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**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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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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 28

[Doc. # AMS-CN-09-0011; CN-09-001]

#### User Fees for 2009 Crop Cotton Classification Services to Growers

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) will raise user fees for cotton producers for 2009 crop cotton classification services under the Cotton Statistics and Estimates Act. These user fees also are authorized under the Cotton Standards Act of 1923. The 2008 user fee for this classification service was \$2.00 per bale. This rule will raise the fee for the 2009 crop to \$2.20 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

**DATES:** *Effective Date:* Effective July 1, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Darryl Earnest, Deputy Administrator, Cotton and Tobacco Program, AMS, USDA, Room 2639-S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250-0224. Telephone (202) 720-2145, facsimile (202) 690-1718, or e-mail [darryl.earnest@usda.gov](mailto:darryl.earnest@usda.gov).

**SUPPLEMENTARY INFORMATION:** A proposed rule detailing the revisions was published in the **Federal Register** on March 26, 2009 (74 FR 13128). A 15-day comment period was provided for interested persons to respond to the proposed rule. Two comments were received from national cotton industry organizations in support of the service and the need for the fee increase.

#### Executive Order 12866

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

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increase above the 2008 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2008 user fee for classification services was \$2.00 per bale; the fee for the 2009 crop would be increased to \$2.20 per bale; the 2009 crop is estimated at 14,500,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2008 crop, 12,740,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2007 crop of

53.50 cents per pound, 500 pound bales of cotton are worth an average of \$267.50 each. The proposed user fee increase for classification services, \$.20 per bale, is less than one percent of the value of an average bale of cotton.

#### Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581-AC43.

*Fees for Classification Under the Cotton Statistics and Estimates Act of 1927*

This final rule will establish the user fee charged to producers for High Volume Instrument (HVI) classification at \$2.20 per bale for the 2009 cotton crop. The 2009 user fee charged to cotton producers for HVI classification was calculated using new methodology, as was authorized by section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234) (2008 Farm Bill). In previous years, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987 (Pub. L. 100-108, 101 Stat. 728) (1987 Act), as amended. This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being  $\pm 15$  percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

The 2008 user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-476) was \$2.00 per bale during the 2008 harvest season as determined by using the formula provided in the 1987 Act. The fee covered salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. Also, the fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923 (7 U.S.C. 51-65),

by an interim final rule effective October 1, 2007 (72 FR 56242).

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar per bale classed) is established that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve

fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2008 through January 2009 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee established to be charged cotton producers for High Volume Instrument (HVI) classification in 2009 is \$2.20 per bale. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2009 crop year.

Accordingly § 28.909, paragraph (b) will reflect the increase of the HVI classification fee to \$2.20 per bale.

A 5 cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data will continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 will remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database will remain at 5 cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of \$5.00 per sheet.

The fee for review classification in § 28.911 will increase to \$2.20 per bale.

The fee for returning samples after classification in § 28.911 will remain at 50 cents per sample.

In addition to raising user fees for the 2009 crop cotton classification services to \$2.20 per bale, this rule finalizes the provisions of the interim final rule published in the **Federal Register** at 72FR56242 on October 3, 2007.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule maintains uniform user fees for 2009 crop cotton classification services as mandated by the Cotton Statistics and Estimates Act.

The earliest harvest and classification of 2009 cotton will occur during July, and the law mandates that the user fee be established sufficiently early so that a uniform fee is charged for the classification of the entire 2009 cotton crop, which will extend from July 2009 to May 2010. Only two comments were received during the public comment period provided in the proposal, and both were supportive of the need for the user fee increase.

#### List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

#### PART 28—[AMENDED]

■ For the reasons set forth in the preamble, 7 CFR part 28 is amended by revising subpart D to read as follows:

##### Subpart D—Cotton Classification and Market News Service for Producers

Sec.

##### Definitions

28.901 Definitions.

##### Administration

28.902 Director.

##### Classification and Market News Services

28.903 Classification of samples.

28.904 Market news.

##### Sampling

28.906 Sampling arrangements.

28.907 Responsibilities of licensed gins or warehouses.

28.908 Samples.

28.909 Costs.

##### Classification

28.910 Classification of samples and issuance of classification data.

28.911 Review classification.

##### Limitations of Services

28.917 Limitations of Services.

##### Subpart D—Cotton Classification and Market News Service for Producers

**Authority:** 7 U.S.C. 51–65; 7 U.S.C. 471–476.

##### Definitions

##### § 28.901 Definitions.

When used in the regulations in this subpart:

(a) *Act* means the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51–65) and the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476), unless otherwise noted.

(b) *Service* means the Agricultural Marketing Service of the United States Department of Agriculture.

(c) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act for the Administrator.

(d) *Division* means the Cotton Division of the Agricultural Marketing Service.

(e) *Director* means the Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act for the Director.

(f) *Producer* means any individual, partnership, corporation, association, trust, estate, or other legal entity, a State or political subdivision thereof, or any agency of such State or political subdivision producing American Upland or American Pima cotton in the capacity of landowner, landlord, tenant, or sharecropper.

#### Administration

##### § 28.902 Director.

The Director shall perform for and under the supervision of the Administrator, such duties as the Administrator may require in enforcing the regulations in this subpart.

#### Classification and Market News Services

##### § 28.903 Classification of samples.

The Director, or an authorized representative, upon the receipt of a producer's cotton sample which complies with the regulations in this subpart shall, as hereinafter provided, furnish to such producer or to an agent designated by the producer the classification in accordance with the official cotton standards of the United States.

##### § 28.904 Market news.

The Director shall cause to be distributed to producers of cotton and to others on request, timely information on prices for various qualities of cotton.

#### Sampling

##### § 28.906 Sampling arrangements.

(a) Cotton must be sampled by a gin or warehouse that holds a valid license to sample cotton issued pursuant to §§ 28.20 through 28.22.

(b) The Director, or an authorized representative may direct that sampling be performed by employees of the Department of Agriculture for the purpose of appraising the sampling

procedures at cotton gins or warehouses, or for the purpose of providing service to producers in special cases where a licensed gin or warehouse is not available.

##### § 28.907 Responsibilities of licensed gins or warehouses.

Each licensee shall be primarily responsible for drawing, identifying, handling, and shipping samples of cotton in accordance with this subpart and with instructions furnished by the Director or an authorized representative from time to time.

##### § 28.908 Samples.

(a) *Only one sample to be submitted.* Only one sample from each bale of eligible cotton shall be submitted for classification under this subpart. This does not prohibit the submission of an additional sample from a bale for review classification if the producer so desires.

(b) *Drawing of samples manual.* (1) Each cut sample shall be drawn from the bale after it is tied out following the ginning process, and shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale: *Provided*, That each sample from a bale of American Pima cotton shall be approximately 10 ounces in weight, not less than 5 ounces of which are to be drawn from each side of the bale.

(2) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers, provided the outside portion from each side is submitted for the official classification.

(c) *Mechanical sampling.* Samples may be drawn in gins equipped with mechanical samplers approved by the Division and operated according to sampling instructions furnished by the Director or an authorized representative. Such samples shall not be less than 6 ounces in weight.

(d) *Samples must be representative.* Each sample must be representative of the bale from which drawn.

(e) *Handling samples.* Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Samples shall be handled only by employees of the licensee prior to shipment or delivery to the cotton classing office of the Division.

(f) *Identifying and shipping samples.* Each sample shall be identified with a tag, supplied or approved by the Division, bearing the gin or warehouse number of the bale from which the sample was drawn and the name and address of the producer of the bale. The tag shall be placed between the two halves of the sample, the sample tightly rolled and enclosed in a package or bag for shipment. Each package or bag shall be labeled or marked with the name and address of the licensed gin or warehouse. The packages shall be shipped or delivered direct to the cotton classing office serving the territory in which the cotton is ginned. Samples that were drawn by a mechanical sampler at the gin may be transported with the bales to the warehouse and then shipped or delivered direct to the classing office by the warehouse.

(g) *Request for classification.* Samples received from a licensed gin or warehouse with the identification tag required in § 28.908(f) shall constitute a request for classification service by the producer.

##### § 28.909 Costs.

(a) Costs incident to sampling, tagging, and identification of samples and transporting samples to points of shipment shall be assumed by the producer, but tags and containers for the shipment of samples and shipping charges via U.S. Postal Service or duly authorized common carrier will be furnished by the service. After classification the samples shall become the property of the Government. The proceeds of the sale of cotton samples shall be used to defray the costs of providing the services under this subpart.

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$2.20 per bale.

(c) The Division will periodically bill producers or the voluntary agents designated by producers for the cost of classification. A discount of 5 cents per sample will be granted for services provide under this section when billing is made to voluntary agents.

#### Classification

##### § 28.910 Classification of samples and issuance of classification data.

(a)(1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,  
 (ii) Computer tapes, or  
 (iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1) of this section, there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be \$10.00.

(b) Owners of cotton, other than producers, may receive classification data showing the official quality determination of each sample by means of telecommunications from a central database to be maintained by the Division. The fee for this service shall be five cents per bale, with all long distance telephone line charges paid by the receiver of data. The minimum charge assessed for services obtained from the central database be \$5.00 per monthly billing period.

(c) Upon request of an owner of cotton for which classification memoranda have been issued under the subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 15 cents per bale or a minimum of \$5.00 per sheet.

#### **§ 28.911 Review classification.**

(a) A producer may request one review classification for each bale of eligible cotton. The fee for review classification is \$2.20 per bale.

(b) Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20 through 28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 50 cents per sample in

addition to the fee established above in this section.

#### **Limitations of Services**

##### **§ 28.917 Limitations of Services.**

The Director, or an authorized representative, may suspend, terminate, or withhold cotton classing and market news services to any producer upon any failure of the producer to comply with the act or these regulations. Failure to remit fees for classification services shall result in loss of service.

Dated: June 2, 2009.

**David R. Shipman,**

*Acting Administrator.*

[FR Doc. E9-13148 Filed 6-2-09; 4:15 pm]

**BILLING CODE P**

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 301**

[Docket No. APHIS-2009-0036]

#### **Karnal Bunt; Regulated Areas**

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

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

**SUMMARY:** We are amending the Karnal bunt regulations to remove certain areas or fields in Riverside County, CA, from the list of regulated areas based on our determination that those areas or fields meet our criteria for release from regulation of Karnal bunt, a fungal disease of wheat. This action is needed to relieve restrictions on certain areas or fields that are no longer necessary.

**DATES:** This interim rule is effective June 4, 2009. We will consider all comments that we receive on or before August 3, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0036> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2009-0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0036.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737-1236; (301) 734-7228.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stages of wheat growth. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat-producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations). Articles regulated for Karnal bunt are listed in § 301.89-2. Conditions for determining whether an area is regulated for Karnal bunt are set forth in § 301.89-3.

Under the regulations in § 301.89–3(f), a field known to have been infected with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field has been permanently removed from crop production; or
- The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the harvested grain must test negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by removing certain areas or fields in Riverside County, CA, from the list of regulated areas, based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). In accordance with § 301.89–3(f)(2), the eligible areas have been tilled at least once per year for a total of 5 years. After tilling, the fields were either planted with a crop or left fallow. For the fields that were planted with a host crop, the crop tested negative, through the absence of bunted kernels, for Karnal bunt. We are therefore adjusting the quarantined boundaries based on surveys that indicate the areas no longer meet the requirements for regulated areas.

The area in Riverside County, CA, that will be removed from the list of regulated areas includes 286 fields and 8,226 acres. In California, 35,271 acres in Riverside County will remain regulated for Karnal bunt. The quarantine boundaries will remain the same in Texas and Arizona.

