the All-Cash Payment will be disclosed, if applicable. Any national securities exchange (as defined in section 2(a)(26) of the Act) ("Exchange") on which Shares are listed will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape, an amount per individual Share representing the sum of the estimated Cash Amount and the current value of the Deposit Securities. The Primary Listing Exchange is the Exchange on which the Shares of a Fund are primarily listed.

⁷ Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

⁸ Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) Portfolio Securities designated to be delivered for redemptions ("Redemption Securities") on the date that the request for redemption is submitted and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Amount, although the actual amount of the Cash Redemption Payment may differ if the Redemption Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.⁹ A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Unit Aggregations.

11. Applicants state that in accepting Deposit Securities and satisfying redemptions with Redemption Securities, the relevant Funds will comply with the Federal securities laws, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act").¹⁰ The specified Deposit Securities and Redemption Securities generally will correspond pro rata, to the extent practicable, to the Portfolio Securities of a Fund. In some cases, because it is often impossible to break up bonds beyond certain

minimum sizes needed for transfer and settlement, there may be minor differences between a basket of the Deposit Securities or Redemption Securities and a true pro rata slice of a Fund's Portfolio Securities.

12. Neither the Trust nor any individual Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "ETF," an "investment company," a "fund," or a "trust." All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or

transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants state that because Creation Unit Aggregations may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c 1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c 1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c 1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c 1, appear to

⁹ Applicants state that a cash-in-lieu amount will replace any "to-be-announced" ("TBA") transaction that is listed as a Deposit Security or Redemption Security of any Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or a Redemption Security.

¹⁰ In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A. The Prospectus will also state that an Authorized Participant that is not a "Qualified Institutional Buyer" as defined in rule 144A under the Securities Act will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for a Global Fund is contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by the Global Fund. Applicants state that delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process longer than seven calendar days for a Global Fund. Applicants request relief under section 6(c) of the Act from section 22(e) to allow a Global Fund to pay redemption proceeds up to 12 calendar days after the tender of any Creation Unit Aggregations for redemption. Except as disclosed in the relevant Global Fund's Prospectus and/or SAI, applicants expect that each Global Fund will be able to deliver

redemption proceeds within seven days.¹¹

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations and redemptions of Creation Unit Aggregations in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies ("Acquiring Management Companies") and unit investment trusts ("Acquiring Trusts") registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, "Acquiring Funds")

to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund or broker-dealer that is registered under the Exchange Act ("Broker") to sell Shares to a Acquiring Fund in excess of the limits of section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Acquiring Fund Adviser") and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Acquiring Fund SubAdviser"). Any investment adviser to an Acquiring Fund will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor ("Sponsor").

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Acquiring Funds nor an Acquiring Fund Affiliate would be able to exert undue influence over the Funds.¹² To limit the control that a Acquiring Fund may have over a Fund, applicants propose a condition prohibiting an Acquiring Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor ("Acquiring Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund SubAdviser, any person controlling, controlled by or under common control with the Acquiring Fund SubAdviser, and any investment

¹¹ Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

¹² An "Acquiring Fund Affiliate" is the Acquiring Fund Adviser, Acquiring Fund SubAdviser(s), any Sponsor, promoter, or principal underwriter of an Acquiring Fund, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is the investment adviser, promoter, or principal underwriter of an Acquiring Fund and any person controlling, controlled by or under common control with any of these entities.

company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund SubAdviser or any person controlling, controlled by or under common control with the Acquiring Fund SubAdviser (“Acquiring Fund’s SubAdvisory Group”). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund SubAdviser, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund SubAdviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. In addition, except as provided in condition 15, an Acquiring Fund Adviser or a trustee (“Trustee”) or Sponsor of an Acquiring Trust will, as applicable, waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received by the Acquiring Fund Adviser, Trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Acquiring Fund in the Fund. Applicants state that any sales

charges or service fees charged with respect to shares of a Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.¹³

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Acquiring Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Acquiring Fund that intends to invest in a Fund in reliance on the requested order will enter into an agreement (“Acquiring Fund Agreement”) between the Fund and the Acquiring Fund requiring the Acquiring Fund to adhere to the terms and conditions of the requested order. The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the requested order only to invest in Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Unit Aggregations by an Acquiring Fund. To the extent that a Acquiring Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Acquiring Fund Agreement prior to any investment by an Acquiring Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (“second-tier affiliate”), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting

securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person’s voting securities.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or second-tier affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Unit Aggregations through “in-kind” transactions. The deposit procedures for both in kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or second-tier affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Acquiring Fund to sell its Shares to and redeem its Shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.¹⁴ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an

¹³ Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

¹⁴ Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Acquiring Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.¹⁵ Applicants believe that any proposed transactions directly between the Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Unit Aggregations by an Acquiring Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by an Acquiring Fund will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of granting the requested relief will be subject to the following conditions:¹⁶

ETF Relief

1. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Funds, and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an Acquiring Fund Agreement with the Fund regarding the terms of the investment.

2. As long as the Trust operates in reliance on the requested order, the Shares will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may

acquire those Shares from a Fund and tender those Shares for redemption to a Fund only in Creation Unit Aggregations. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Unit Aggregations only.

4. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per individual Share basis, for the Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such closing price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's SubAdvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or an Acquiring Fund's SubAdvisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it will vote its

Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Acquiring Fund's SubAdvisory Group with respect to a Fund for which the Acquiring Fund SubAdviser or a person controlling, controlled by, or under common control with the Acquiring Fund SubAdviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund SubAdviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of a Fund ("Board"), including a majority of the disinterested trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by

¹⁵ Applicants believe that an Acquiring Fund likely will purchase Shares of the Funds in the secondary market and will not purchase or redeem Creation Unit Aggregations directly from a Fund. However, the requested relief would apply to direct sales of Shares in Creation Unit Aggregations by a Fund to an Acquiring Fund and redemptions of those Shares. The requested relief is intended to cover the in-kind transactions that would accompany such sales and redemptions.

¹⁶ See note 4, *supra*.

a Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by a Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

14. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute a Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s) or their Sponsors or Trustees, as applicable, understand the terms and conditions of

the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares, in excess of the limit in section 12(d)(1)(A)(i), a Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received under any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund SubAdviser will waive fees otherwise payable to the Acquiring Fund SubAdviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from the Fund by the Acquiring Fund SubAdviser, or an affiliated person of the Acquiring Fund Sub-Adviser, other than any advisory fees paid to the Acquiring Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund SubAdviser. In the event that the Acquiring Fund SubAdviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission

permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11301 Filed 5-13-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, May 20, 2009 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be: The Commission will consider whether to propose changes to the federal proxy rules to facilitate director nominations by shareholders.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

May 12, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-11380 Filed 5-12-09; 4:15 pm]

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**SECURITIES AND EXCHANGE
COMMISSION**

[File No. 500-1]

**In the Matter of: Fortel, Inc., Now
Known as Envit Capital Group, Inc.;**
Order of Suspension of Trading

May 12, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fortel, Inc., now known as Envit Capital Group, Inc., because it has not filed any periodic reports since the period ended June 30, 2002.

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 company.

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 company is suspended for the period from 9:30 a.m. EDT on May 12, 2009, through 11:59 p.m. EDT on May 26, 2009.

By the Commission.

Elizabeth M. Murphy,*Secretary.*

[FR Doc. E9-11393 Filed 5-12-09; 4:15 pm]

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**SECURITIES AND EXCHANGE
COMMISSION**[Release No. 34-59886; File No. SR-
NYSEArca-2009-39]**Self-Regulatory Organizations; Notice
of Filing and Immediate Effectiveness
of Proposed Rule Change by NYSE
Arca, Inc. Regarding Amendments to
NYSE Arca Equities Rule 8.3 (“Listing
of Currency and Index Warrants”)**

May 7, 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 May 1, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).² 15 U.S.C. 78a.³ 17 CFR 240.19b-4.**I. Self-Regulatory Organization’s
Statement of the Terms of Substance of
the Proposed Rule Change**

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to amend NYSE Arca Equities Rule 8.3 (“Listing of Currency and Index Warrants”) to include alternate listing standards for currency and index warrants. 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 Public Reference Room of 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 Exchange proposes to amend NYSE Arca Equities Rule 8.3 to include alternate minimum distribution and market value standards for currency and index warrants.⁴ Under the proposed alternative standards, the minimum number of public holders required will not be defined, but will be determined on a case by case basis. Other criteria will require a minimum of 2,000,000 warrants together with an aggregate market value of \$12,000,000 and initial price of \$6 per warrant.

NYSE Arca Equities Rule 8.3 provides listing standards for currency and index warrants which includes, among other things, minimum distribution and market value standards. Currently, NYSE Arca Equities Rule 8.3 requires a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public warrant holders, and an aggregate market value of \$4,000,000.

The Exchange proposes to add alternative standards to allow the

Exchange to list warrant issues that it believes are appropriate for listing and increase its flexibility in reviewing such issues. The proposed alternative standards are similar to those previously approved by the Commission for the American Stock Exchange LLC (now known as NYSE Amex LLC) and for the Chicago Board Options Exchange (“CBOE”).⁵ Accordingly, under the proposed alternative listing standards, the minimum number of public holders required will not be defined, but will be determined on a case by case basis. Other criteria will require a minimum of 2,000,000 warrants together with an aggregate market value of \$12,000,000 and minimum price of \$6 per warrant. Because currency and index warrants are in many respects similar to currency and index options, which require no minimum number of holders upon issuance, the Exchange believes reviewing the number of public warrant holders on a case by case basis is appropriate.

The Exchange believes the proposed alternative warrant listing standards will increase the Exchange’s ability to review proposed warrant issues on a case by case basis in determining whether it is appropriate to list the particular warrant being proposed. Lastly, the Exchange believes that the approval of the alternative warrant listing standard will help foster competition between the Exchange and other national securities exchanges that have implemented the alternative warrant listing standards proposed herein.⁶

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Act in general and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities,

⁵ See Securities Exchange Act Release No. 43611 (November 22, 2000), 65 FR 75326 (December 1, 2000) (SR-CBOE-99-14) (order approving a proposed rule change relating to listing criteria for stock index warrants in CBOE Rule 31.5E); Securities Exchange Act Release No. 45036 (November 6, 2001), 66 FR 57760 (November 16, 2001) (SR-Amex-2001-89) (notice of filing and immediate effectiveness of proposed rule change relating to currency and index warrant listing standards in Section 106 of the American Stock Exchange LLC *Company Guide*).

⁶ See note 5, *supra*.⁷ 15 U.S.C. 78f(b).⁸ 15 U.S.C. 78f(b)(5).

⁴ NYSE Arca Equities Rule 8.3 accommodates listing of currency, currency index and stock index warrants.

and, in general to protect investors and the public interest. The proposed rule change will allow the listing and trading of currency and index warrants on the Exchange under standards previously implemented by other national securities exchanges, which the Exchange believes 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.

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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is

consistent with the protection of investors and the public interest. The Commission notes that the proposed alternative listing standards are substantially identical to rules of other national securities exchanges.¹² Therefore, the Commission designates the proposal operative upon filing.¹³

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.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-39 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-2009-39. 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. All submissions should refer to File Number SR-NYSEArca-2009-39 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11163 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59873; File No. SR-MSRB-2009-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to MSRB Rule G-8 Requiring Brokers, Dealers and Municipal Securities Dealers To Maintain Certain Records Relating to Auction Rate Securities and Variable Rate Demand Obligations

May 6, 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 April 28, 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 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 is filing with the Commission a proposed rule change consisting of an amendment to MSRB Rule G-8, Books and Records (the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). 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. The Exchange has satisfied this requirement.

¹² See *supra* note 5.

¹³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(3)(C).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

“proposed rule change”). The proposed rule change would provide organizations responsible for inspecting and enforcing MSRB rules with information that would assist in the enforcement of compliance with Rule G-34(c), on variable rate security market information, by requiring brokers, dealers and municipal securities dealers to maintain certain records relating to auction rate securities and variable rate demand obligations. The MSRB proposes an effective date for the proposed rule change of June 1, 2009.

The text of the proposed rule change is available on the MSRB’s Web site (<http://www.msrb.org>), 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 MSRB operates a facility for the collection and public dissemination of information about securities bearing interest at short-term rates (the Short-term Obligation Rate Transparency System, or SHORT System). MSRB Rule G-34(c), on variable rate security market information, requires brokers, dealers and municipal securities dealers (collectively “dealers”) to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about municipal Auction Rate Securities (“ARS”) and Variable Rate Demand Obligations (“VRDO”) following an ARS auction or VRDO interest rate reset.

The proposed rule change would require those dealers for which MSRB Rule G-34(c) applies to retain for a period of three years records that would show that the requirement in Rule G-34 to submit information to the SHORT System applies to the dealer and that the dealer has submitted accurate information to the SHORT System. For ARS, dealers would be required to

retain a record of all of the ARS for which the dealer acts as a Program Dealer as defined in Rule G-34(c)(i)(A), a record of all information submitted to and received from an Auction Agent as defined in Rule G-34(c)(i) with respect to an auction, and all information required to be submitted to the SHORT System. For VRDO, dealers would be required to retain a record of all of the VRDO for which the dealer acts as a Remarketing Agent as defined in Rule G-34(c)(ii), and all information required to be submitted to the SHORT System. These records would provide organizations responsible for inspecting and enforcing MSRB rules with information that would assist in the enforcement of compliance with MSRB Rule G-34(c).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, 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 because it will facilitate the inspection and enforcement of MSRB Rule G-34(c).

B. Self-Regulatory Organization’s Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition since it would apply equally to all brokers, dealers and municipal securities dealers.

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.

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 and [sic] significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or

such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.³

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-MSRB-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-MSRB-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

³ The Commission notes that Rule 19b-4(f)(6)(iii) requires the self-regulatory organization 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 MSRB has satisfied the pre-filing requirement.

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 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 No. SR-MSRB-2009-06 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-11167 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59884; File No. SR-NYSE-2009-43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete All References in the NYSE Rule Book to "Alternext" and "Alternext US" and Substitute References to "Amex" To Reflect the Recent Name Change of NYSE Alternext US LLC to NYSE Amex LLC

May 7, 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 April 22, 2009, 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 NYSE. The Exchange has designated this proposal as one concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Rule Book to delete all references therein to "Alternext" and "Alternext US" and substitute references to "Amex" to reflect the recent name change of NYSE Alternext US LLC to NYSE Amex LLC. 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, NYSE 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. NYSE 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

On March 18, 2009, NYSE Alternext US LLC (the "Amex SRO"), formerly American Stock Exchange LLC prior to its acquisition by NYSE Euronext on October 1, 2008, filed a Certificate of Amendment with the Secretary of State of the State of Delaware to officially change its name to NYSE Amex LLC. Earlier, on March 3, 2009, the Amex SRO had filed a Form 19b-4 with the Commission proposing to amend its rules to reflect the name change, and the Commission issued a Notice with respect to that rule filing on March 13, 2009.⁵

The Exchange has a number of outdated references in its Rule Book to the Amex SRO under the old name, specifically in Rules 2, 6A, 18, 36, 103B and 300. The purpose of this proposed rule change is to amend the Exchange's Rule Book to delete all references therein to "Alternext" and "Alternext US" and substitute references to

"Amex" to accurately reflect the recent name change of the Amex SRO.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. More specifically, updating the references in the Exchange's rules to reflect the correct name of the Amex SRO may help eliminate potential confusion among investors who may not be aware that a name change has taken place.

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 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 proposed rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(3) of Rule 19b-4 thereunder.⁹ 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.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ See Securities Exchange Act Release No. 34-59575 (March 13, 2009), 74 FR 11803 (March 19, 2009); Notice of Filing and Immediate Effectiveness of Proposed Rule Change (File No. SR-NYSEALTR-2009-24).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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-2009-43 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-2009-43. 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 NYSE. 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-2009-43 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11228 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59888; File No. SR-ISE-2009-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, by the International Securities Exchange, LLC Relating to Amending the Direct Edge ECN Fee Schedule To Increase the Super Tier Rebate in Securities Reported To Tape A and Tape C

May 7, 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 May 1, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 amend Direct Edge ECN's ("DECN") fee schedule for ISE Members³ to raise the Super Tier Rebates, as defined below, for securities reported to Tape A and Tape C and to make certain other clarifying changes. All of the changes described herein are applicable to ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. Currently, DECNs' fee schedule includes a per share rebate in securities reported to Tape A and Tape C of \$0.0029 per share for ISE Members that add liquidity on EDGX if the ISE Member satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month. The rebate described above is referred to as a "Super Tier Rebate" on the DECN fee schedule.

The Exchange is now proposing to raise the aforementioned Super Tier Rebate from \$0.0029 to \$0.003 per share. The Exchange is raising this rebate to maintain a competitive rate. This fee change will become operative on May 1, 2009.

In an effort to increase volume on EDGA, DECN currently offers volume discounts for ISE Members who route 20,000,000 shares or more on a daily basis, measured monthly, to Nasdaq through EDGA using order types that are solely eligible for routing to Nasdaq. Such orders are currently charged at \$0.0025 per share with respect to EDGA routed volume. ISE Members routing 30,000,000 shares per day are charged \$0.0024 per share with respect to EDGA routed volume. Recently, Nasdaq has amended its pricing by increasing its fee for orders that remove liquidity by \$0.0004.⁴ Accordingly, the Exchange is now proposing to amend the DECN volume discounts that apply to ISE Members by increasing each volume discount fee by \$0.0004, which will

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

⁴ See Securities and Exchange Commission Release No. 59843 (April 29, 2009), 74 FR 21046 (May 6, 2009) (SR-NASDAQ-2009-035).

change the fee to \$0.0029 per share and \$0.0028 per share, respectively.

On April 1, 2009, the Exchange amended the DECN fee schedule to reduce the rebate from \$0.0035 per share to \$0.003 per share for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B by ISE Members.⁵ In connection with this amendment, a portion of the corresponding footnote on the DECN fee schedule should have been deleted, but such deletion was overlooked at the time of the filing. The relevant portion of the footnote states "In the event that Direct Edge offers a rebate higher than \$0.0029 per share for subscribers who do not meet the criteria for the Super Tier, then those who meet the aforementioned criteria will receive the higher rebate." The Exchange proposes to delete this language as Direct Edge is no longer offering this incentive.

The Exchange is also proposing to make certain clarifying changes to DECN's fee schedule. DECN's fee schedule includes a description of liquidity flags and associated fees. Flag D is appended to orders that are routed to and executed on the New York Stock Exchange ("NYSE"). Such orders are charged a fee on the NYSE because the order is removing liquidity. The fee assessed to this order is then passed back to the ISE Member that originated the order. The Exchange is now proposing to amend the description of Flag D to include, not just orders that are routed to NYSE, but also orders that are re-routed to NYSE. Meaning, the order that originates at DECN may get routed to another market center for execution, but that market center may re-route the order to NYSE, where the order ultimately receives an execution that results in a removal of liquidity. In this circumstance, the fee assessed to the order will still be passed back to the ISE Member that originated the order as if such order was originally routed to NYSE.