**Immediate Action**

Immediate action is warranted to relieve restrictions that are no longer

necessary on certain areas or fields in Riverside County, CA, regulated for Karnal bunt. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

**Executive Order 12866 and Regulatory Flexibility Act**

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

This rule amends the Karnal bunt regulations by removing certain areas in California from quarantine based on surveys that indicate these areas have met the criteria in § 301.89–3(f) for being released from regulation. With this change, 286 fields representing 8,226 acres in Riverside County, CA, will be removed from quarantine.

Any wheat, durum wheat, or triticale grown in regulated fields cannot be moved into or through a non-regulated area without first being tested for bunted kernels. In addition, any wheat, durum wheat, or triticale grown in those fields cannot be used as seed within or outside a regulated area unless it is tested and found free of bunted kernels and spores. The regulations require that all conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling

wheat, durum wheat, or triticale be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in § 301.89–12. Releasing the 286 fields from Karnal bunt regulations will relieve the owners and other related businesses of these movement restrictions for regulated articles. Access to domestic and international markets for affected producers may also be improved.

Wheat producers will not be the only entities to benefit from this rule. Many independent operators of harvesting equipment and other service providers operating in the affected areas will benefit from the release of the fields from quarantine. Also, the reduction in regulated acreage will reduce the need for associated regulatory activities, such as surveying and testing.

Although this rule will benefit wheat producers and other entities in the affected areas, overall effects are expected to be relatively small. There were about 81,033 farm operations, including wheat farms, in California in 2007.<sup>1</sup> According to the 2007 Census of Agriculture, of these 81,033 farms, a total of 1,191 farms harvested wheat for grain in California (table 1). In 2007, California produced about 1.5 percent of wheat grown for grain in the United States.<sup>2</sup> Statewide, a total of 640,000 all-purpose acres were planted with wheat in 2007, with about 345,000 acres harvested for grain and about 295,000 acres harvested for forage.<sup>3</sup> In comparison, the 2007 Census of Agriculture reported only 17 wheat farms located in Riverside County representing about 1.4 percent of farms producing wheat in California. These 17 farms produced only slightly over 1 percent of California’s wheat.<sup>4</sup>

TABLE 1—COUNTY, STATE, AND NATIONAL PRODUCTION DATA FOR WHEAT HARVESTED FOR GRAIN, 2007

	Farms harvesting wheat for grain	Wheat acres harvested for grain	Total wheat production (bushels)	Total value of wheat production (dollars)
Riverside County .....	17	6,759	337,839	1,720,000
Statewide .....	1,191	345,000	30,224,394	155,566,000
United States .....	160,810	20,432,969	1,993,648,378	10,623,640,000

Source: USDA–NASS, 2007 Census of Agriculture. Washington, DC: National Agricultural Statistics Service.

<sup>1</sup> USDA–NASS, *Quick Stats: U.S. & All States Data-Farm Numbers, California Data: Farm Numbers by Economic Sales Classes*. Washington, DC: National Agricultural Statistics Service.

<sup>2</sup> USDA–NASS, 2007 Census of Agriculture, Volume 1, Chapter 1: U.S. National Level Data, Table 3. Washington, DC: National Agricultural Statistics Service.

<sup>3</sup> Wheat is planted for forage, grain, or a combination of the two.

<sup>4</sup> USDA–NASS, 2007 Census of Agriculture, California County Data, Table 26. Washington, DC: National Agricultural Statistics Service.

The average yield per harvested acre for California in 2007 was 85.4 bushels, while the average yield per harvested acre for Riverside County was 50 bushels.<sup>5</sup> The average price for wheat in 2007 was \$5.90 per bushel. For 2007, the total value of production for wheat in California was over \$155.6 million, compared to a total value of production for wheat in Riverside County of \$1.72 million. The U.S. Small Business Administration's (SBA) small-entity standard for wheat farming is \$750,000 or less in annual receipts.<sup>6</sup> Based on the 2007 Census of Agriculture, average annual sales per wheat farm in Riverside County was about \$102,000, well below the SBA standard. Riverside County is primarily a producer of nursery products, specialty fruits and vegetables, and dates.<sup>7</sup>

In sum, wheat production in the portion of Riverside County that will no longer be under quarantine for Karnal bunt comprises a small fraction of California's total wheat production; only four wheat producers will be released from the movement restrictions for regulated articles. Any benefits experienced by these producers and other affected entities will not impact U.S. wheat production or the price for wheat.

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

#### Executive Order 12372

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

#### Executive Order 12988

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

<sup>5</sup> USDA-NASS, *California State Agriculture Overview—2007*. Washington, DC: National Agricultural Statistics Service.

<sup>6</sup> Table of Size Standards based on NAICS 2002 [Wheat farming; NAICS code 111140]. Washington, DC: U.S. Small Business Administration, effective October 1, 2007.

<sup>7</sup> California Department of Food and Agriculture, *California Agricultural Resource Directory 2008–2009*, County Statistical Data. p. 39.

#### Paperwork Reduction Act

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

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501 A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301–89.3, paragraph (g) is amended under the heading “California” by revising the entry for Riverside County to read as follows:

#### § 301.89–3 Regulated areas.

\* \* \* \* \*

(g) \* \* \*

#### California

*Riverside County.* That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at Defrain Boulevard and West Hobsonway; then, east on West Hobsonway to South Lovekin Boulevard; then, south on South Lovekin Boulevard to West Rice Street; then, east on West Rice Street to South Commercial Street; then, northeast along an imaginary line to its intersection with Midway Place and West Rice Street; then, east on West Rice Street to South Spring Street; then, south on South Spring Street to Dekema Street; then, east on Dekema Street to South Broadway; then, south on South Broadway to Interstate 10; then, east on Interstate 10 to South Intake Boulevard; then, south on South Intake Boulevard to 14th Avenue; then, east along an imaginary line to its intersection with the D–10 Canal Levee at 33.603649 latitude and –114.562167 longitude; then, south along the D–10 Canal Levee to Seeley Avenue; then, east on Seeley Avenue to the F Canal; then, south along the F Canal to its intersection with 33.568563 latitude and –114.551014 longitude; then, west along an imaginary line to its intersection with 33.568531 latitude and –114.552651

longitude; then, south along an imaginary line to 20th Avenue at 33.560219 latitude and –114.552415 longitude; then, east on 20th Avenue to the D–10–11 Canal; then, southwest along the D–10–11 Canal to its intersection with 33.557494 latitude and –114.552419 longitude; then, south along an imaginary line to its intersection with the F Canal at 33.545550 latitude and –114.551826 longitude; then, east along the F Canal to its intersection with 33.545762 latitude and –114.544763 longitude; then, south along an imaginary line to its intersection with the boundary of Riverside County at 33.540900 latitude and –114.544620 longitude; then, southwest along the boundary of Riverside County to its intersection with 33.455829 latitude and –114.623143 longitude; then, west along an imaginary line to its intersection with 33.455783 latitude and –114.669038 longitude; then, north along an imaginary line to its intersection with the South End Drain at 33.456190 latitude and –114.669076 longitude; then, north along the South End Drain to 34th Avenue; then west on 34th Avenue to its intersection with 33.463226 latitude and –114.682378 longitude; then, north along an imaginary line to its intersection with the C–18–1 Canal at 33.470432 latitude and –114.682384 latitude; then, west along the C–18–1 Canal to its intersection with 33.470427 latitude and –114.691076 longitude; then, north along an imaginary line to its intersection with an unnamed canal at 33.474836 latitude and –114.691197 longitude; then, southwest along the unnamed canal to the shoreline of Palo Verde Lagoon; then, northeast along the shoreline of Palo Verde Lagoon to its intersection with Rannells Drain; then, north along Rannells Drain to its intersection with 33.499639 latitude and –114.691526 longitude; then, north along an imaginary line to its intersection with the C–03 Canal; then, north along the C–03 Canal to its intersection with 33.522835 latitude and –114.687051 longitude; then, north along an imaginary line to its intersection with 24th Avenue at 33.530245 latitude and –114.687198 longitude; then, east on 24th Avenue to the C–03 Canal; then, north along the C–03 Canal to its intersection with 33.540956 latitude and –114.682964 longitude; then, west along an imaginary line to its intersection with an unnamed canal at 33.540901 latitude and –114.692066 longitude; then, north along the unnamed canal to 22nd Avenue; then,

east on 22nd Avenue to Keim Boulevard; then, north on Keim Boulevard to an unnamed canal at 33.564619 latitude and -114.691983 longitude; then, northeast along the unnamed canal to its intersection with the C-03 Canal; then, north along the C-03 Canal to its intersection with 33.573626 latitude and -114.683341 longitude; then, north along an imaginary line to its intersection with Rannells Drain at 33.580861 latitude and -114.683545 longitude; then, east along Rannells Drain to its intersection with an unnamed drain at 33.581179 latitude and -114.678880 longitude; then, north along the unnamed drain to its intersection with Seeley Avenue; then, east on Seeley Avenue to Stephenson Boulevard; then, north on Stephenson Boulevard to an unnamed drain at 33.595529 latitude and -114.674943 longitude; then, east along the unnamed drain to its intersection with 33.595448 latitude and -114.666369 longitude; then, east along an imaginary line to its intersection with 15th Avenue and the West Side Drain; then, northeast along the West Side Drain to West 14th Avenue; then, east on West 14th Avenue to Arrowhead Boulevard; then, north on Arrowhead Boulevard to Interstate 10; then, east on Interstate 10 to Defrain Boulevard; then, north on Defrain Boulevard to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 29th day of May 2009.

**Kevin Shea,**

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

[FR Doc. E9-13051 Filed 6-3-09; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE297; Special Conditions No. 23-237-SC]

#### Special Conditions: Spectrum Aeronautical, LLC Model S-40; Full Authority Digital Engine Control (FADEC) System

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Spectrum Aeronautical, LLC Model S-40 airplane. This airplane will have a novel or unusual design

feature(s) associated with the use of an electronic engine control system instead of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is May 26, 2009.

We must receive your comments by July 20, 2009.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket CE297, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Rules Docket at the above address. You must mark your comments Docket No. CE297. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816-329-4135, fax 816-329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested persons to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to

review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### Background

On November 21, 2007, Spectrum Aeronautical, LLC applied for a type certificate for their new Model S-40. The Spectrum Model S-40 is a 2 + 9 seat (pilots + passengers) conventionally configured low wing normal category jet airplane with a T-tail and tricycle landing gear. This fiber-wound, all composite aircraft will be certified for day, night, VFR, IFR, and flight into known icing operations with a planned maximum operating altitude of 45,000 feet. The company seeks approval for single pilot operations and will show compliance with Reduced Vertical Separation Minimums (RVSM) requirements.

The Spectrum Model S-40 airplane is equipped with two GE Honda Aero HF120 turbofan engines, each using an electronic engine control system (FADEC) instead of a traditional mechanical control system. Even though the engine control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to critical environmental effects and possible effects on or by other airplane systems. For example, indirect effects of lightning, radio interference with other airplane electronic systems, shared engine and airplane data and power sources.

The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems and critical environmental effects, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned. Therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Although the parts of the system that are not certificated with the engine could be

evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system.

In some cases, the airplane that the engine is used in will determine a higher classification (Advisory Circular (AC) 23.1309) than the engine controls are certificated for, which will require that the FADEC/DEEC systems be analyzed at a higher classification. Since November 2005, FADEC special conditions have mandated the classification for § 23.1309 analysis for loss of FADEC control as catastrophic for any airplane. This is not to imply that an engine failure is classified as catastrophic, but that the digital engine control must provide an equivalent reliability to mechanical engine controls.