Finally, the Exchange is proposing to delete a portion of a footnote on DECN's fee schedule that provides for a lower charge to ISE Members [sic] whose orders in securities that are reported to Tape A and Tape C first get routed to Nasdaq Stock Market ("Nasdaq") and then get re-routed by Nasdaq. In this circumstance, the ISE Member would be charged a fee of \$0.0026 per share for removing liquidity in Tape A and Tape C securities regardless of where the order ultimately gets executed and

regardless of what the executing market center charges Nasdaq. Whereas, orders that get routed to any other market center and then re-routed by that market center get charged a fee of \$0.003 per share when the order removes liquidity. The Exchange is now proposing to delete the portion of the footnote that provides for this exception because Nasdaq has raised their [sic] fee to \$0.003 per share for all orders that get routed to Nasdaq and then re-routed by Nasdaq.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, raising the Super Tier Rebate in Tape A and Tape C securities and offering pricing incentives to market participants who route orders to DECN allows DECN to remain competitive. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to DECN. Additionally, the Exchange is proposing to make certain clean-up and clarifying changes to the DECN fee schedule to assist ISE Members in understanding the charges that are applicable when using its facilities. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2009-23 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2009-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

⁵ See Securities and Exchange Commission Release Nos. 59692 (April 2, 2009), 74 FR 16024 (April 8, 2009) (SR-ISE-2009-17).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2009-23 and should be submitted by June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11230 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59883; File No. SR-NYSEAmex-2009-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Making Certain Amendments to Its Price List

May 7, 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 April 30, 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, 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 price list to (i) clarify that non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd are not subject to any transaction fee, (ii) clarify that brokers are charged a discounted fee of \$0.0005 per share for Discretionary e-Quotes and verbal agency interest when taking liquidity from the Exchange, and (iii) to remove references to the payment of rebates applicable to the period prior to the implementation of the Capital

Commitment Schedule that are no longer relevant. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and 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 proposes to modify the 2009 NYSE Amex Price List to clarify that non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd are not subject to any transaction fee. The 2009 NYSE Amex Price List does not currently reference any fee for these transactions and the Exchange treats them the same as non-electronic agency transactions of more than 10,000 shares, which are free of charge. The amended 2009 NYSE Amex Price List will state that any non-electronic agency transaction between brokers in the crowd is free of charge, regardless of size.

The current NYSE Amex price list does not state a fee policy with respect to Discretionary e-Quotes and orders submitted by floor brokers as verbal agency interest. The Exchange's current practice with respect to such orders is to charge the floor broker \$0.0005 per share or, in the case of securities with a trading price of less than \$1.00, the lesser of (i) \$0.0005 per share or (ii) 0.25% of the dollar value of the transaction. The current NYSE Amex Price List does not state this fee policy. The Exchange is amending its price list to specifically state this policy.

Footnote 5 in the current 2009 NYSE Amex Price List states that Designated Market Makers receive rebates under several circumstances when providing liquidity on non-displayed interest using the Capital Commitment Schedule, or, prior to the implementation of the Capital Commitment Schedule, using the

following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes. As the Capital Commitment Schedule has been implemented, the text dealing with the payment of rebates in the period prior to its implementation is no longer relevant and the Exchange proposes to delete it.

The subheading "Transactions in Securities with a Per Share Price Above \$1.00" is modified to clarify that it applies to all transactions in securities with a price equal to or greater than \$1.00. It will now read as follows: "Transactions in Securities with a Per Share Price of \$1.00 or more."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and Section 6(b)(4) of the Act,⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁵ of the Act and subparagraph (f)(2) of Rule 19b-4⁶ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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-2009-16 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-2009-16. 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-NYSEAmex-2009-16 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11227 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59890; File No. SR-BATS-2009-010]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

May 7, 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 April 30, 2009, BATS Exchange, Inc. ("BATS" 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. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2009.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective May 1, 2009, in order to: (i) Charge a consistent fee of \$0.0025 per share for trades that remove liquidity in securities priced \$1.00 or above and provide a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in securities priced \$1.00 or above; (ii) change the securities for which the Exchange does not pay a rebate for adding liquidity to all securities priced below \$1.00, rather than securities priced below \$5.00, and eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00; (iii) decrease the fee charged by the Exchange for its "CYCLE" routing strategy from \$0.0026 per share to \$0.0025 per share and modify the routing fee for securities priced below \$1.00; and (iv) change from a fee of \$0.0005 per share to a rebate of \$0.0001 per share for Modified Destination Specific Orders routed to a dark liquidity venue. Each of these proposed changes is described in further detail below.

(i) Fees and Rebates for Securities Priced \$1.00 or Above

The Exchange currently charges a fee of \$0.0025 per share for trades that remove liquidity in securities priced \$5.00 or above, and proposes to change this fee so that it instead applies to trades that remove liquidity in securities priced \$1.00 or above.

The Exchange currently provides rebates for securities priced \$5.00 or above of \$0.0023 per share to Members who add displayed liquidity in Tape A and C securities, and \$0.0028 per share to Members who add displayed in Tape B securities. The Exchange proposes to

change this structure so that it instead provides a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in all securities priced \$1.00 or above. The Exchange does not propose to change the rebate provided for non-displayed liquidity added to the BATS Book, which is currently \$0.0020 per share for Tapes A, B, and C. However, because the rebate for displayed liquidity, as proposed, will now apply to all securities rather than having a different rebate for Tape B securities, the Exchange proposes eliminating the reference to Tapes A, B, and C in connection with non-displayed liquidity as such reference is no longer necessary.

(ii) Securities Priced Below \$1.00

Currently, the Exchange does not pay a rebate to Members who add liquidity in securities priced below \$5.00. The Exchange proposes to increase the number of securities to which a rebate applies by changing to a no-rebate structure for liquidity adders in securities priced below \$1.00. The Exchange also proposes to eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00, and instead, to allow Members to remove liquidity in securities priced below \$1.00 without a charge.

(iii) Standard Routing Fee and Routing Fee for Securities Priced Below \$1.00

The Exchange proposes to decrease the fee charged by the Exchange for its CYCLE routing strategy⁵ from \$0.0026 per share to \$0.0025 per share. To be consistent with this change, the Exchange proposes to charge 0.25%, rather than 0.26%, of the total dollar value of the execution for any security (all Tapes) priced under \$1.00 per share that is routed away from the Exchange.

(iv) Dark Scan Rebate

Finally, the Exchange proposes to change its fee structure for Modified Destination Specific Orders routed to a dark liquidity venue (referred to by the Exchange as "Dark Scan"). Rather than charging a fee for Dark Scan orders, which is currently \$0.0005, the Exchange proposes to provide a rebate of \$0.0001. Because this change is a change from a fee to a rebate, the Exchange proposes changing the heading of the applicable section to

⁵ The CYCLE routing strategy routes orders to any market center or execution venue other than a dark liquidity pool. Orders are routed to dark liquidity pools through the Exchange's DART routing strategy. Orders executed through DART cost \$0.0020 per share, which the Exchange has not proposed to change at this time.

"Other Non-Standard Routing Options," rather than referring to "Other Non-Standard Routing Charges".

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and rebates are competitive with those charged by other venues and that the changes it has proposed will simplify the Exchange's pricing model. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2009-010 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 No. SR-BATS-2009-010. 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 changes 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2009-010 and should be submitted on or before June 4, 2009.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11264 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59885; File No. SR-FINRA-2009-015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Expedited Administration of Promissory Note Cases

May 7, 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 April 17, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by FINRA. 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

FINRA is proposing to adopt Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"), to establish procedures to expedite the administration of arbitrations in which a member's only claim is that an associated person failed to pay money owed on a promissory note; and to amend Rules 13214 and 13600 of the Industry Code to make conforming changes. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is proposing to amend the Industry Code to establish new procedures to expedite the administration of promissory note cases. Proposed new Rule 13806 would apply to arbitrations solely involving a member's claim that an associated person failed to pay money owed on a promissory note. In order to proceed under the new rule, a claimant would not be permitted to include any additional allegations in the Statement of Claim. FINRA is also proposing to amend Rules 13214 and 13600 of the Industry Code to make conforming changes.

In the absence of additional allegations by members or associated persons, promissory note cases involve straightforward contracts with few documents being entered into evidence. The new procedures would streamline the process for promissory note cases and reduce expenses for the parties while maintaining the procedural safeguards in the Industry Code for the associated person against whom a member asserts a claim.

Specifically, under the proposed procedures:

- Parties would choose a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims,³ unless an associated person files a counterclaim or third party claim of more than \$100,000, exclusive of interest or expenses, or the counterclaim or third party claim is unspecified or does not request money damages.⁴ FINRA believes that the

³ See Rule 13802(c)(3). These specially qualified arbitrators are attorneys familiar with employment law who have at least ten years of legal experience. In addition, a chair or single arbitrator may not have represented primarily the views of employers or of employees within the last five years. Primarily means 50 percent or more of the arbitrator's business or professional activities within the last five years.

⁴ The \$100,000 threshold was chosen because FINRA recently raised the threshold for a single chair-qualified arbitrator in all cases to \$100,000. Under the rule change, if the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not

arbitrators on this roster would be especially suited to resolve these disputes because of the depth of their experience and their familiarity with employment law;

- If the associated person does not file an answer, simplified discovery procedures would apply⁵ and, regardless of the amount in controversy, the single arbitrator would render an award based on the pleadings and other materials submitted by the parties. The arbitrator would be paid an honorarium of \$125 for each arbitration resolved in this manner;⁶

- If the associated person files an answer (but does not seek any additional relief or assert any counterclaims or third party claims), regular discovery procedures would apply⁷ and, regardless of the amount in controversy, the single arbitrator would hold a hearing; and

- If the associated person files a counterclaim or third party claim, then regular discovery procedures would apply and panel composition would be based on the amount of the counterclaim or third party claim. If the counterclaim and/or third party claim is not more than \$100,000, exclusive of interest and expenses, the Director⁸ would appoint a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims. If the counterclaim and/or third party claim is more than \$100,000, exclusive of interest and expenses, then the Director would appoint a three-arbitrator panel. The Director would appoint one public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims who would serve as chairperson, one arbitrator from the public roster, and one arbitrator from the non-public roster. If the counterclaim or third party claim is filed after a single arbitrator is appointed, and a three-arbitrator panel is required, the Director would retain

request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator. See Exchange Act Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (SR-FINRA-2008-047).

⁵ Rule 13800(d) (Simplified Arbitration—Discovery and Additional Evidence) provides for limited discovery in arbitrations involving \$25,000 or less, exclusive of interest and expenses.

⁶ In simplified arbitration proceedings administered under Rules 12800 and 13800 (Simplified Arbitration), the arbitrator honorarium is \$125. The honorarium under proposed Rule 13806 is intended to be consistent with these rules.

⁷ The 13500 series of rules would provide for prehearing procedures and discovery in these cases.

⁸ Rule 13100(k) defines the term "Director" to mean the "Director of FINRA Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority."

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the appointed arbitrator as chair and appoint two additional arbitrators (one public and one non-public arbitrator). Regardless of whether the panel is composed of one or three arbitrators, FINRA would pay the arbitrators the honoraria provided for in the Industry Code for arbitrations resolved by a hearing.

FINRA is proposing to amend Rule 13214 (Payment of Arbitrators) to reflect that the rule applies to arbitrator honoraria except as specified in new Rule 13806(f) or as specifically excluded in Rule 13214. Under the proposal, FINRA would pay an arbitrator an honorarium of \$125 for each arbitration in which the associated person does not file an answer and the award is based on the arbitrator's review of the pleadings and other materials submitted by the parties. As these are expedited proceedings, FINRA would not pay an honorarium for resolving a discovery-related motion without a hearing session or for resolving a contested motion concerning issuance of a subpoena without a hearing session. In instances where full discovery would be conducted under the 13500 series of rules, FINRA would pay the honorarium prescribed in Rule 13214 for discovery-related motions without a hearing session and for contested motions concerning issuance of a subpoena without a hearing session.

FINRA is also proposing to amend Rule 13600 (Required Hearings) to reflect that a hearing will be held unless new Rule 13806(e)(1) provides otherwise. Under the proposal, if the associated person does not file an answer, no initial prehearing conference or hearing would be held. Generally, in the absence of additional allegations by members or associated persons, promissory note cases involve straight forward contracts with few documents entered into evidence. FINRA believes that, in these situations, promissory note cases would be processed more quickly and efficiently and expenses would be reduced for the parties and the forum if the arbitrator were to render the award on the pleadings and other materials submitted by the parties.⁹

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following

publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Generally, in the absence of additional allegations by members or associated persons, promissory note cases involve straight forward contracts with few documents entered into evidence. FINRA believes that, under the proposal, these promissory note cases would be processed more quickly and efficiently and expenses would be reduced for the parties and the forum. FINRA does not believe that the new procedures would negatively impact its administration of other cases filed with the forum.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

Written comments 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 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-FINRA-2009-015 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2009-015. 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-015 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11263 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

⁹ The rationale for the proposed rule change was confirmed in a phone conversation with Margo Hassan and Ken Andrichik of FINRA, on May 6, 2009.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59892; File No. SR-CBOE-2009-027]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

May 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 2009, Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to (i) waive the customer transaction fee for orders of a certain size in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs"), (ii) reduce the fee for use of a Floor Broker Workstation, and (iii) waive member dues for certain members. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to institute the following fee changes effective May 1, 2009:

Waiver of Customer Transaction Fee in ETF and HOLDRs Options

Customer orders in ETF and HOLDRs options are charged a transaction fee of \$.18 per contract, except that only certain customer complex orders in QQQQ options are assessed a transaction fee.¹ The Exchange proposes to waive the transaction fee on all customer orders of 99 contracts or less in ETF and HOLDRs options. The Exchange would charge any leg of a complex order in ETF and HOLDRs options that exceeds 99 contracts, even if the leg is only partially executed below the 99 contract threshold.² For example, if a member enters a spread order in an ETF or HOLDRs option to buy 50 contracts and sell 100 contracts, and 90 contracts of the 100 contract leg are executed, the Exchange would charge the member \$.18 per contract for the 90 contracts that were executed.

Reduction of Floor Broker Workstation Fee

The Floor Broker Workstation (FBW) is a system for electronically entering and electronically managing orders on the Exchange floor. The Exchange currently assesses a fee of \$355 per month per login ID for use of an FBW. The Exchange proposes to reduce this fee to \$200 per month per login ID.

Waiver of Member Dues for Certain Members

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting

¹ Customer complex orders in QQQQ options that take liquidity from the complex order book are assessed \$.18 per contract. See CBOE Fees Schedule, Section 1 and Footnote 12.

² The Exchange notes that the transaction fee waiver is based on the size of the order that is entered and not on the number of contracts that are executed, *i.e.*, the fee waiver would apply only if the size of the order entered is 99 contracts or less. For example, if a member enters an order for 200 contracts in an ETF option and only 50 contracts are executed, the Exchange would charge the member the standard ETF option customer transaction fee (\$.18/contract) for the 50 contracts that were executed. The fee waiver would not apply in that case. If, for example, a member enters an order for 90 contracts in an ETF option and all or a portion of the order is executed, the member would not be charged any transaction fee. See email from Jaime Galvan, Assistant Secretary, CBOE, to Sara Hawkins, Special Counsel, Commission, dated May 6, 2009.

Fee, in which case the member does not pay member dues).³ Under Rule 3.17(c), the membership lease agreement between a lessor member and a lessee member designates who is responsible for Exchange dues, fees and other charges. Typically, leases provide that the lessee is responsible for dues and therefore lessors do not pay dues.

Under the lessor compensation component of the Interim Trading Permit ("ITP") program, the Exchange compensates a lessor for an "open lease" while the ITP program is active and ITPs are outstanding.⁴ The goal of this component of the ITP program is to put such a lessor in a similar position to if the lessor's membership was leased. This goal would be frustrated if the lessor is charged dues because the lessor would be subject to an obligation the lessor would not otherwise be subject to if the lessor's membership was leased.

Consistent with this goal, the Exchange proposes to waive member dues for a lessor member for any month in which the lessor receives a payment from the Exchange for an open lease under the ITP program. The Exchange would not waive member dues for any lessor with an open lease who has not notified the Exchange of the open lease or otherwise complied with Exchange Rule 3.27.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable and reasonable in that, with regard to the customer transaction fee waiver in ETF and HOLDRs options, the fee waiver would help the Exchange maintain its competitiveness for retail order flow in these products; with regard to the reduction in the FBW fee, the Exchange would be providing a cost savings to all users of FBWs; and with regard to the

³ Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.

⁴ The ITP program is a program pursuant to which the Exchange has the authority to issue up to 50 ITPs. The ITP program is governed by CBOE Rule 3.27. The lessor compensation component of the ITP program is described in CBOE Rule 3.27(d). An "open lease" is defined in Rule 3.27(d) as a transferable Exchange membership available for lease.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

waiver of member dues for certain lessor members with open leases, the waiver would help the Exchange place such a lessor in a similar position to if the lessor's membership was leased, consistent with Exchange Rule 3.27(d).

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 that is not necessary or appropriate in furtherance of 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 has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-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-CBOE-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, 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 CBOE. 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-2009-027 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11232 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59889; File No. SR-BATS-2009-011]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

May 7, 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 May 1, 2009, BATS Exchange, Inc. ("BATS" 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. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective as of May 1, 2009.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's fee schedule effective May 1, 2009, the Exchange charges 0.25% of the total dollar value of the execution for any security priced under \$1.00 per share that is routed away from the Exchange. The Exchange is filing this proposed rule change to clarify that this charge only applies to orders routed through its "CYCLE" strategy,⁵ and thus, does not apply to

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The Exchange's CYCLE strategy is the best execution routing strategy through which the Exchange routes to venues other than dark liquidity venues. The current fee schedule states that the charge applies to "orders routed to and executed at

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

other non-standard routing options such as Directed ISO's, Dark Scan orders, and orders routed through its "DART" strategy to dark liquidity venues. For any security priced under \$1.00 that is routed away and executed through an order type or routing strategy other than CYCLE, the Exchange will charge the specified fee or provide the specified rebate for such execution. For instance, an order for a security priced below \$1.00 that is routed and executed through Dark Scan would receive the same \$0.0001 rebate as a security priced above \$1.00.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and rebates are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change

other markets." The Exchange intended this to apply only to orders routed through CYCLE, and believes that the proposed language clarifies this intent.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2009-011 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 No. SR-BATS-2009-011. 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 changes 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2009-011 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11231 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59887; File No. SR-ISE-2009-24]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

May 7, 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 May 6, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On May 7, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, is described in Items I and II below, which Items have been prepared by ISE. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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

The Exchange proposes to modify the amounts that Direct Edge ECN

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

(“DECN”), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange’s Internet Web site at <http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On May 1, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend DECN’s fee schedule for ISE Members³ to increase the per share rebate in securities reported to Tape A and Tape C from \$0.0029 to \$0.003 for orders that add liquidity on EDGX if the ISE Member satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.⁴ DECN is a member of ISE as well as a facility of ISE. The rebate described above is referred to as a “Super Tier Rebate” on the DECN fee schedule.

In an effort to increase volume on EDGA, DECN currently offers volume discounts for ISE Members who route 20,000,000 shares or more on a daily basis, measured monthly, to Nasdaq through EDGA using order types that are solely eligible for routing to Nasdaq. Prior to SR-ISE-2009-23, orders were

charged at \$0.0025 per share with respect to EDGA routed volume. ISE Members routing 30,000,000 shares per day were charged \$0.0024 per share with respect to EDGA routed volume. Recently, Nasdaq has amended its pricing by increasing its fee for orders that remove liquidity by \$0.0004.⁵ Accordingly, in SR-ISE-2009-23, the Exchange amended the DECN volume discounts that apply to ISE Members by increasing each volume discount fee by \$0.0004, which changed the fee to \$0.0029 per share and \$0.0028 per share, respectively.

On April 1, 2009, the Exchange amended the DECN fee schedule to reduce the rebate from \$0.0035 per share to \$0.003 per share for orders that add liquidity on EDGX in securities priced at or above \$1.00 that are reported to Tape B by ISE Members.⁶ In connection with this amendment, a portion of the corresponding footnote on the DECN fee schedule should have been deleted, but such deletion was overlooked at the time of the filing. The relevant portion of the footnote states “In the event that Direct Edge offers a rebate higher than \$0.0029 per share for subscribers who do not meet the criteria for the Super Tier, then those who meet the aforementioned criteria will receive the higher rebate.” In SR-ISE-2009-23, the Exchange deleted this language as Direct Edge is no longer offering this incentive.