#### Type Certification Basis

Under the provisions of 14 CFR 21.17, Spectrum Aeronautical, LLC must show that the Model S-40 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23-1 through 23-57, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model S-40 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model S-40 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as appropriate, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

#### Novel or Unusual Design Features

The Spectrum Aeronautical, LLC Model S-40 will incorporate the following novel or unusual design features: Electronic engine control system.

#### Applicability

As discussed above, these special conditions are applicable to the Model S-40. Should Spectrum Aeronautical, LLC apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Spectrum Aeronautical, LLC Model S-40 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

#### Conclusion

This action affects only certain novel or unusual design features on one model, Model S-40, of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

#### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

#### Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

#### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Spectrum Aeronautical, LLC Model S-40 airplanes.

##### 1. Electronic Engine Control

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23-49. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather to determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement; however, the effects of the installation on this data must be addressed.

For these evaluations, the loss of FADEC control will be analyzed

utilizing the threat levels associated with a catastrophic failure.

Issued in Kansas City, Missouri on May 26, 2009.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-12992 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 34

**[Docket No.: FAA-2009-0112; Amendment No. 34-4]**

**RIN 2120-AJ41**

#### Emission Standards for Turbine Engine Powered Airplanes; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending an error in its emission standards for turbine engine powered airplanes. The paragraph that describes the sampling and analytical procedures for measuring smoke exhaust emissions contains an erroneous cross reference which was included in the final rule. This document corrects that error so that the reader is able to locate the correct information.

**DATES:** This correction is effective June 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule, contact Aimee Fisher, Emissions Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7705; e-mail: [aimee.fisher@faa.gov](mailto:aimee.fisher@faa.gov). For legal questions concerning this rule, contact Karen Petronis (AGC-200), Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; e-mail: [karen.petronis@faa.gov](mailto:karen.petronis@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA published a final rule entitled "Emission Standards for Turbine Engine Powered Airplanes" in the **Federal Register** on Tuesday, April 28, 2009 (74 FR 19128). The final rule amended emissions standards for

turbine engine powered airplanes to incorporate the standards adopted by the United States Environmental Protection Agency (EPA). This rule also amended certain test procedures for gaseous exhaust emissions, which are based on the standards of the International Civil Aviation Organization (ICAO) for gaseous emissions of oxides of nitrogen (NO<sub>x</sub>). This final rule, as published, contained an erroneous cross reference to an ICAO Annex in § 34.82. The correct reference is ICAO Annex 16.

**Correction**

■ In FR Doc. E9-9433 appearing on page 19125 of the **Federal Register** of Tuesday, April 28, 2009, make the following corrections:

**§ 34.82 [Amended]**

■ 1. On page 19128, second column, in the first sentence of § 34.82, remove the phrase “Appendix 2 to ICAO Annex 2 to ICAO Annex 16” and add the phrase “Appendix 2 to ICAO Annex 16” in its place.

Issued in Washington, DC, on May 29, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E9-12977 Filed 6-3-09; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 95**

[Docket No. 30669; Amdt. No. 481]

**IFR Altitudes; Miscellaneous Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or

direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, July 02, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Harry Hodges, Flight Procedure Standards Branch (AMCAFS-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 amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

**The Rule**

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The

effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95**

Airspace, Navigation (air).

Issued in Washington, DC, on May 29, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 2, 2009.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended as follows:

**REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS**

[Amendment 481 Effective Date, July 02, 2009]

From	To	MEA
<b>§ 95.6001 Victor Routes-U.S.</b>		
<b>§ 95.6031 VOR Federal Airway V31 Is Amended To Read in Part</b>		
Patuxent, MD VORTAC ..... *6000-MRA	*Aruye, MD FIX .....	2500
*Aruye, MD FIX ..... *6000-MRA **3000-GNSS MEA	Nottingham, MD VORTAC .....	##*6000

## REVISIONS TO IFR ALTITUDES &amp; CHANGEOVER POINTS—Continued

[Amendment 481 Effective Date, July 02, 2009]

From	To	MEA
#R-138 Unusable Below 6000'		
<b>§ 95.6045 VOR Federal Airway V45 Is Amended To Read in Part</b>		
Henderson, WV VORTAC ..... *10000-MCA Bremn, OH FIX, S Bnd **3000-GNSS MEA	*Bremn, OH FIX .....	**10000
Bremn, OH FIX .....	Appleton, OH VORTAC .....	3000
<b>§ 95.6051 VOR Federal Airway V51 Is Amended To Read in Part</b>		
Craig, FL VORTAC ..... *1700-MOCA *4000-GNSS MEA	Alma, GA VORTAC .....	*5000
<b>§ 95.6053 VOR Federal Airway V53 Is Amended To Read in Part</b>		
Columbia, SC VORTAC ..... Wills, SC FIX .....	Wills, SC FIX ..... Spartanburg, SC VORTAC .....	4000 2700
<b>§ 95.6084 VOR Federal Airway V84 Is Amended To Read in Part</b>		
MKTKT, NY FIX ..... *2400-MOCA *3000-GNSS MEA #Buf R-282 Unusable Below 6000	Buffalo, NY VOR/DME .....	#*6000
<b>§ 95.6097 VOR Federal Airway V97 Is Amended To Read in Part</b>		
Darbs, FL FIX ..... *4000-GNSS MEA	Plyer, FL FIX .....	*6000
Plyer, FL FIX ..... *1400-MOCA *4000-GNSS MEA	Clamp, FL FIX .....	*7000
Clamp, FL FIX ..... *1400-MOCA *4000-GNSS MEA	Hevvn, FL FIX .....	*6000
Hevvn, FL FIX ..... *1400-MOCA *2000-GNSS MEA	Addax, FL FIX .....	*3000
<b>§ 95.6139 VOR Federal Airway V139 Is Amended To Read in Part</b>		
Providence, RI VORTAC ..... *2000-GNSS MEA	Inndy, MA FIX .....	*3000
<b>§ 95.6151 VOR Federal Airway V151 Is Amended To Read in Part</b>		
Gails, MA FIX ..... *2000-GNSS MEA	Providence, RI VORTAC .....	*3000
<b>§ 95.6189 VOR Federal Airway V189 Is Amended To Read in Part</b>		
Wright Brothers, NC VOR/DME ..... *8000-MCA Darez, NC FIX, E Bnd **3000-GNSS MEA	*Darez, NC FIX .....	**8000
Darez, NC FIX ..... *3000-MOCA *4000-GNSS MEA	Tar River, NC VORTAC .....	*6000
<b>§ 95.6198 VOR Federal Airway V198 Is Amended To Read in Part</b>		
Sabine Pass, TX VOR/DME ..... *1700-MOCA *2000-GNSS MEA	White Lake, LA VOR/DME .....	*4000
<b>§ 95.6200 VOR Federal Airway V200 Is Amended To Read in Part</b>		
Racer, CO FIX .....	Meeker, CO VOR/DME .....	10500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued  
 [Amendment 481 Effective Date, July 02, 2009]

From	To	MEA	
<b>§ 95.6441 VOR Federal Airway V441 Is Amended To Read in Part</b>			
Ocala, FL VORTAC ..... *3000—MRA	*Lejko, FL FIX .....	2000	
*Lejko, FL FIX ..... *3000—MRA	Gators, FL VORTAC .....	2000	
<b>§ 95.6448 VOR Federal Airway V448 Is Amended To Read in Part</b>			
Class, ID FIX ..... *13000—MCA Oliby, MT FIX, NE Bnd **9900—MOCA **10000—GNSS MEA	*Oliby, MT FIX .....	**12000	
Oliby, MT FIX ..... *9000—GNSS MEA	Killy, MT FIX .....	*13000	
Killy, MT FIX ..... *7600—MOCA *8000—GNSS MEA	Kalispell, MT VOR/DME .....	*12000	
<b>§ 95.6537 VOR Federal Airway V537 Is Amended To Read in Part</b>			
Ocala, FL VORTAC ..... *3000—MRA	*Lejko, FL FIX .....	2000	
*Lejko, FL FIX ..... *3000—MRA	Gators, FL VORTAC .....	2000	
From	To	MEA	MAA
<b>§ 95.7001 Jet Routes</b>			
<b>§ 95.7149 Jet Route J149 Is Amended To Read in Part</b>			
Armel, VA VORTAC ..... *18000—GNSS MEA	Geffs, WV FIX .....	*31000	41000
Geffs, WV FIX ..... *18000—GNSS MEA	Hacks, WV FIX .....	*29000	41000
Hacks, WV FIX ..... *18000—GNSS MEA	Rosewood, OH VORTAC .....	*23000	45000
<b>§ 95.7167 Jet Route J167 Is Amended To Read in Part</b>			
Fort Yukon, AK VORTAC .....	U.S. Canadian Border .....	18000	45000
From	To	Changeover Points	
		Distance	From
<b>§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V448 Is Amended To Modify Changeover Point</b>			
Spokane, WA VORTAC .....	Kalispell, MT VOR/DME .....	105	Spokane.
<b>V45 Is Amended To Add Changeover Point</b>			
Henderson, WV VORTAC .....	Appleton, OH VORTAC .....	59	Henderson.

[FR Doc. E9-12991 Filed 6-3-09; 8:45 am]

BILLING CODE 4910-13-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 239 and 274

[Release Nos. 33-8998A; IC-28584A; File No. S7-28-07]

RIN 3235-AJ44

### Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** In connection with rules adopted in Release No. 33-8998 (January 13, 2009), which appeared in the *Federal Register* on January 26, 2009 (74 FR 4546), the Securities and Exchange Commission is making technical corrections to Form N-1A and Form N-4. Specifically, the Commission is correcting certain cross-references appearing in each Form and correcting a citation appearing in Form N-1A. The citation being corrected was originally adopted in its incorrect form in Release No. IC-23064 (Mar. 13, 1998), which appeared in the *Federal Register* on March 23, 1998 (63 FR 13916).

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, Office of Disclosure Regulation, at (202) 551-6784, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5720.

**SUPPLEMENTARY INFORMATION:** The Commission is making the following corrections to Release No. 33-8998 (January 13, 2009), which was published in FR Doc E9-1035 appearing on page 4546 in the *Federal Register* on January 26, 2009:

**Note:** The text of the form does not, and these amendments will not, appear in the Code of Federal Regulations.

1. On page 4588, second column, amendment 13, paragraph m.ii., beginning on line four, revise the reference “Items 17(d) and 22(b)” to read “Items 17(d) and 23(b)”.

2. On page 4588, second column, amendment 13, paragraph m.iii., on the second line, revise “reference” to read “references”, and on the third line, revise the reference “Item 22(a)” to read “Item 23(a)”.

3. On page 4593, second column, add amendment 13(a) to read as follows:

13(a). Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In the General Instructions, revising the citation “[15 U.S.C. 80a-24f-2]” in paragraph B.3. to read “[15 U.S.C. 80a-24(f)]”; and

b. In newly redesignated Item 17(c)(2), revising the reference “paragraph (d)(1)” to read “paragraph (c)(1)”.

4. On page 4593, second column, amendment 14, beginning on the fourth line and continuing on to the third column, revise the reference “Item 27(b)(ii) of Form N-1A” to read “Item 26(b)(4) of Form N-1A”; in the third column on the third line, revise the reference “Item 27(b)(ii) equation” to read “Item 26(b)(4) equation”; and in the third column on the fourth line, revise the reference “Item 20(b)(ii)” to read “Item 21(b)(ii)”.