In SR-ISE-2009-23, the Exchange also made certain clarifying changes to DECN’s fee schedule. DECN’s fee schedule includes a description of liquidity flags and associated fees. Flag D is appended to orders that are routed to and executed on the New York Stock Exchange (“NYSE”). Such orders are charged a fee on the NYSE because the order is removing liquidity. The fee assessed to this order is then passed back to the ISE Member that originated the order. In SR-ISE-2009-23, the Exchange amended the description of Flag D to include, not just orders that are routed to NYSE, but also orders that are re-routed to NYSE. Meaning, the order that originates at DECN may get routed to another market center for execution, but that market center may re-route the order to NYSE, where the order ultimately receives an execution that results in a removal of liquidity. In this circumstance, the fee assessed to the order will still be passed back to the ISE Member that originated the order as

if such order was originally routed to NYSE.

Finally, in SR-ISE-2009-23, the Exchange deleted a portion of a footnote on DECN’s fee schedule that provides for a lower charge to ISE Members whose orders in securities that are reported to Tape A and Tape C first get routed to Nasdaq Stock Market (“Nasdaq”) and then get re-routed by Nasdaq. In this circumstance, the ISE Member would be charged a fee of \$0.0026 per share for removing liquidity in Tape A and Tape C securities regardless of where the order ultimately gets executed and regardless of what the executing market center charges Nasdaq. Whereas, orders that get routed to any other market center and then re-routed by that market center get charged a fee of \$0.003 per share when the order removes liquidity. In SR-ISE-2009-23, the Exchange proposed to delete the portion of the footnote that provides for this exception because Nasdaq has raised their fee to \$0.003 per share for all orders that get routed to Nasdaq and then re-routed by Nasdaq.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates were changed pursuant to SR-ISE-2009-23, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive will be the same as the amounts that ISE Members receive.

ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of May 1, 2009. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive equivalent amounts and that the imposition of such amounts will begin on the same May 1, 2009 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and

⁵ See Securities and Exchange Commission Release No. 59843 (April 29, 2009), 74 FR 21046 (May 6, 2009) (SR-NASDAQ-2009-035).

⁶ See Securities and Exchange Commission Release Nos. 59692 (April 2, 2009), 74 FR 16024 (April 8, 2009) (SR-ISE-2009-17).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

³ References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

⁴ See SR-ISE-2009-23.

other charges among its members and other persons using its facilities. In particular, this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will receive equivalent rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any 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 No. SR-ISE-2009-24 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2009-24. 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2009-24 and should be submitted by June 4, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4),¹⁰ of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facilities.

ISE recently amended DECN's fee schedule to increase the Super Tier Rebate in securities reported to Tape A and Tape C and revise other rebates and fees.¹¹ DECN receives rebates and charges fees for transactions it executes on EGDG or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to May 1, 2009, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.¹²

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Securities Exchange Act Release No. 34-59888 (May 7, 2009) (notice of filing and immediate effectiveness of File No. SR-ISE-2009-23) (the "Member Fee Filing").

¹² See note 11, *supra*.

publication of notice in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to May 1, 2009, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change, as amended (SR-ISE-2009-24) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11229 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59875; File No. SR-NASDAQ-2009-043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify DOT, SCAN and STGY Routing Strategies To Incorporate an Optional Pre-Routing Display Period

May 6, 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 April 30, 2009, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes a rule change to modify its DOT, SCAN and STGY routing strategies so as to incorporate an optional pre-routing display period for all orders using such strategies.

The text of the proposed rule change is below. Proposed new language is italicized.

4758. Order Routing

(a) Order Routing Process

(1) The Order Routing Process shall be available to Participants from 7 a.m. until 8 p.m. Eastern Time, and shall route orders as described below: All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) The System provides three routing options. Of these three, DOT is only available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or NYSE Amex. The System will consider the quotations only of accessible markets. The three System routing options are:

(i) DOT ("DOT")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, before being sent to the destination exchange, so long as the price at such market centers would not violate the Order Protection Rule. *If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed 3 seconds as determined by Nasdaq.* Any un-executed portion will thereafter be sent to the NYSE or NYSE Amex, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close. Notwithstanding the foregoing, orders designated for participation in the NYSE or NYSE Amex opening or closing processes will not check the System for available shares prior to routing.

(ii) Reactive Electronic Only ("STGY")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will

seek to execute at the price it would send the order to a destination market center. *If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed 3 seconds as determined by Nasdaq.* If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(iii) Electronic Only Scan ("SCAN")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, in compliance with Rule 611 under Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. *If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed 3 seconds as determined by Nasdaq.* If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

Orders that do not check the System for available shares prior to routing may not be sent to a facility of an exchange that is an affiliate of Nasdaq, except for orders that are sent to the NASDAQ OMX BX Equities Market.

(B) No change.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to expand its DOT, SCAN and STGY routing strategies to provide an optional pre-routing display period for orders using those strategies. Under the proposal, orders entered using any form of the DOT, SCAN or STGY routing strategies will, after first executing to the maximum extent possible in Nasdaq's book, have their remaining share amounts and prices displayed to Nasdaq market participants and market data vendors for a period of time determined by Nasdaq which will not exceed 3 seconds. This display to Nasdaq market participants and market data vendors shall take place before routing any order or order remainder to any other available market and will be the default processing preference for the DOT, SCAN and STGY strategies. Parties not wishing to have their orders displayed prior to routing may direct the system to avoid the pre-routing display period.

Nasdaq notes that such pre-routing display functionality has already been approved by the Commission for use by the CBOE Stock Exchange and that such functionality can be expected to provide system users with greater control over their trading. Except for the changes to the DOT, SCAN and STGY routing functionality itself describe here, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets.

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 Sections 6(b)(5) of the Act,⁵ in particular, in that the proposal 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. Nasdaq notes that similar functionality has already been

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

³ 17 CFR 240.19b-4(f)(6).

found to be consistent with the Act by the Commission.⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

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:

⁶ Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR-CBOE-2008-123).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has requested that the Commission waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

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-2009-043 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-2009-043. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-043 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-11168 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59869; File No. SR-NYSE-2009-46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until October 1, 2009 the Six-Month Pilot Program Which Established a New Class of NYSE Market Participants Referred to as "Supplemental Liquidity Providers" and Is Designated as Exchange Rule 107B

May 6, 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 April 30, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until October 1, 2009, the six-month pilot program ("Pilot" or "program") which established a new class of NYSE market participants referred to as "Supplemental Liquidity Providers" ("SLPs") and is designated as Exchange Rule 107B. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until October 1, 2009, the six-month pilot program ("Pilot" or "program") for "Supplemental Liquidity Providers" ("SLPs") under Rule 107B. The SLP pilot program commenced operation on or about the date the SEC approved the NYSE "New Market Model" pilot⁴ which is scheduled to be in operation until October 1, 2009. The Exchange proposes to extend the SLP pilot until October 1, 2009, the termination date of the New Market Model pilot, as the SLP program was designed to operate in the New Market Model and was established to supplement the liquidity provided by Designated Market Makers ("DMMs") in the New Market Model.

SLPs have a 5% average quoting requirement per assigned security. Additionally, if an SLP posts displayed or non-displayed liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate. By requiring SLPs to quote at the NBB or the NBO a percentage of the regular trading day in their assigned securities, and by paying a rebate when the SLP's interest results in an execution, the Exchange rewards aggressive liquidity providers in the market. The Exchange contends that this quoting and rebate program encourages the additional utilization of, and interaction with, the NYSE and has provided customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement and should, therefore, be extended until October 1, 2009.

The Exchange believes that the SLP program has added meaningful liquidity to the marketplace and improved both NYSE and overall market quality. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period. In the future, the Exchange may propose certain changes to Rule 107B, which will be the subject of a 19(b)-4 rule filing and filed with the Commission. Until such time that the Exchange proposes changes to Rule 107B, the Exchange is requesting to extend the operation of Rule 107B until October 1, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")⁵ for this proposed rule change is the requirement under Section 6(b)(5)⁶ that an Exchange have rules that are 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.

The Exchange proposes to extend the SLP pilot until October 1, 2009, the termination date of the New Market Model pilot, as the SLP program was designed to operate in the New Market Model and run parallel with DMM trading activity. The SLP program has provided benefits to all NYSE customers by bringing price discovery, liquidity, competitive quotes and price improvement to the market and the Exchange seeks to continue providing such benefits to its customer at least until October 1, 2009 with an extension of the SLP pilot program.

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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not

become operative for 30 days after the date of filing.⁹ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the SLP pilot will expire on April 30, 2009, waiver of this time period is necessary so that no interruption of the pilot will occur. Therefore, the Commission designates the proposal operative upon filing.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-46 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.

⁹ 17 CFR 240.19b-4(f)(6)(iii). 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. NYSE has satisfied this requirement.

¹⁰ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78f(a).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) ("New Market Model").

All submissions should refer to File Number SR–NYSE–2009–46. 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. All submissions should refer to File Number SR–NYSE–2009–46 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–11166 Filed 5–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59863; File No. SR–NYSE–2009–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Modify Certain Equity Transaction Fees and Rebates

May 5, 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 April 30, 2009, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed

with the Securities and Exchange Commission (the "Commission") the proposed rule changes 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 make a number of changes to its schedule of equity transaction fees and rebates, with effect from May 1, 2009. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of changes to its schedule of equity transaction fees, with effect from May 1, 2009.

The following are the proposed changes:

- Currently, the Exchange caps trading fees per transaction at \$120. This cap is being eliminated and there will no longer be any limit on the trading fees that may be incurred in connection with a transaction. The \$120 trading fee cap per transaction will be retained for market at-the-close and limit at-the-close orders.

- The price list does not currently indicate what fee is charged when orders are executed at the close (except for market at-the-close and limit at-the-close orders). The Exchange's practice has been to not charge a fee when this happens and now proposes to formalize this approach by clearly stating it in the price list.

- Designated Market Makers whose orders are executed at the close receive a credit of \$0.0005 per share. The Exchange now proposes to provide (i) a credit of \$0.0012 per share to floor brokers whose orders are executed at the close and (ii) a credit of \$0.0005 per share to Supplemental Liquidity Providers whose orders are executed at the close.

- Agency cross trades (*i.e.*, a trade where a Member Organization has customer orders to buy and sell an equivalent amount of the same security) of 10,000 shares or more are currently free of charge. The Exchange proposes to extend this approach to agency cross trades of fewer than 10,000 shares, so that all agency cross trades will be free of charge regardless of size.

The subheading "Transactions in stocks with a per share stock price of \$1.00 or less" is modified to clarify that the fees under that subheading actually apply only to transactions in stocks with a price of less than \$1.00. As amended, it reads "Transactions in stocks with a per share stock price less than \$1.00."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6⁴ of the Act in general and furthers the objectives of Section 6(b)(4)⁵ in particular, in that it is designed provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all member organizations will be subject to the same fee structure.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

¹² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(2)⁷ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-47 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-2009-47. 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. All submissions should refer to File Number SR-NYSE-2009-47 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11165 Filed 5-13-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[PUBLIC NOTICE 6614]

Culturally Significant Objects Imported for Exhibition Determinations: "Scripture for the Eyes: Bible Illustration in Netherlandish Prints of the Sixteenth Century"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: "Scripture for the Eyes: Bible Illustration in Netherlandish Prints of the Sixteenth Century," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Biblical Art, New York, NY, from on or about June 4, 2009, until on or about September 27, 2009; Michael C. Carlos Museum, Atlanta, GA, from on or about October 17, 2009, until on or about January 24, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-453-8050). The

address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: May 8, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9-11300 Filed 5-13-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6615]

Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of Overseas Buildings Operations will meet on Tuesday, June 2, 2009 from 9:30 a.m. until 3:30 p.m. Eastern Standard Time. The meeting will be held in room 1107 of the U.S. Department of State, located at 2201 C Street, NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Buildings Operations' senior management and the panel members, on design, operations, and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Shinnick opens the discussion to them.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by May 22, 2009, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (*i.e.*, U.S. government ID, U.S. military ID, passport, or drivers license with state) by e-mailing: iapr@state.gov. Because of space restrictions, we request that companies interested in attending send only one representative.

If you have any questions, please contact Andrea Walk at walkam@state.gov or on (703) 516-1544.

Dated: May 1, 2009.

Richard J. Shinnick,

Director, ad interim, Overseas Building Operations, Department of State.

[FR Doc. E9-11302 Filed 5-13-09; 8:45 am]

BILLING CODE 4710-24-P

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Aviation Proceedings, Agreements
Filed the Week Ending April 30, 2009**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT-OST-2009-0102.

Date Filed: April 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 599—Resolution 010c TC3 Special Passenger Amending Resolution between Japan, Korea (Rep. of) and China (excluding Hong Kong SAR and Macao SAR), and between Japan and Korea (Rep. of) (Memo 1293).

Intended effective date: 15 May 2009.

Renee V. Wright,

*Program Manager, Docket Operations,
Federal Register Liaison.*

[FR Doc. E9-11269 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety
Administration**

[U.S. DOT Docket No. NHTSA-2009-0096]

**Reports, Forms, and Recordkeeping
Requirements: Agency Information
Collection Activity Under OMB Review**

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: Refer to the docket notice number cited at the beginning of this notice and send your 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 Ave., SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Charlene Doyle, Contracting Officer's Technical Representative, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., NVS-431, Washington, DC 20590. Ms. Doyle's phone number is 202-366-1276 and her e-mail address is charlene.doyle@dot.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) How to enhance the quality, utility, and clarity of the information to be collected; and (iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: Tire Pressure Monitoring System—Special Study.

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Required Expiration Date of Approval: Three years from the date of approval by OMB (i.e., estimated date of September 2012).

Abstract: Improperly inflated tires pose a safety risk, increasing the chance of skidding, hydroplaning, longer stopping distances, and crashes due to flat tires and blowouts. Congress passed the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000, as a direct consequence of hearings before the Committee on Energy and Commerce on the safety of Firestone tires and related matters. Section 13 of the TREAD Act directs NHTSA to conduct rulemaking actions to revise and update the Federal motor vehicle safety standards for tires, to improve labeling on tires, and to require a system in new motor vehicles that warns the operator when a tire is significantly underinflated.

In response to Section 13 of the TREAD Act, NHTSA's National Center for Statistics and Analysis (NCSA) conducted the Tire Pressure Special Study (TPSS) in February 2001. The TPSS was designed to assess to what extent passenger vehicle operators are aware of the recommended tire pressures for their vehicles, the frequency and the means they use to measure their tire pressure, and how significantly the actual measured tire pressure differed from the manufacturer's recommended tire pressure. The TPSS found that 26 percent of the cars and 29 percent of LTVs had at least one tire more than 25 percent below the pressure recommended by the manufacturer, as specified on the placard located on the inside of the driver side door.

In an effort to decrease the number of vehicles with improperly inflated tires, Tire Pressure Monitoring Systems (TPMS) were mandated in Federal Motor Vehicle Safety Standard (FMVSS) No. 138, so that drivers are warned when the pressure in one or more of the vehicle's tires has fallen to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. To meet FMVSS No. 138, TPMS must indicate which of the four tires is underinflated. As of September 1, 2007, TPMS was required on all new light vehicles (i.e., passenger cars, trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those

vehicles with dual wheels on an axle). A phase-in period began on October 5, 2005, requiring that 20 percent of MY 2006 light vehicles be equipped with TPMS. This phase-in was stepped up to 70 percent for MY 2007, leading to 100 percent for MY 2008.

Executive Order 12866 requires Federal agencies to evaluate their existing regulations and programs and measure their effectiveness in achieving their objectives. However, since the phase-in of TPMS, there has not been any evaluation of TPMS. The purpose of this survey, Tire Pressure Monitoring System—Special Study (TPMS—SS), is to evaluate whether the frequency of underinflated tires has decreased in vehicles with TPMS in comparison to vehicles of the same age without TPMS. In addition, the survey will collect data on the drivers' familiarity with the type of warning given by their TPMS and the action(s) that they have taken after the warning has been given.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): To minimize the survey start-up cost and to provide a trained cadre of data collectors, field data collection will be conducted through the infrastructure of the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS). The NASS CDS consists of 24 Primary Sampling Units (PSUs) that are a probability sample selected from a sample frame of 1,195 PSUs. The sample was selected based on the number of fatal and injury motor vehicle crashes occurring in the PSUs.

Within each of NASS CDS 24 PSUs, 3 eligible gas stations (*i.e.*, gas stations with more than one gas island) will be selected from each of seven randomly eligible Zip codes (*i.e.*, Zip codes with at least 3 gas stations with more than one gas island) for a total of 21 gas stations per PSU. The 21 selected gas stations will be assigned to one of the 21 days of the data collection period.

The universe under study in the National Automotive Sampling System (NASS) Tire Pressure Monitoring System—Special Study (TPMS—SS) consists of passenger vehicles equipped with tire pressure monitoring systems (TPMS) and a set of peer vehicles that are not equipped with TPMS in the continental United States for the model years 2004 and newer. Data to be collected shall include in-person collection of vehicle profile data, tire data, and driver profile data for at least 10,000 passenger vehicles, as well as supplemental data on TPMS use for 600 of these vehicles. For an additional 450 passenger vehicles, supplemental data

on TPMS use will be collected from the driver via one of the following 3 methods: (1) Filling out a hard copy survey form; (2) Completing the form on-line; or (3) Being called back by the field researcher at a later date.

Additionally, each respondent will receive a card on which the NASS Data Collectors will have recorded the Manufacturers Recommended Tire Pressure and the Tire Pressure the Data Collectors read for each of the vehicle's tires. Consequently, the respondent is receiving benefit in return for his/her participation.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information: NHTSA estimates that the average time to collect vehicle, tire, and driver data will be slightly over 10 minutes for each interview (or a total of 1750 hours) for the 10,000 respondents plus an additional 10 minutes each (or a total of 175 hours) for the 1,050 respondents who will be asked supplemental questions on TPMS use. Consequently, the total respondent burden hours is estimated to be 1,925 hours.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E9-11204 Filed 5-13-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-Eighth Meeting, RTCA Special Committee 186: Automatic Dependent Surveillance-Broadcast (ADS-B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS-B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS-B).

DATES: The meeting will be held June 2-5, 2009, at 9 a.m. on June 2-4 and on June 5th starting at 8 a.m. at RTCA and 2 p.m. in Europe (WebEx and Phone Bridge information to be provided).

ADDRESSES: RTCA Conference Rooms at 1828 L Street, NW., Suite 805, Washington, DC 20036.

Note: Any meeting day(s) for the Requirements Focus Group (RFG), RAD

FRAC, will be announced at a later date * * * as required * * * based on the FRAC comments received.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington DC, 20036, (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. The agenda will include:

June 2, Specific Working Group Sessions:

- RTCA—All Day, WG-1—ATSA SURF 1A, ARINC Room.

June 3, Specific Working Group Sessions:

- RTCA—All Day, WG-1—ATSA SURF 1A, ARINC Room.

- RTCA—All Day, WG-5, UAT MOPS, MacIntosh-NBAA Room & Hilton-ATA Room.

Feb. 4, Specific Working Group Sessions:

- RTCA—All Day, WG-1—ATSA SURF 1A, ARINC Room .

- RTCA—All Day, WG-5, UAT MOPS, MacIntosh-NBAA Room & Hilton-ATA Room.