Dated: May 28, 2009.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. E9-12956 Filed 6-3-09; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 524

[Docket No. FDA-2009-N-0665]

#### Ophthalmic and Topical Dosage Form New Animal Drugs; Change of Sponsor; Diclofenac; Ivermectin Otic Suspension

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for diclofenac sodium cream and ivermectin otic suspension from IDEXX Pharmaceuticals, Inc., to Boehringer Ingelheim Vetmedica, Inc.

**DATES:** This rule is effective June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** David R. Newkirk, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8307, e-mail: [david.newkirk@fda.hhs.gov](mailto:david.newkirk@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** IDEXX Pharmaceuticals, Inc., 7009 Albert Pick Rd., Greensboro, NC 27409, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141-186 for SURPASS

(diclofenac sodium) topical cream and NADA 141-174 for ACAREXX (ivermectin) otic suspension to Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506-2002. Accordingly, the regulations are amended in 21 CFR 524.590 and 524.1195 to reflect the change of sponsorship.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

#### PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 524.590 [Amended]

■ 2. In paragraph (b) of § 524.590, remove “065274” and in its place add “000010”.

#### § 524.1195 [Amended]

■ 3. In paragraph (b) of § 524.1195, remove “065274” and in its place add “000010”.

Dated: May 27, 2009.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E9-13015 Filed 6-3-09; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0267]

RIN 1625-AA00

#### Safety Zone; Sea World June Fireworks; Mission Bay, San Diego, CA

**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 June Nights Fireworks. 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 June 5, 2009 to 10 p.m. June 7, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0267 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-2009-0267 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 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 or e-mail, Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7262, e-mail [Shane.E.Jackson@uscg.mil](mailto:Shane.E.Jackson@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**

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 June Fireworks, 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 June 5, 2009 through June 7, 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 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: 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 0023–01 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 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 figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule involves the establishment of a safety zone around a fireworks barge. 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. Add new temporary zone § 165.T11–187 to read as follows:

### § 165.T11–187 Safety zone; Sea World June Fireworks; 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 June 5, 2009 through June 7, 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: May 18, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9-12980 Filed 6-3-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0103]

RIN 1625-AA00

#### Safety Zone; Sea World 4th of July Fireworks Display; Mission Bay, San Diego, CA

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 4th of July Fireworks Display. This safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8 p.m. on July 3, 2009 to 9:45 p.m. on July 5, 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-2009-0103 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-2009-0103 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 Shane Jackson, Waterways Management, Coast Guard; telephone 619-278-7262, e-mail [Shane.E.Jackson@uscg.mil](mailto:Shane.E.Jackson@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 20, 2009 we published a notice of proposed rulemaking (NPRM) entitled "Safety zone; Sea World 4th of July Fireworks Display; Mission Bay, San Diego, California" in the **Federal Register** (74 FR 17926). We received no comments on the proposed rule. No public meeting was requested, and none was held.

##### Background and Purpose

Fireworks & Stage FX Inc is sponsoring the Sea World 4th of July Fireworks Display, which will include a fireworks presentation originating from a land based firing site located at approximately 32°46'17.20" N, 117°13'24.72" W. The safety zone will encompass all navigable waters within 800 feet of the firing site. This 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 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 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 p.m. to 9:45 p.m. on July 3, 2009 thru July 5, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in effect for one hour and 45 minutes late in the evening. Before the effective period, we will publish a Local Notice to Mariners (LNM).

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

■ 2. Add new temporary zone § 165.T11-168 to read as follows:

#### § 165.T11-168 Safety zone; Sea World 4th of July Fireworks Display; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone are all the navigable waters within 800 feet of the firing site located at approximately 32°46'17.20" N, 117°13'24.72" W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on July 3, 2009 through July 5, 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: May 18, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9-12982 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1253]

RIN 1625-AA00

#### Safety Zone; Dutch Shoe Regatta; San Diego Harbor, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone within the navigable waters of the San Diego Harbor in San Diego, California for the Dutch Shoe Regatta. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other users and vessels 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 11 a.m. to 3 p.m. on July 24, 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-2008-1253 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-1253 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 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 Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (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**

On February 26, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Dutch Shoe Regatta; San Diego Harbor, San Diego, CA in the **Federal Register** (74 FR 8768). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

##### **Background and Purpose**

The San Diego Yacht Club is sponsoring the Dutch Shoe Regatta,

which is held in the San Diego Harbor in San Diego, CA. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, participating vessels, and other users and vessels 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 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 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 11 a.m. to 3 p.m. on July 24, 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 in effect for only 4 hours. Although the safety zone will apply to the entire width of the harbor, traffic will be allowed to pass through the zone with the permission of the Coast Guard. 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), 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 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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 involves the establishment of a safety zone in the vicinity of a marine regatta. 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary zone § 165.T11-140 to read as follows:

#### § 165.T11-140 Safety Zone: Dutch Shoe Regatta; San Diego Harbor, San Diego, CA.

(a) *Location.* The limits of the safety zone will encompass the following coordinates: 32°42.48' N, 117°14.00' W;

32°42.17' N, 117°14.08' W; 32°41.96' N, 117°13.60' W; 32°42.19' N, 117°13.50' W.

(b) *Enforcement Period.* This safety zone will be enforced from 11 a.m. to 3 p.m. on July 24, 2009. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Communications Center (COMCEN). The COMCEN may be contacted via VHF-FM channel 16 or (619) 278-7033.

(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 18, 2009.

**T.H. Farris,**  
Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9-12981 Filed 6-3-09; 8:45 am]

BILLING CODE 4910-15-P

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 9

#### RIN 2900-AN00

#### Servicemembers' Group Life Insurance Traumatic Injury Protection Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, an interim

final rule amending the Department of Veterans Affairs (VA) regulation regarding the Servicemembers' Group Life Insurance traumatic injury protection (TSGLI) program. The amendment was necessary in order to add losses that would be covered under the program and to define terms that are relevant to these new losses. The final rule also clarifies existing language in the regulation and reorganizes several existing provisions.

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Jeanne King, Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842-2000, ext. 4839 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** An interim final rule amending VA's regulation regarding the added losses to the TSGLI program, the clarification of existing language, and the reorganization of certain provisions was published in the **Federal Register** on November 26, 2008 (73 FR 71926).

We provided a 30-day comment period that ended on December 26, 2008. No comments were received. Based on the rationale set forth in the interim final rule, we now adopt the interim final rule as a final rule without change.

**Administrative Procedure Act**

This document, without change, affirms the amendment made by the interim final rule that is already in effect. The Secretary of Veterans Affairs concluded that, under 5 U.S.C. 553(b)(3)(B), there was good cause to dispense with the opportunity for prior comment with respect to this rule. The Secretary found that it was impracticable, unnecessary, and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. Nevertheless, the Secretary invited public comment on the interim final rule but did not receive any comments. The amendment was consistent with the priorities established by Congress and was needed on an expedited basis because the prior version of the regulation would have precluded VA from providing a TSGLI payment for the other losses that the agency had determined should be added as a covered benefit under the program.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of

anticipated costs and benefits before issuing any rule that may result in an expenditure by the State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

**Paperwork Reduction Act**

This document expands the collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521) (the Act). Accordingly, under section 3507(d) of the Act, VA submitted a copy of the amended TSGLI form (titled Application for TSGLI Benefits Form) to OMB for its review of the proposed collection of information concurrent with the publication of the interim final rule.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance Program number and title for this rule is 64.103, Life Insurance for Veterans.

**List of Subjects in 38 CFR Part 9**

Life insurance, Military personnel, Veterans.

Approved: May 19, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

**PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE**

■ Accordingly, the interim final rule amending 38 CFR part 9, which was published at 73 FR 71926 on November 26, 2008, is adopted as a final rule without change.

[FR Doc. E9-13097 Filed 6-3-09; 8:45 am]

**BILLING CODE 8320-01-P**

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3020**

[Docket Nos. MC2009-24, CP2009-28; Order No. 218]

**New Postal Product**

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Final rule.

The Commission is adding the Postal Service's Royal Mail Inbound Air Parcel Post Agreement negotiated service agreement to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

**DATES:** Effective June 4, 2009 and is applicable beginning May 29, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:****I. Introduction**

On April 21, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Royal Mail Inbound Air Parcel Post Agreement (Agreement) to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Governors have established a price and classification “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. This Request has been assigned Docket No. MC2009-24.

The Postal Service contemporaneously filed the Agreement related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The Agreement has been assigned Docket No. CP2009-28.

In support of its Request, the Postal Service filed the following materials: (1) A statement of supporting justification as required by 39 CFR 3020.32;<sup>2</sup> (2) Governors’ Decision No. 09-5 authorizing the new product which includes a certification of the vote, requested changes in the Mail Classification Schedule (MCS) product list, an analysis of the Agreement, a certification of compliance with 39 U.S.C. 3633(a);<sup>3</sup> and (3) a redacted version of the Agreement.<sup>4</sup> An additional certification of compliance with 39 U.S.C. 3633(a) is included to reflect changes in the estimated amount of inward land rate payments in 2010 due to revisions to the payment structure under the Universal Postal Union’s Parcel Post Regulations that will become effective on January 1, 2010.<sup>5</sup> Substantively, the Request seeks to add the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List. *Id.* at 1-2.

In the statement of supporting justification, Giselle Valera, Executive Director, Global Finance and Business Analysis, asserts that the service to be provided under the Agreement will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal

Service’s total institutional costs. *Id.*, Attachment 1. Thus, Ms. Valera contends there will be no issue of subsidization of competitive products by market dominant products as a result of this Agreement. *Id.* W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the Agreement complies with 39 U.S.C. 3633(a). *See id.*, Attachment C.

The Postal Service filed much of the supporting materials, including the unredacted Governors’ Decision and the unredacted Agreement, under seal. In its Request, the Postal Service maintains that portions of the Agreement with prices, terms and conditions along with related financial information, and portions of the accompanying analyses that provide prices, or financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 207, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>6</sup>

On May 12, 2009, the Postal Service filed revised information relating to two changes that occurred subsequent to the filing of its Request.<sup>7</sup> The first change corrects certain discrepancies in Transportation Cost Systems (TRACS) data filed by the Postal Service in Docket No. ACR2008. In the FY 2008 Annual Compliance Determination, the Commission found minor discrepancies in the TRACS data used to distribute FY 2008 highway transportation costs to a few international products. Revised Notice at 1-2. On April 30, 2009, the Postal Service filed corrected data in Library Reference USPS-FY08-NP37 in Docket No. ACR2008, explaining that the discrepancies were inadvertent.

The second change concerns a reduction in the inward land rates applicable for Universal Postal Union (UPU) air parcels tendered by foreign posts to the United States beginning on July 1, 2009.<sup>8</sup> The reduction is due to the denial of a bonus payment to the Postal Service for the delivery of inbound UPU parcels starting July 1, 2009. The Postal Service believes that the denial is in error and is appealing

it. In the interim, however, the Postal Service revised financial information showing effects of the reduced inward land rates.

The Postal Service concludes that the revised financial information does not adversely affect the cost coverage of the Royal Mail Agreement and the Agreement is still in compliance with all applicable statutory and regulatory requirements. *Id.* at 3.

**II. Comments**

Comments were filed by the Public Representative,<sup>9</sup> and Express Delivery and Logistics Association (XLA).<sup>10</sup> The Postal Service filed a reply to the comments of XLA,<sup>11</sup> and XLA filed reply comments to the Postal Service comments.<sup>12</sup> The Public Representative filed reply comments to the revised Notice filed by the Postal Service.<sup>13</sup>

The Public Representative states that the Postal Service’s filing complies with applicable Commission rules of practice and procedure, and concludes that the Royal Mail Inbound Air Parcel Post Agreement comports with the requirements of title 39. Public Representative Comments at 1 and 4. The Public Representative determines that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3. He also states that the Agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative also commented on the Postal Service’s revised information, concluding that the instant Agreement appears to have more than adequate cost coverage. Public Representative Reply Comments at 2. As

<sup>9</sup>Public Representative Comments in Response to United States Postal Service Request To Add Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List, May 5, 2009 (Public Representative Comments).