June 5, Joint RTCA SC-186/ EUROCAE WG-51: (*Starting at 2 p.m. in Europe and 8 a.m. at RTCA*)

- Opening Plenary (Chairman's Introductory Remarks, Review of Meeting Agenda.
- Review/Approval of the Forty-Seventh Meeting Summary, RTCA Paper No. 110-09/SC186-281.
- Consider for Approval—New Document—*Safety and Performance Requirements (SPR) Standard for ADS-B-RAD*, RTCA Paper No. 106-09/SC186-279.
- Discussion—1090 Extended Squitter MOPS—Revision.
- Review of EUROCAE WG-51 Activities.
- FAA Surveillance and Broadcast Services (SBS) Program—Status.
- Date, Place and Time of Next Meeting.
- Working Group Reports.
- WG-1—Operations and Implementation.
- WG-2—TIS-B MASPS.
- WG-3—1090 MHz MOPS.
- WG-4—Application Technical Requirements.
- WG-5—UAT MOPS.
- RFG—Requirements Focus Group.
- Wake vortex ad-hoc group report and recommended action plan.
- ADS-B ITP coordination with SC-214 for data link requirements.
- New Business.

- Other Business.
- Review Action Items/Work Programs.

- Adjourn Plenary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the “**FOR FURTHER INFORMATION CONTACT**” section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 7, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–11257 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Fort Worth Alliance Airport, Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that revision two of the future noise exposure map submitted by the city of Fort Worth for Fort Worth Alliance Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 is in compliance with applicable requirements.

DATES: Effective Date: The effective date of the FAA’s determination on the future noise exposure map is May 5, 2009.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Mr. Paul Blackford ASW 652b, 2601 Meacham Blvd. Fort Worth, Texas 76137, (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that FAA finds, effective May 5, 2009, the second revision of the future noise exposure map submitted for Fort Worth Alliance Airport is in compliance with applicable requirements of Part 150. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as “the Act”), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft

operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the future noise exposure map (second revision) and accompanying documentation submitted by the city of Fort Worth. The documentation that constitutes the “future noise exposure map” as defined in section 150.7 of Part 150 includes: Section 5.0, and Exhibits 5.1–5.6. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on May 5, 2008.

FAA’s determination on an airport operator’s noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant’s data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA’s review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator

that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA’s evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Mr. Kent Penney, Airport Systems Director, City of Fort Worth, Aviation Department, 4201 N. Main St., Suite 200, Fort Worth, Texas. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, May 5, 2009.

Edward Agnew,

Acting Manager, Airports Division.

[FR Doc. E9–11155 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0046]

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 KROEZIN.

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–2009–0046 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 June 15, 2009.

ADDRESSES: Comments should refer to docket number MARAD-2009-0046. 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 KROEZIN is:

Intended Use: "Vessel Chartering Operations".

Geographic Region: "Pacific Coast of the United States including: California, Oregon, and Washington".

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: May 5, 2009.

By Order of the Maritime Administrator.
Leonard Sutter,
Secretary, Maritime Administration.
[FR Doc. E9-11144 Filed 5-13-09; 8:45 am]
BILLING CODE 4910-81-P

AVERAGE STATE TAX RATES
[In percent]

Railroad	2002	2003	2004	2005	2006	2007
BNSF	5.487	5.471	5.238	5.196	5.183	5.650
CNGT	6.512	6.582	6.738	6.703	6.701	6.684
CSXT	5.960	6.362	6.312	6.101	5.941	5.702
KCS	5.791	5.805	5.839	4.728	5.992	6.494
NS	6.213	6.583	6.589	6.376	6.194	5.986
SOO	7.890	8.346	7.828	7.635	7.591	7.501
UP	5.443	5.405	5.406	5.393	6.275	6.163

Additional information is contained in the Board's decision. A copy of the Board's decision is available for inspection or copying at the Board's Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423-0001, and is posted on the Board's Web site, <http://www.stb.dot.gov>.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 8, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.
Kulunie L. Cannon,
Clearance Clerk.
[FR Doc. E9-11254 Filed 5-13-09; 8:45 am]
BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 6, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646 (Sub-No. 2)]

Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: By a decision served on May 11, 2009, the Board adopted the evidence filed by the Association of American Railroads (AAR) calculating railroad-specific average state tax rates to be included in the Revenue Shortfall Allocation Method (RSAM) benchmarks for 2002 through 2007

FOR FURTHER INFORMATION CONTACT: Timothy J. Stafford, (202) 245-0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The decision served on May 11, 2009, adopted the evidence filed by the AAR calculating railroad-specific average state tax rates to be included in the RSAM benchmarks for 2002 through 2007. The railroad-specific average state tax rates are set forth in the table below.

Public Law 104-13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 15, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535-0126.
Type of Review: Revision.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Forms: PDF 3871.

Description: Submitted by companies engaged in the business of writing mortgage guaranty insurance for purpose of purchasing "Tax and Loss" bonds.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 8 hours.

OMB Number: 1535-0032.

Type of Review: Extension.

Title: Application for disposition of Retirement Plan/Individual Retirement Bonds Without Admin. of Deceased Owners Estate.

Forms: PDF 3565.

Description: Used by heirs of deceased owners of Retirement Plan/Indiv. Retirement Bonds to request disposition.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 17 hours.

OMB Number: 1535-0012.

Type of Review: Extension.

Title: Request by Fiduciary for Reissue of United States Savings Bonds.

Forms: PDF 1455.

Description: Used by fiduciary to request distribution of U.S. Savings Bonds to the person(s) entitled.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 8,850 hours.

OMB Number: 1535-0102.

Type of Review: Extension.

Title: Supporting Statement of Ownership for Overdue United States Bearer Securities.

Forms: PDF 1071.

Description: Used to establish ownership and support a request for payment.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 250 hours.

Clearance Officer: Judi Owens (304) 480-8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Shagufta Ahmed (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9-11208 Filed 5-13-09; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before July 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-6688, or through the Internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545-0162.

Form Number: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: Form 4136 was revised due to Legislation or Chief Counsel Guidance, which was required by Public Law 110-289. This revision also resulted in an addition of 1 code reference and 14 line items, increasing burden hours to 4,618,145.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 2,441,858.

Estimated Time per Response: 1 hr.,53 min.

Estimated Total Annual Burden Hours: 4,618,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9-11215 Filed 5-13-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 982

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

DATES: Written comments should be received on or before July 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

OMB Number: 1545-0046.

Form Number: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: Form 982 was revised due to qualified individuals of the Midwestern disasters (Pub. L. 110-343). This revision resulted in an additional 4 code references and 2 line items.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, farms, Federal government and state, local or tribal government.

Estimated Number of Responses: 667.

Estimated Time per Response: 12 hrs., 2 min.

Estimated Total Annual Burden

Hours: 8,031.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-11216 Filed 5-13-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 851

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 851, Affiliations Schedule.

DATES: Written comments should be received on or before July 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Affiliations Schedule.

OMB Number: 1545-0025.

Form Number: 851.

Abstract: Form 851 is filed by the parent corporation for an affiliated group of corporations that files a consolidated return (Form 1120). Form 851 provides IRS with information on the names and identification numbers of the members of the affiliated group, the taxes paid by each member of the group, and stock ownership, changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in Internal Revenue Code section 1504.

Current Actions: There are no changes being made to Form 851 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and farms.

Estimated Number of Responses: 4,000.

Estimated Time per Response: 12 hrs., 46 min.

Estimated Total Annual Burden

Hours: 51,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-11214 Filed 5-13-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: First Net Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: First Net Insurance Company (NAIC #10972). Business Address: 102 Julale Center, Hagatna, GU 96910. Phone: (671) 477-8613. Underwriting Limitation b/: \$634,000. Surety Licenses c/: GU, MP. Incorporated IN: GU.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2008 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>.

Questions concerning this Notice may be directed to the U.S. Department of

the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 28, 2009.

Rose M. Miller,

Acting Director, Financial Accounting and Services Division.

[FR Doc. E9-11250 Filed 5-13-09; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Termination and Merger: Seaboard Surety Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570, 2008 Revision, published June 30, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds has been terminated. The Seaboard Surety Company (NAIC# 22535) merged with and into Travelers Casualty and Surety Company of America (NAIC# 31194) effective January 1, 2009. The surviving corporation of the merger activity is Travelers Casualty and Surety Company of America (NAIC# 31194), a Connecticut domiciled corporation. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2008 Revision, to reflect this change.

In the event bond-approving officers have questions relating to bonds issued by the above-named company that has merged with and into Travelers Casualty and Surety Company of America (NAIC# 31194), they should contact Travelers Casualty and Surety Company of America at (860) 277-0111.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch,

3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 28, 2009.

Rose M. Miller,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. E9-11251 Filed 5-13-09; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Termination and Merger: Surety Company of the Pacific

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Surety Company of the Pacific (NAIC# 12793) under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds has been terminated. The above-named company merged with and into American Contractors Indemnity Company (NAIC# 10216) effective March 2, 2009. The surviving corporation of the merger activity is American Contractors Indemnity Company (NAIC# 10216), a California domiciled corporation. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2008 Revision, to reflect this change.

In the event bond-approving officers have questions relating to bonds issued by the Surety Company of the Pacific (NAIC# 12793) that has merged with and into American Contractors Indemnity Company (NAIC# 10216), they should contact American Contractors Indemnity Company at (310) 649-0990.

The Circular may be viewed and downloaded through the Internet at www.fms.treas.gov/c570.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 28, 2009.

Rose M. Miller,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. E9-11252 Filed 5-13-09; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the four individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.*: 202/622-2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) via facsimile through a 24-hour fax-on-demand service, *tel.*: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On May 6, 2009, the Acting Director of OFAC removed from the SDN List the four individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the four unblocked individuals follows:

COLLAZOS TELLO, Jairo Camilo, c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; c/o DIMABE LTDA., Bogota, Colombia; DOB 09 Dec 1953; POB Cali, Colombia; Cedula No. 14998261 (Colombia); Passport AH690431 Colombia) (individual) [SDNT]

DURAN ABDELNUR, Jorge Eduardo, c/o DURATEX S.A., Bogota, Colombia; c/o COMERCIALIZADORA MORDUR S.A., Quito, Ecuador; DOB 21 Nov 1955; POB Colombia; Cedula No. 19309441 (Colombia) (individual) [SDNT]

RODRIGUEZ BALANTA, Jorge Enrique, c/o DISTRIBUCIONES GLOMIL LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL CALI S.A., Cali, Colombia; c/o DISMERCOOP, Cali, Colombia; DOB 24 Jun 1956; Cedula No. 16602232 (Colombia); Passport 16602232 (Colombia) (individual) [SDNT]

GONZALEZ LIZALDA, Maria Lorena, c/o INVERSIONES Y CONSTRUCCIONES ATLAS LTDA., Cali, Colombia; DOB 20 Jul 1969; Cedula No. 31992548 (Colombia) (individual) [SDNT]

Dated: May 6, 2009.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9-11205 Filed 5-13-09; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service; Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on June 26, 2009, at The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC. The meeting is scheduled to begin at 8 a.m. and end at 4 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92-463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461-1700.

Dated: May 6, 2009.

By Direction of the Secretary:

E. Philip Riggan,

Committee Management Officer.

[FR Doc. E9-11211 Filed 5-13-09; 8:45 am]

BILLING CODE 8320-01-P

**DEPARTMENT OF VETERANS
AFFAIRS**

**Advisory Committee on Disability
Compensation; Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on June 1-2, 2009, at the St. Regis Washington DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting will be held in the Carlton Room on June 1 and in the Chandelier Room on June 2. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On June 1, the Committee will receive briefings about studies on compensation for Veterans with service-connected disabilities and other Veteran benefits programs. On the afternoon of June 1 and the morning of June 2, the Committee will break into subcommittees to prepare recommendations. In the afternoon of June 2, time will be allocated for receiving public comments. Public comments will be limited to three

minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1-2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461-9728 or Ersie.farber@va.gov.

Dated: May 7, 2009.

By Direction of the Secretary:

E. Philip Riggan,

Committee Management Officer.

[FR Doc. E9-11212 Filed 5-13-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
May 14, 2009**

Part II

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Parts 5, 25, and 52

**Federal Acquisition Regulation; FAC 2005–
32, Technical Amendments; Final Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 25, and 52

[FAC 2005-32; Docket 2009-0003; Sequence 3]

Federal Acquisition Regulation; FAC 2005-32, Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR), Federal Acquisition Circular (FAC) 2005-32, published in the Federal Register at 74 FR 14622-14652, on March 31, 2009, in order to make editorial and correcting changes.

DATES: Effective Date: May 14, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedule. Please cite FAC 2005-32, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation (FAR), Federal Acquisition Circular (FAC) 2005-32, published in the Federal Register at 74 FR 14622-14652, on March 31, 2009, in order to make editorial and correcting changes.

List of Subjects in 48 CFR Parts 5, 25, and 52

Government procurement.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 5, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.705 [Amended]

2. Amend section 5.705 in the table that follows paragraph (b) by removing,

from the second column, the heading "Posting Rationale on Special Section of Recovery.Gov" and adding "Rationale Required" in its place; and by removing, from the sixth row, second column, the colon and adding an em dash in its place.

PART 25—FOREIGN ACQUISITION

3. Amend section 25.200 by adding paragraph (c) to read as follows:

25.200 Scope of subpart.

* * * * *

(c) When using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) for construction, see Subpart 25.6.

* * * * *

4. Amend section 25.1102 by removing from paragraph (c)(3) "other than Mexico" and adding "other than Bahrain, Mexico, and Oman" in its place; and revising paragraphs (e)(2)(i) and (e)(2)(ii) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(e) * * *

(2) * * *

(i) Basic clause. List all foreign construction materials excepted from the Buy American Act or section 1605 of the the Recovery Act, other than Recovery Act designated country construction material.

(ii) Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the Buy American Act or section 1605 of the Recovery Act, unless the excepted foreign construction material is from a Recovery Act designated country other than Bahrain, Mexico, or Oman.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-11 [Amended]

5. Amend section 52.204-11 in paragraph (a), in the definition "Total Compensation" by removing the period after the paragraph (6) designation.

6. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Revising paragraphs (b)(3), (b)(16), and (b)(18);

c. Removing and reserving paragraph (e)(1)(iii); and

d. In Alternate II by—

1. Revising the date of the Alternate;

2. Redesignating paragraphs (e)(1)(ii)(B) through (e)(1)(ii)(M) as paragraphs (e)(1)(ii)(C) through (e)(1)(ii)(N), respectively; and adding a new paragraph (e)(1)(ii)(B); and

3. Removing from the newly designated paragraph (e)(1)(ii)(J) "2.222-51" and adding "52.222-51" in its place.

The revised and added text reads as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS "(MAY 2009)"

* * * * *

(b) * * *

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

* * * * *

(16) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

* * * * *

(18) 52.219-28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 632(a)(2)).

* * * * *

Alternate II "(MAY 2009)". * * *

* * * * *

(e)(1) * * *

(ii) * * *

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Section 1553 of Pub. L. 111-5).

* * * * *

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-32, Technical Amendments, is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-32, Technical Amendments is effective May 14, 2009.

Dated: May 5, 2009.

Amy G. Williams,

*Acting Deputy Director, Defense Procurement
and Acquisition Policy (Defense Acquisition
Regulations System).*

Dated: May 6, 2009.

Rodney P. Lantier,

*Acting Senior Procurement Executive &
Acting Deputy Chief Acquisition Officer,
Office of the Chief Acquisition Officer, U.S.
General Services Administration.*

Dated: May 4, 2009.

William P. McNally,

*Assistant Administrator for Procurement,
National Aeronautics and Space
Administration.*

[FR Doc. E9-11039 Filed 5-13-09; 8:45 am]

BILLING CODE 6820-EP-S



Federal Register

**Thursday,
May 14, 2009**

Part III

The President

**Proclamation 8377—National Defense
Transportation Day and National
Transportation Week, 2009**

**Proclamation 8378—Peace Officers
Memorial Day and Police Week, 2009**

Presidential Documents

Title 3—

Proclamation 8377 of May 11, 2009**The President****National Defense Transportation Day and National Transportation Week, 2009****By the President of the United States of America****A Proclamation**

Every day, Americans rely on roads, rails, ports, and airports to get to work and to transport goods and services. At the same time, the United States Armed Forces rely on our transportation infrastructure to move personnel and supplies. During National Transportation Week and on National Defense Transportation Day, we underscore the importance of the transportation system to our Nation's economy and security. We also honor the dedicated professionals who build, maintain, and operate our transportation infrastructure.

From rural roads to state-of-the-art intermodal facilities, transportation infrastructure is crucial to economic growth. Goods and services flow constantly across land, water, and sky, and our most efficient modes of travel save businesses and consumers money, and can reduce impacts on our environment. To compete in the 21st century global economy, the United States must have an advanced transportation system.

Securing America's energy future and maintaining our national defense also require a robust transportation system. Whether responding to natural disasters at home or mobilizing resources to defend America abroad, transportation is vital to keeping Americans safe. Global climate change and our reliance on foreign oil have also created tremendous national security challenges. To solve these problems and create new economic opportunities, we must make our transportation system cleaner and more efficient.

My Administration has taken bold action to rebuild our Nation's crumbling infrastructure. The American Recovery and Reinvestment Act integrates the goals of job creation and economic growth with a renewed commitment to transportation. This legislation will fund projects to improve public transportation, repair highways and roads, modernize airports and seaports, and invest in renewable energy, all while creating or saving hundreds of thousands of jobs.

To make the most of every taxpayer dollar, my Administration is working side-by-side with State and local governments and the private sector to provide oversight and to closely monitor these transportation investments.

The women and men who support this critical sector every day make this plan possible. Renewing America's transportation system is an historic task, and I am convinced they will rise to the challenge.

The Congress has requested, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), that the President designate the third Friday in May of each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Friday, May 15, 2009, as National Defense Transportation Day and May 10 through May 16, 2009, as National Transportation Week. I call upon all Americans to recognize the importance of our Nation's transportation infrastructure and to acknowledge the contributions of those who build, operate, and maintain it.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text above it.

Presidential Documents

Proclamation 8378 of May 11, 2009

Peace Officers Memorial Day and Police Week, 2009

By the President of the United States of America

A Proclamation

Every day, peace officers put on their uniforms and go to work to safeguard America's communities and uphold the freedoms we hold dear. This week we honor their contributions and sacrifice.

Law enforcement officers routinely place themselves in harm's way to protect people they do not and will not know. They serve willingly and devotedly, and their commitment is essential for us to maintain a healthy quality of life, a strong economy, the safety of our families, and a robust national security system.

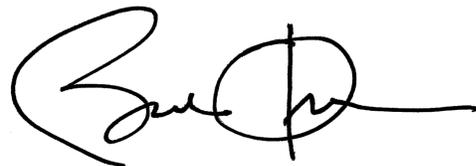
My Administration is working to keep Americans safe and to strengthen the Federal partnership with America's peace officers. The American Recovery and Reinvestment Act, which I recently signed, makes \$4 billion available for State and local law enforcement. This provision will save or create thousands of law enforcement jobs across the country through the revitalized Community Oriented Policing Services Hiring Recovery Program. The Recovery Act also provides \$2 billion through the Edward Byrne Memorial Justice Assistance Grant Program. These measures will put more officers on the street and help those already serving to perform their jobs more effectively.

The benefits that peace officers provide come with great sacrifice. Every year, many give their lives in the performance of their duties. Their contributions live on in the communities they strengthened, and their service will never be forgotten. This week, as we recognize their commitment to duty, we renew our pledge to support their families and colleagues.

The President has been requested to designate May 15 of each year as Peace Officers Memorial Day in honor of all Federal, State, and local officers killed or disabled in the line of duty, and to designate that week as Police Week in recognition of their service given to the United States (36 U.S.C. 136–37).

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 15, 2009, as Peace Officers Memorial Day and May 10 through May 16, 2009, as Police Week. I call upon all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and appropriate officials of all units of government, to direct that the flag be flown at half staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, 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.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

[FR Doc. E9-11497

Filed 5-13-09; 11:15 am]

Billing code 3195-W9-P

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Federal Register

Vol. 74, No. 92

Thursday, May 14, 2009

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