<sup>10</sup>Comments of Express Delivery and Logistics Association Pursuant to PRC Order 207, May 5, 2009 (XLA Comments).

<sup>11</sup>Reply of the United States Postal Service to Comments by the Express Delivery and Logistics Association in Response to Order No. 207, May 6, 2009 (Postal Service Reply Comments).

<sup>12</sup>Final Reply of XLA to Reply by the United States Postal Service Pursuant to XLA’s Comments Pursuant to PRC Order 207, May 7, 2009 (XLA Reply Comments). XLA also filed an accompanying Motion of Express Delivery and Logistics Association for Late Acceptance of Comments on United States Postal Service Reply to XLA Comments on Order 207, May 7, 2009. The motion is granted.

<sup>13</sup>Public Representative Comments in Reply to the United States Postal Service Notice of Filing Revised Information Under 39 CFR 3015.5(c)(1), May 20, 2009 (Public Representative Reply Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Reply to the United States Postal Service’s Notice of Filing Revised Information Under 39 CFR 3015.5(c)(1), May 20, 2009. The motion is granted.

<sup>1</sup>Request of the United States Postal Service to Add Royal Mail Inbound Air Parcel Post Agreement to the Competitive Products List and Notice of Filing (Under Seal) Contract and Enabling Governors’ Decision, April 21, 2009 (Request).

<sup>2</sup>Attachment 1 to the Request.

<sup>3</sup>Attachment 2 to the Request.

<sup>4</sup>Attachment 3 to the Request.

<sup>5</sup>Attachment 4 to the Request.

<sup>6</sup>PRC Order No. 207, Notice and Order Concerning Royal Mail Inbound Air Parcel Post Negotiated Service Agreement, April 27, 2009 (Order No. 207).

<sup>7</sup>Notice of United States Postal Service of Filing Revised Information Under 39 CFR 3015.5(c)(1), May 12, 2009 (Revised Notice).

<sup>8</sup>Inward land rates are charges posts pay each other for delivery of incoming parcels. The Postal Service indicates that inward land rates are based on a rate formula prescribed by the UPU’s Postal Operations Council. Alternatively, countries may negotiate rates with other UPU members. *Id.* at 2, n.1.

a result, he maintains that the Agreement appears to be in compliance with 39 U.S.C. 3633.

XLA's comments focus on section 407(e)(2) of title 39 regarding application of customs laws to shipments of competitive products by the Postal Service and similar shipments by private companies. XLA Comments at 1. XLA contends that the Postal Service has singular customs advantages for all international mail. It objects to adding the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Products List. *Id.* XLA requests that the Commission reject the Postal Service request until a single customs clearance process has been adopted or, alternatively, condition approval of the request on Postal Service using the commercial custom clearance process applicable to competing inbound international parcel delivery services. *Id.* at 2.

In its reply, the Postal Service contends that XLA raises similar claims to those filed by International Transit Solutions, Inc. to Order No. 141 regarding Docket No. MC2009-10. Postal Service Reply Comments at 1. It argues that the Commission has previously ruled that such comments (relative to customs issues) are outside the scope of the rate and classification proceedings. *Id.* at 1-2. Further, the Postal Service incorporates by reference its previous responses to the comments made by International Transit Solutions and, in addition, argues that this proceeding does not implicate customs procedures. *Id.* at 3.

In its reply to the Postal Service, XLA contends that its comments are distinguishable from its earlier comments since it has not cited any regulatory advantages attributed to the Postal Service in the instant case. XLA Reply Comments at 1. XLA takes issue with Postal Service comments that section 407(e)(2) is being implemented and offers its view that the PAEA "has interconnected parts [which] must be applied evenly and simultaneously as written". *Id.* at 2.

### III. Commission Analysis

The Commission has reviewed the Request, the Agreement, the financial analysis filed under seal, and the comments filed by all parties.

**Statutory requirements.** The Commission's statutory responsibilities in this instance entail assigning the Royal Mail Inbound Air Parcel Post Agreement to either the Market Dominant Product List or the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal

for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

**Product list assignment.** In determining whether to assign the Royal Mail Inbound Air Parcel Post Agreement as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

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

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies. It indicates that if it increases prices, it risks losing inbound United Kingdom-origin volume to a private competitor in the international shipping industry. Request, Attachment 1, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar international parcel delivery services. *Id.* It further states that this Agreement has been classified as competitive because of its exclusion from the letter monopoly and the level of competition in the relevant market. *Id.*

The Postal Service notes that even though some incoming parcels subject to this Agreement may contain letters, the prices paid under the Agreement are six times the rate for the first ounce of a First-Class Mail letter and are expected to weigh more than 12.5 ounces. *Id.* at para. (e). It also remarks that the Royal Mail Group and its customers find the terms and conditions of the Agreement satisfactory since it is aware of competitors offering similar services. *Id.* at para. (g). The Postal Service states that the market for

expedited delivery services is highly competitive and the addition of the Agreement should have minimal if any impact on small business concerns. It observes that Royal Mail's small business customers will have an additional option for shipping articles to the United States and small businesses in this country will benefit from being able to receive shipments from the United Kingdom. Therefore, the Postal Service concludes the net impact on small business should be positive. *Id.* at para. (h).

The Public Representative supports the proposed classification of Royal Mail Inbound Air Parcel Post Agreement as a competitive product. Public Representative Reply Comments at 1.

As noted above, XLA opposes adding the instant Agreement to the Competitive Product List on the grounds that the Postal Service receives preferential customs clearance processing. XLA Comments at 1. The issue raised by XLA is beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposed Agreement is consistent with the policies of sections 3632, 3633, and 3642 of title 39.<sup>14</sup> The issue raised by XLA does not implicate changes to the Mail Classification Schedule.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that the Royal Mail Inbound Air Parcel Post Agreement is appropriately classified as a competitive product and should be added to the Competitive Product List.<sup>15</sup>

**Cost considerations.** The Postal Service presents a financial analysis showing that Royal Mail Inbound Air Parcel Post results in cost savings while ensuring that the Agreement covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that the Royal Mail Inbound Air Parcel Post Agreement should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products

<sup>14</sup> See Public Representative Comments at 2.

<sup>15</sup> In Docket No. RM2007-1, the Commission previously accepted and considered comments from multiple parties (XLA included) on the categorization of classes of products, including outbound international mail. See PRC Order No. 43, Order Establishing Ratemaking Regulations For Market Dominant and Competitive Products, October 29, 2007. In that docket, XLA argued that outbound and inbound international mail should be categorized as competitive. *Id.* at 85.

(39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Royal Mail Inbound Air Parcel Post Agreement indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service shall promptly notify the Commission of the termination date of the Agreement. If the Agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves the Royal Mail Inbound Air Parcel Post Agreement as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

*It is Ordered:*

1. Royal Mail Inbound Air Parcel Post Agreement (MC2009–24 and CP2009–28) is added to the Competitive Product List as a new product under Priority Mail, Inbound Air Parcel Post.

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

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

#### List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

**Judith M. Grady**,  
*Acting Secretary.*

■ For the reasons stated in the preamble, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

#### PART 3020—PRODUCT LISTS

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

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

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

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

Part A—Market Dominant Products

1000 Market Dominant Product List  
First-Class Mail

Single-Piece Letters/Postcards	[Reserved for Product Description]
Bulk Letters/Postcards	Not Flat-Machinables (NFM)/Parcels
Flats	[Reserved for Product Description]
Parcels	Periodicals
Outbound Single-Piece First-Class Mail	[Reserved for Class Description]
International	Within County Periodicals
Inbound Single-Piece First-Class Mail	[Reserved for Product Description]
International	Outside County Periodicals
Standard Mail (Regular and Nonprofit)	[Reserved for Product Description]
High Density and Saturation Letters	Package Services
High Density and Saturation Flats/Parcels	[Reserved for Class Description]
Carrier Route	Single-Piece Parcel Post
Letters	[Reserved for Product Description]
Flats	Inbound Surface Parcel Post (at UPU rates)
Not Flat-Machinables (NFM)/Parcels	[Reserved for Product Description]
Periodicals	Bound Printed Matter Flats
Within County Periodicals	[Reserved for Product Description]
Outside County Periodicals	Bound Printed Matter Parcels
Package Services	[Reserved for Product Description]
Single-Piece Parcel Post	Media Mail/Library Mail
Inbound Surface Parcel Post (at UPU Rates)	[Reserved for Product Description]
Bound Printed Matter Flats	Special Services
Bound Printed Matter Parcels	[Reserved for Class Description]
Media Mail/Library Mail	Ancillary Services
Special Services	[Reserved for Product Description]
Ancillary Services	Address Correction Service
International Ancillary Services	[Reserved for Product Description]
Address List Services	Applications and Mailing Permits
Caller Service	[Reserved for Product Description]
Change-of-Address Credit Card	Business Reply Mail
Authentication	[Reserved for Product Description]
Confirm	Bulk Parcel Return Service
International Reply Coupon Service	[Reserved for Product Description]
International Business Reply Mail Service	Certified Mail
Money Orders	[Reserved for Product Description]
Post Office Box Service	Certificate of Mailing
Negotiated Service Agreements	[Reserved for Product Description]
HSBC North America Holdings Inc.	Collect on Delivery
Negotiated Service Agreement	[Reserved for Product Description]
Bookspan Negotiated Service Agreement	Delivery Confirmation
Bank of America Corporation Negotiated	[Reserved for Product Description]
Service Agreement	Insurance
The Bradford Group Negotiated Service	[Reserved for Product Description]
Agreement	Merchandise Return Service
Inbound International	[Reserved for Product Description]
Canada Post—United States Postal Service	Parcel Airlift (PAL)
Contractual Bilateral Agreement for	[Reserved for Product Description]
Inbound Market Dominant Services	Registered Mail
Market Dominant Product Descriptions	[Reserved for Product Description]
First-Class Mail	Return Receipt
[Reserved for Class Description]	[Reserved for Product Description]
Single-Piece Letters/Postcards	Return Receipt for Merchandise
[Reserved for Product Description]	[Reserved for Product Description]
Bulk Letters/Postcards	Restricted Delivery
[Reserved for Product Description]	[Reserved for Product Description]
Flats	Shipper-Paid Forwarding
[Reserved for Product Description]	[Reserved for Product Description]
Parcels	Signature Confirmation
[Reserved for Product Description]	[Reserved for Product Description]
Outbound Single-Piece First-Class Mail	Special Handling
International	[Reserved for Product Description]
[Reserved for Product Description]	Stamped Envelopes
Inbound Single-Piece First-Class Mail	[Reserved for Product Description]
International	Stamped Cards
[Reserved for Product Description]	[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)	Premium Stamped Stationery
[Reserved for Class Description]	[Reserved for Product Description]
High Density and Saturation Letters	Premium Stamped Cards
[Reserved for Product Description]	[Reserved for Product Description]
High Density and Saturation Flats/Parcels	International Ancillary Services
[Reserved for Product Description]	[Reserved for Product Description]
Carrier Route	International Certificate of Mailing
[Reserved for Product Description]	[Reserved for Product Description]
Letters	International Registered Mail
[Reserved for Product Description]	[Reserved for Product Description]
Flats	International Return Receipt

[Reserved for Product Description]  
 International Restricted Delivery  
 [Reserved for Product Description]  
 Address List Services  
 [Reserved for Product Description]  
 Caller Service  
 [Reserved for Product Description]  
 Change-of-Address Credit Card  
 Authentication  
 [Reserved for Product Description]  
 Confirm  
 [Reserved for Product Description]  
 International Reply Coupon Service  
 [Reserved for Product Description]  
 International Business Reply Mail Service  
 [Reserved for Product Description]  
 Money Orders  
 [Reserved for Product Description]  
 Post Office Box Service  
 [Reserved for Product Description]  
 Negotiated Service Agreements  
 [Reserved for Class Description]  
 HSBC North America Holdings Inc.  
 Negotiated Service Agreement  
 [Reserved for Product Description]  
 Bookspan Negotiated Service Agreement  
 [Reserved for Product Description]  
 Bank of America Corporation Negotiated  
 Service Agreement  
 The Bradford Group Negotiated Service  
 Agreement  
 Part B—Competitive Products  
 Competitive Product List  
 Express Mail  
 Express Mail  
 Outbound International Expedited Services  
 Inbound International Expedited Services  
 Inbound International Expedited Services 1  
 (CP2008-7)  
 Inbound International Expedited Services 2  
 (MC2009-10 and CP2009-12)  
 Priority Mail  
 Priority Mail  
 Outbound Priority Mail International  
 Inbound Air Parcel Post  
 Royal Mail Group Inbound Air Parcel Post  
 Agreement  
 Parcel Select  
 Parcel Return Service  
 International  
 International Priority Airlift (IPA)  
 International Surface Airlift (ISAL)  
 International Direct Sacks—M—Bags  
 Global Customized Shipping Services  
 Inbound Surface Parcel Post (at Non-UPU  
 Rates)  
 Canada Post—United States Postal Service  
 Contractual Bilateral Agreement for  
 Inbound Competitive Services (MC2009-  
 8 and CP2009-9)  
 International Money Transfer Service  
 International Ancillary Services  
 Special Services  
 Premium Forwarding Service  
 Negotiated Service Agreements  
 Domestic  
 Express Mail Contract 1 (MC2008-5)  
 Express Mail Contract 2 (MC2009-3 and  
 CP2009-4)  
 Express Mail Contract 3 (MC2009-15 and  
 CP2009-21)  
 Express Mail & Priority Mail Contract 1  
 (MC2009-6 and CP2009-7)

Express Mail & Priority Mail Contract 2  
 (MC2009-12 and CP2009-14)  
 Express Mail & Priority Mail Contract 3  
 (MC2009-13 and CP2009-17)  
 Express Mail & Priority Mail Contract 4  
 (MC2009-17 and CP2009-24)  
 Express Mail & Priority Mail Contract 5  
 (MC2009-18 and CP2009-25)  
 Parcel Return Service Contract 1 (MC2009-  
 1 and CP2009-2)  
 Priority Mail Contract 1 (MC2008-8 and  
 CP2008-26)  
 Priority Mail Contract 2 (MC2009-2 and  
 CP2009-3)  
 Priority Mail Contract 3 (MC2009-4 and  
 CP2009-5)  
 Priority Mail Contract 4 (MC2009-5 and  
 CP2009-6)  
 Priority Mail Contract 5 (MC2009-21 and  
 CP2009-26)  
 Outbound International  
 Global Direct Contracts (MC2009-9,  
 CP2009-10, and CP2009-11)  
 Global Expedited Package Services (GEPS)  
 Contracts  
 GEPS 1 (CP2008-5, CP2008-11, CP2008-  
 12, and CP2008-13, CP2008-18,  
 CP2008-19, CP2008-20, CP2008-21,  
 CP2008-22, CP2008-23, and CP2008-24)  
 Global Plus Contracts  
 Global Plus 1 (CP2008-9 and CP2008-10)  
 Global Plus 2 (MC2008-7, CP2008-16 and  
 CP2008-17)  
 Inbound International  
 Inbound Direct Entry Contracts With  
 Foreign Postal Administrations  
 (MC2008-6, CP2008-14 and CP2008-15)  
 International Business Reply Service  
 Competitive Contract 1 (MC2009-14 and  
 CP2009-20)  
 Competitive Product Descriptions  
 Express Mail  
 [Reserved for Group Description]  
 Express Mail  
 [Reserved for Product Description]  
 Outbound International Expedited Services  
 [Reserved for Product Description]  
 Inbound International Expedited Services  
 [Reserved for Product Description]  
 Priority  
 [Reserved for Product Description]  
 Priority Mail  
 [Reserved for Product Description]  
 Outbound Priority Mail International  
 [Reserved for Product Description]  
 Inbound Air Parcel Post  
 [Reserved for Product Description]  
 Parcel Select  
 [Reserved for Group Description]  
 Parcel Return Service  
 [Reserved for Group Description]  
 International  
 [Reserved for Group Description]  
 International Priority Airlift (IPA)  
 [Reserved for Product Description]  
 International Surface Airlift (ISAL)  
 [Reserved for Product Description]  
 International Direct Sacks—M—Bags  
 [Reserved for Product Description]  
 Global Customized Shipping Services  
 [Reserved for Product Description]  
 International Money Transfer Service  
 [Reserved for Product Description]  
 Inbound Surface Parcel Post (at Non-UPU  
 Rates)  
 [Reserved for Product Description]

International Ancillary Services  
 [Reserved for Product Description]  
 International Certificate of Mailing  
 [Reserved for Product Description]  
 International Registered Mail  
 [Reserved for Product Description]  
 International Return Receipt  
 [Reserved for Product Description]  
 International Restricted Delivery  
 [Reserved for Product Description]  
 International Insurance  
 [Reserved for Product Description]  
 Negotiated Service Agreements  
 [Reserved for Group Description]  
 Domestic  
 [Reserved for Product Description]  
 Outbound International  
 [Reserved for Group Description]

Part C—Glossary of Terms and Conditions  
 [Reserved]

Part D—Country Price Lists for International  
 Mail [Reserved]

[FR Doc. E9-13046 Filed 6-3-09; 8:45 am]

**BILLING CODE 7710-FW-P**

## **NATIONAL SCIENCE FOUNDATION**

### **45 CFR Part 681**

**RIN 3145-AA50**

#### **Program Fraud Civil Remedies Act**

**AGENCY:** National Science Foundation.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), which authorizes NSF to impose, through administrative adjudication, civil penalties and assessments against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false, fictitious, or fraudulent claim or written statement to the agency. The regulations establish the procedures that NSF will follow in implementing PFCRA, and specify the hearing and appeal rights of persons subject to penalties and assessments under PFCRA.

**DATES:** *Effective Date:* These regulations are effective July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Gold, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, Telephone: 703-292-8060.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Public Law 99-509 (codified at 31 U.S.C. 3801-3812) to establish an administrative remedy against any

person who makes, or causes to be made, a false claim or written statement to any of certain Federal agencies. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties and assessments against individuals who file false claims or statements for which the liability is \$150,000 or less. When PFCRA was enacted, its coverage did not extend to NSF. However, pursuant to section 7017 of the America COMPETES Act (Pub. L. 110-69), the scope of PFCRA's coverage has been expanded to include NSF.

PFCRA requires each affected agency to promulgate rules and regulations necessary to implement its provisions. Following PFCRA's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE), an inter-agency task force was established under the leadership of the Department of Health and Human Services to develop model regulations for implementation of PFCRA by all affected agencies. This action was in keeping with the stated desire of the Senate Governmental Affairs Committee that "the regulations would be substantially similar throughout the government." (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985)). The PCIE recommended adoption of the model rules by all affected agencies.

NSF published a proposed rule with request for comment in the **Federal Register** on December 30, 2008 [73 FR 79761]. No comments were received. Thus, NSF has decided to issue the final rule as proposed.

### Statutory and Regulatory Analysis

Under the Act, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that the person named in the report is liable under the Act. Upon an affirmative finding of adequate evidence, the reviewing official sends to the Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency may institute administrative proceedings against the person only if the Attorney General (or his/her designee) approves. Any penalty or assessment imposed under the Act may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

The regulations designate the NSF General Counsel or his or her designee

as the reviewing official. Any administrative adjudication under the Act will be presided over by an Administrative Law Judge and any appeals from the Administrative Law Judge's decision will be decided by the NSF Director or his or her designee.

#### *Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)*

This rule will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### *Executive Order 12866*

OMB has determined this rule to be nonsignificant.

#### *Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))*

This rule will not have a significant adverse impact on a substantial number of small entities.

#### *Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104-4)*

This rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

#### *Federalism (Executive Order 13132)*

This rule does not have Federalism implications, as set forth in Executive Order 13132. 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.

### List of Subjects in 45 CFR Part 681

Claims, Fraud, Penalties.

■ For the reasons stated in the preamble, NSF adds a new part 681 to chapter VI of title 45 of the Code of Federal Regulations to read as follows:

### **PART 681—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS**

#### **Purpose, Definitions, and Basis for Liability**

- Sec.
- 681.1 Purpose.
- 681.2 Definitions.
- 681.3 What is the basis for the imposition of civil penalties and assessments?

#### **Procedures Leading to Issuance of a Complaint**

- 681.4 Who investigates program fraud?
- 681.5 What happens if program fraud is suspected?
- 681.6 When may NSF issue a complaint?
- 681.7 What is contained in a complaint?
- 681.8 How will the complaint be served?

### **Procedures Following Service of a Complaint**

- 681.9 How does a defendant respond to the complaint?
- 681.10 What happens if a defendant fails to file an answer?
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- 681.12 What kind of hearing is contemplated?
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- 681.16 Can the reviewing official or the ALJ be disqualified?
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- 681.19 Are witness lists exchanged before the hearing?
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- 681.23 How are documents filed and served with the ALJ?
- 681.24 How is time computed?
- 681.25 Where is the hearing held?
- 681.26 How will the hearing be conducted and who has the burden of proof?
- 681.27 How is evidence presented at the hearing?
- 681.28 How is witness testimony presented?
- 681.29 Will the hearing proceedings be recorded?
- 681.30 Are ex parte communications between a party and the ALJ permitted?
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- 681.38 What happens if an initial decision is appealed?
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- 681.40 How does the authority head dispose of an appeal?
- 681.41 What judicial review is available?
- 681.42 Can the administrative complaint be settled voluntarily?
- 681.43 How are civil penalties and assessments collected?
- 681.44 Is there a right to administrative offset?
- 681.45 What happens to collections?
- 681.46 What if the investigation indicates criminal misconduct?

## Purpose, Definitions, and Basis for Liability

### § 681.1 Purpose.

This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (“PFCRA”). PFCRA provides NSF, and other Federal agencies, with an administrative remedy to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious, or fraudulent claims or written statements to NSF. PFCRA also provides due process protections to all persons who are subject to administrative proceedings under this part.

### § 681.2 Definitions.

For the purposes of this part—

*ALJ* means an Administrative Law Judge in the authority appointed pursuant to section 3105 of title 5 or detailed to the authority pursuant to section 3344 of title 5.

*Authority* means the National Science Foundation.

*Authority head* means the Director of the National Science Foundation or the Director’s designee.

*Benefit* is intended to cover anything of value, including but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

*Claim* is defined in section 3801(a)(3) of title 31 of the United States Code.

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 681.8.

*Defendant* means any person alleged in a complaint under § 681.7 to be liable for a civil penalty or assessment pursuant to PFCRA.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ required by § 681.33, and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Investigating official* means the NSF Inspector General or an employee of the Office of Inspector General designated by the Inspector General.

*Knows or has reason to know* is defined in section 3801(a)(5) of title 31 of the United States Code.

*Makes* shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

*Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

*Representative* means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or the Commonwealth of Puerto Rico, or any other individual designated in writing by the defendant.

*Reviewing official* means the General Counsel of NSF or the General Counsel’s designee.

*Statement* is defined in section 3801(a)(9) of title 5 of the United States Code.

### § 681.3 What is the basis for the imposition of civil penalties and assessments?

(a) *Claims.* (1) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each claim if that person makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such a claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of NSF.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section may also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such a claim.

(b) *Statements.* (1) Any person shall be subject, in addition to any other

remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement if that person makes a written statement that the person knows or has reason to know—

(i) Asserts a material fact which is false, fictitious, or fraudulent; or

(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such a statement; and

(iii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of this statement.

(2) A person will only be subject to a civil penalty under 681.3(b)(1) if the written statement made by the person contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of this statement.

(3) Each written representation, certification, or affirmation constitutes a separate statement.

(4) A statement shall be considered made to NSF when it is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of NSF.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a false, fictitious, or fraudulent claim or statement under this section, each such person may be held liable for a civil penalty and assessment, where appropriate, under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of persons.

## Procedures Leading to Issuance of a Complaint

### § 681.4 Who investigates program fraud?

The Inspector General, or his or her designee, is the investigating official responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under PFCRA and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents.

### § 681.5 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this part is warranted, the investigating official

submits a report containing the findings and conclusions of the investigation to the reviewing official. If the reviewing official determines that the report provides adequate evidence that a person made a false, fictitious or fraudulent claim or statement, the reviewing official shall transmit to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

(1) The reasons for the referral;  
 (2) The claims or statements upon which liability would be based;  
 (3) The evidence that supports liability;  
 (4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(b) If, at any time, the Attorney General or his or her designee requests in writing that this administrative process be stayed, the authority head, as identified in § 681.2(c) of this part, must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

#### **§ 681.6 When may NSF issue a complaint?**

NSF may issue a complaint:

(a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed \$150,000.

#### **§ 681.7 What is contained in a complaint?**

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations.

(b) The complaint will state that NSF seeks to impose civil penalties, assessments, or both, against the defendant and will include:

(1) The allegations of liability against the defendant, including the statutory

basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) A statement that the defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer; and

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(c) The reviewing official must serve any complaint on the defendant and, if a hearing is requested by the defendant, provide a copy to the ALJ assigned to the case.

#### **§ 681.8 How will the complaint be served?**

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

- (1) Registered or certified mail; or
- (2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) When served with the complaint, the defendant should also be served with a copy of this part 681 and 31 U.S.C. 3801–3812.

#### **Procedures Following Service of a Complaint**

##### **§ 681.9 How does a defendant respond to the complaint?**

(a) A defendant may file an answer with the reviewing official within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person

authorized by the defendant to act as the defendant's representative, if any.

(c) If the defendant is unable to file a timely answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with the ALJ and a copy must be served on the reviewing official.

##### **§ 681.10 What happens if a defendant fails to file an answer?**

(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under PFCRA.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) At any time before an initial decision becomes final, a defendant may file a motion with the ALJ asking that the case be reopened. An ALJ may only reopen a case if, in this motion, he or she determines that the defendant set forth extraordinary circumstances that prevented the defendant from filing a timely answer. The initial decision will be stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If the ALJ determines that a defendant has demonstrated extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision,

and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to reconsideration under § 681.35.

(i) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously, based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(l) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such a decision.

**§ 681.11 What happens once an answer is filed?**

(a) When the reviewing official receives an answer, he or she must file concurrently, the complaint and the answer with the ALJ, along with a designation of NSF's representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the NSF representative, in the same manner as the complaint, which is described in § 681.8. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

(1) The tentative date, time, and place of the hearing;

(2) The legal authority and jurisdiction under which the hearing is being held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for NSF; and

(6) Such other matters as the ALJ deems appropriate.

**Hearing Procedures**

**§ 681.12 What kind of hearing is contemplated?**

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

**§ 681.13 At the hearing, what rights do the parties have?**

Each party has the right to:

(a) Be represented by a representative;

(b) Request a pre-hearing conference and participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

**§ 681.14 What is the role of the ALJ?**

An ALJ retained by NSF serves as the presiding officer at all hearings.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary

judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

**§ 681.15 How are the functions of the ALJ separated from those of the investigating official and the reviewing official?**

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the review of the initial decision by the authority head; or

(3) Make the collection of penalties and assessment under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

**§ 681.16 Can the reviewing official or ALJ be disqualified?**

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

**§ 681.17 What rights are there to review documents?**

(a) Once the ALJ issues a hearing notice pursuant to § 681.11(b), and upon

written request to the reviewing official, the defendant may:

(1) Review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents; and

(2) Obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(b) The notice sent to the Attorney General from the reviewing official as described in § 681.5(a) is not discoverable under any circumstances.

(c) If the reviewing official does not respond to the defendant's request within 20 days, the defendant may file a motion to compel disclosure of the documents with the ALJ subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 681.9.

**§ 681.18 What type of discovery is authorized and how is it conducted?**

(a) The following types of discovery are authorized:

- (1) Requests for production of documents for inspection and copying;
- (2) Requests for admissions of authenticity of any relevant document or of the truth of any relevant fact;
- (3) Written interrogatories; and
- (4) Depositions.

(b) For the purpose of this section, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for Discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion

and/or a motion for protective order as provided in § 681.22.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 681.22.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed by § 681.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

**§ 681.19 Are witness lists exchanged before the hearing?**

(a) As ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that each party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party in advance unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

**§ 681.20 Can witnesses be subpoenaed?**

(a) A party wishing to procure the appearance and testimony of any

individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request not less than 15 days before the date of the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 681.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 681.21 Who pays the costs for a subpoena?**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of NSF, a check of fees and mileage need not accompany the subpoena.

**§ 681.22 Are protective orders available?**

(a) A party or prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions;
- (3) That the discovery may be had only through a method of discovery other than requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of the discovery be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 681.23 How are documents filed and served with the ALJ?**

(a) Documents filed with the ALJ must include an original and two copies. Every document filed in the proceeding must contain a title (e.g., motion to quash subpoena), a caption setting forth the title of the action, and the case number assigned by the ALJ. Every document must be signed by the person on whose behalf the paper was filed, or his or her representative.

(b) Documents are considered filed when they are mailed. The date of mailing may be established by a certificate from the party or its representative, or by proof that the document was sent by certified or registered mail.

(c) A party filing a document with the ALJ must, at the time of filing, serve a copy of such document on every other party. When a party is represented by a representative, the party's representative must be served in lieu of the party.

(d) A certificate of the individual serving the document constitutes proof of service. The certificate must set forth the manner in which the document was served.

**§ 681.24 How is time computed?**

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government are excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

**§ 681.25 Where is the hearing held?**

The ALJ will hold the hearing in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made to NSF; or

(c) As agreed upon by the defendant and the ALJ.

**§ 681.26 How will the hearing be conducted and who has the burden of proof?**

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the penalty and/or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers filed in the proceeding constitute the record for a decision by the ALJ.

(b) NSF must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

**§ 681.27 How is evidence presented at the hearing?**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where he or she deems appropriate.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence shall be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

**§ 681.28 How is witness testimony presented?**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 681.19.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence.

(d) The ALJ shall permit the parties to conduct such cross examination as may be required for a full and true disclosure of the facts.

(e) Upon motion of any party, the ALJ shall order witnesses excluded from the hearing room so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 681.29 Will the hearing proceedings be recorded?**

The hearing will be recorded and transcribed. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

**§ 681.30 Are ex parte communications between a party and the ALJ permitted?**

Ex parte communications between a party and the ALJ are not permitted unless the other party consents to such a communication taking place. This does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 681.31 Are there sanctions for misconduct?**

(a) The ALJ may sanction a person, including any party or representative,

for failing to comply with an order, or for engaging in other misconduct that interferes with the speedy, orderly, and fair conduct of a hearing.

(b) Any such sanction shall reasonably relate to the severity and nature of the misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such a request.

(d) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

(e) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

#### **§ 681.32 Are post-hearing briefs required?**

Post-hearing briefs are not required, but the ALJ may permit them at his or her discretion.

#### **Decisions and Appeals**

#### **§ 681.33 How is the case decided?**

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after the close of the hearing or, if the filing of post-hearing briefs were permitted, within 90 days after the final post-hearing brief was filed.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant

found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

#### **§ 681.34 How are penalty and assessment amounts determined?**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of the investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or a state, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(b) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

#### **§ 681.35 Can a party request reconsideration of the initial decision?**

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) Any response to a motion for reconsideration will only be allowed if it is requested by the ALJ.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, no further motions for reconsideration may be filed by any party.

#### **§ 681.36 When does the initial decision of the ALJ become final?**

(a) The initial decision of the ALJ becomes the final decision of NSF, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false, fictitious, or fraudulent claim or statement timely appeals to the authority head of NSF, as set forth in § 681.37.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of NSF 30 days after the order is issued, unless a defendant adjudged to have submitted a false, fictitious, fraudulent claim or statement timely appeals to the authority head of NSF, as set forth in § 681.37.

**§ 681.37 What are the procedures for appealing the ALJ decision?**

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the authority head within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional 30 days if an extension request is filed within the initial 30-day period and shows good cause.

(c) The defendant's appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) The NSF representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing reconsideration motions has expired, the ALJ will forward the record of the proceeding to the authority head.

**§ 681.38 What happens if an initial decision is appealed?**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

**§ 681.39 Are there any limitations on the right to appeal to the authority head?**

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for

consideration of the additional evidence.

**§ 681.40 How does the authority head dispose of an appeal?**

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

**§ 681.41 What judicial review is available?**

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final NSF decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

**§ 681.42 Can the administrative complaint be settled voluntarily?**

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate.

**§ 681.43 How are civil penalties and assessments collected?**

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 681.44 Is there a right to administrative offset?**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered,

or any amount agreed upon in a compromise or settlement, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 681.45 What happens to collections?**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 681.46 What if the investigation indicates criminal misconduct?**

(a) Any investigating official may:

- (1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

- (2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

- (3) Issue subpoenas under any other statutory authority.

(b) Nothing in this part limits the requirement that NSF employees report suspected violations of criminal law to the NSF Office of Inspector General or to the Attorney General.

Dated: May 19, 2009.

**Lawrence Rudolph,**  
*General Counsel.*

[FR Doc. E9-12170 Filed 6-3-09; 8:45 am]

BILLING CODE 7555-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 09-1160; MB Docket No. 08-208; RM-11495]

**Television Broadcasting Services; Fort Wayne, IN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed WISE-TV License, LLC, licensee of WISE-TV, analog channel 33, and WISE-DT, DTV channel 19, Fort Wayne, Indiana, to substitute DTV channel 18 for its assigned post-transition DTV channel 19 at Fort Wayne.

**DATES:** This rule is effective June 4, 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. 08-208, adopted May 20, 2009, and released May 27, 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](mailto: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 Indiana, is amended by adding DTV channel 18 and removing DTV channel 19 at Fort Wayne.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-13047 Filed 6-3-09; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 09-1162; MB Docket No. 08-140; RM-11470]

**Television Broadcasting Services; Williston, ND**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Prairie Public Broadcasting, Inc., the licensee of noncommercial educational station KWSE-DT, to substitute DTV channel \*11 for its assigned post-transition DTV channel \*51 at Williston, North Dakota. **DATES:** This rule is effective June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-140, adopted May 20, 2009, and released May 27, 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](mailto: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 North Dakota, is amended by adding DTV channel \*11 and removing DTV channel \*51 at Williston.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-13050 Filed 6-3-09; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 09-1159; MB Docket No. 08-163; RM-11482]

**Television Broadcasting Services; Yuma, AZ**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Pappas Arizona License, LLC, the permittee of station KSWT-DT, to substitute DTV channel 13 for its assigned post-

transition DTV channel 16 at Yuma, Arizona.

**DATES:** This rule is effective June 4, 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. 08-163, adopted May 20, 2009, and released May 27, 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](mailto: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 Arizona, is amended by adding DTV channel 13 and removing DTV channel 16 at Yuma.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-13054 Filed 6-3-09; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648-XP47

#### Atlantic Highly Migratory Species; Inseason Action To Close the Commercial Gulf of Mexico Non-Sandbar Large Coastal Shark Fishery

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

**ACTION:** Fishery closure.

**SUMMARY:** NMFS is closing the commercial fishery for non-sandbar large coastal sharks (LCS) in the Gulf of Mexico region. This action is necessary because that quota for the 2009 fishing season is projected to have reached at least 80 percent of the available quota.

**DATES:** The commercial non-sandbar LCS fishery is closed effective 11:30 p.m. local time June 6, 2009 until the publication of the 2010 shark season specifications in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz, 301-713-2347; fax 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report every two weeks. Dealer reports for fish received between the 1<sup>st</sup> and 15<sup>th</sup> of any month must be received by NMFS by the 25<sup>th</sup> of that month. Dealer reports for fish received between the 16<sup>th</sup> and the end of any

month must be received by NMFS by the 10<sup>th</sup> of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On December 24, 2008 (73 FR 79005), NMFS announced that the non-sandbar LCS quota for the Gulf of Mexico region for the 2009 fishing year would be 390.5 metric tons (mt) dressed weight (dw) (860,896 lb dw). Dealer reports through the April 30, 2009, reporting period indicate that 293.8 mt dw or 75 percent of the available quota for non-sandbar LCS has been taken in the Gulf of Mexico. Dealer reports indicate that 56 percent of the quota was taken from the opening of the fishery on January 23, 2009, through February 28, 2009; 9 percent of the quota was taken in March; and 10 percent was taken in April. Based on dealer reports in March and April, NMFS expects that approximately 10 percent of the quota will also be taken in May. Based on this projection, the fishery could reach 85 percent of the quota, which exceeds the 80 percent limit specified in the regulations. Accordingly, NMFS is closing the commercial non-sandbar LCS fishery in the Gulf of Mexico region as of 11:30 p.m. local time June 6, 2009. All other shark fisheries remain open.

At § 635.27(b)(1)(ii), the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region.

During the closure, retention of non-sandbar LCS sharks in the Gulf of Mexico region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and no sale provisions apply (50 CFR 635.22(a) and (c)), or if the vessel

possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive non-sandbar LCS in the Gulf of Mexico region from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess non-sandbar LCS that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. However, a permitted shark dealer or processor may possess non-sandbar LCS that were harvested by a vessel issued a valid shark research fishery permit (per § 635.32) with a NMFS-approved observer onboard during the trip the sharks were taken as long as the non-sandbar shark research fishery remains open. Under this closure, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a non-sandbar LCS in the Gulf of Mexico region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2009.

**Kristen C. Koch,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-13072 Filed 6-1-09; 4:15 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910091344-9056-02]

RIN 0648-XP57

#### Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Catcher Processor Rockfish Cooperatives in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by catcher processor rockfish cooperatives subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the GOA. This action is necessary because the 2009 Pacific halibut prohibited species catch (PSC) sideboard limit specified for the deep-water species fishery by catcher processor rockfish cooperatives subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep-water species fisheries.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2009, through 1200 hrs, A.l.t., July 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific halibut PSC sideboard limit specified for the deep-water species fishery by catcher processor rockfish cooperatives subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is 8 metric tons as established by § 679.82(d), the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), and as posted as the Catcher Processor Sideboards at [http://](http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm)

[www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm](http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm).

In accordance with § 679.82(d)(9)(i)(B), the Administrator, Alaska Region, NMFS, has determined that the 2009 Pacific halibut PSC sideboard limit specified for the deep-water species fishery by catcher processor rockfish cooperatives subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep-water species fisheries. Consequently, in accordance with § 679.82(d)(9)(ii)(B), NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by catcher processor rockfish cooperatives subject to sideboard limits established under the Central GOA Rockfish Program in the GOA. The species and species groups that comprise the deep-water species fishery for the sideboard limit include deep-water flatfish, rex sole, and arrowtooth flounder.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Notice and comment is unnecessary because there is insufficient halibut PSC sideboard limit to support a directed fishery and therefore the Regional Administrator has no discretion for any action other than to prohibit directed fishing.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2009.

**Kristen C. Koch,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-13087 Filed 6-3-09; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 0810141351-9087-02]

RIN 0648-XP60

**Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Greenland turbot total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 28, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by

the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Greenland turbot TAC in the Aleutian Islands subarea of the BSAI is 1,947 metric tons (mt) as established by the 2009 and 2010 final harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2009 Greenland turbot TAC in the Aleutian Islands subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,347 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 27, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9-13088 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 74, No. 106

Thursday, June 4, 2009

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Doc. No. AMS-FV-08-0017; FV08-920-2 PR]

#### Kiwifruit Grown in California; Change in Reporting Requirements and New Information Collection

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed changes to the reporting requirements currently prescribed under the marketing order that regulates the handling of kiwifruit grown in California. The order is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would require handlers who ship 100,000 or more trays per season to file weekly shipment and price information with the Committee. Shipments of organic kiwifruit would be exempt from this requirement. The Committee would use this information to prepare its marketing policy statements and annual reports and to provide timely information to the industry to assist them in making marketing decisions throughout the season. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) of a new information collection.

**DATES:** Comments on the proposed rulemaking must be received by August 3, 2009. Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35), comments on the information collection burden that would result from this proposal must be received by August 3, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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

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

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

This proposal invites comments on changes to the reporting requirements authorized under the order. This rule would add a new reporting requirement and form to those currently specified in the order's administrative rules and regulations. This change would allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Under this proposed regulation, handlers would not be required to provide weekly shipment and price information on shipments of organic kiwifruit. The information collected would be used by the Committee to prepare its marketing policy statement as required under the order. The information would also be used to generate timely reports for the industry as a whole to use in making marketing decisions throughout the season. This proposal was recommended by the Committee at its meetings on September 6, 2007; January 30, 2008; and April 22, 2008.

Section 920.34 of the order requires the Committee to prepare an annual report for presentation to the Secretary and the industry. The annual report provides a cumulative review of industry statistics as well as information about program activities and expenditures. Section 920.50 of the order requires the Committee to prepare an annual marketing policy report for submission to the Secretary. The marketing policy describes expected kiwifruit production, quality, and marketing conditions. Along with other

pertinent information, the marketing policy provides the basis for the recommendation of appropriate kiwifruit handling regulations for the upcoming season. Section 920.60 of the order authorizes the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform these duties. The provisions of § 920.60(c) require that handlers maintain copies of all kiwifruit receipts and disposals for at least two succeeding fiscal years to verify their shipping reports.

The Committee's current reporting requirements are specified in § 920.160 of the order's administrative rules and regulations. This section includes requirements that handlers submit shipment reports and the Kiwifruit Inventory Shipping System (KISS) form, which consists of three reports: KISS/Add Inventory, KISS/Deduct Inventory, and KISS/Shipment.

Handlers who ship fewer than 10,000 trays per season are only required to file the shipment report twice per year and are not required to file the KISS form. Handlers who ship 10,000 trays or more per season are required to file the shipment report monthly and all three sections of the KISS form monthly or semi-monthly during certain months. The Committee provides forms to assist handlers with supplying the required information.

Kiwifruit shipments generally begin in September and continue through July. The Committee requires handlers who ship 10,000 trays or more to file their initial shipment reports by the fifth day of the month following the month in which their first shipments are made. This report is used to track shipments by type, weight, and destination.

The Committee has established November 5 as the deadline for filing the initial KISS reports. Subsequent reports are to be filed on the fifth day of each month throughout the season, with biweekly reports required for the months of December, January, and February. The KISS/Shipment report is used to report shipments by fruit size and pack type. The KISS/Add Inventory and KISS/Deduct Inventory reports are used to report changes in inventory.

This proposed rule would revise § 920.160 by adding a new reporting requirement and form. Under the new regulation, handlers who ship 100,000 tray equivalents or more per season would be required to submit weekly shipment and price data on the new KISS Price/Shipment report form. The information collected on the KISS Price/Shipment report would include data on gross f.o.b. sales and the total number of

containers shipped by pack, fruit size, grade, and market destination. Handlers submitting the KISS Price/Shipment report would no longer be required to submit the existing shipment report or KISS/Shipment report as that information would be collected on the new KISS Price/Shipment report. However, handlers submitting the KISS Price/Shipment report would still be responsible for filing the KISS/Add Inventory and KISS/Deduct Inventory reports.

The Committee recommended the 100,000 tray threshold because handlers shipping 100,000 trays or more account for approximately 90% of the production area's total shipments in a season. Committee members believe that information on such shipments would provide a sufficiently broad picture of ongoing marketing conditions. Information about the volume of kiwifruit in the current channels of commerce would be compiled by the Committee and reported to the industry. The Committee believes that such information provided throughout the season would benefit the industry as a whole when making marketing decisions.

While information from handlers with total shipments of fewer than 100,000 trays each season might not be significant on a weekly basis, such information would continue to be collected from those handlers on the other existing shipment and KISS reports and would be used to generate the Committee's marketing policy statements and annual reports.

The current reporting requirements make no provisions for collecting information on kiwifruit prices. The Committee believes that the industry as a whole would benefit from receiving gross f.o.b. sales information that would be collected by the Committee each week and used to generate timely industry reports. In the past, the Committee has used information from other sources to prepare their mandatory reports and provide updates to the industry, but Committee members feel that information from such sources no longer meets their needs. For example, one voluntary industry organization collects and reports weekly price information from participating handlers. Some industry members have found this information helpful in making marketing decisions in the past. However, Committee members report that the number of participating handlers has declined and that the information collected from the remaining participants may not provide as complete a picture of ongoing marketing conditions as the Committee

would like. The Committee believes that compiling sales information from all large-volume kiwifruit handlers in the production area would be more reflective of—and would be of greater benefit to—the industry as a whole.

There can be significant differences in the price of kiwifruit throughout the season, including great fluctuations in prices from week to week. The Committee believes that having accurate and timely sales information would help to reduce these price fluctuations and promote orderly marketing, resulting in increased grower returns.

Under the proposed change, handlers would not be required to report shipments of organically-produced (organic) kiwifruit on the new KISS Price/Shipment report. There are only a small number of handlers who handle organic kiwifruit, representing a small percentage of total shipments. Organic kiwifruit has its own unique marketing conditions with a pricing structure that differs from that of conventionally-produced (conventional) kiwifruit. Therefore, the Committee recommended that shipments of organic kiwifruit should be exempt from the new reporting requirements. However, organic kiwifruit shipments would continue to be reported as required on the appropriate existing Committee forms.

Kiwifruit handlers who ship between 10,000 and 100,000 trays or tray equivalents would continue to report by submitting monthly shipping reports and the existing KISS forms, including the KISS/Shipment reports. The reporting requirements for handlers shipping fewer than 10,000 tray equivalents would also remain the same. Also, the reporting exemption for minimum quantities of kiwifruit handled under certain conditions specified in § 920.110(b) would remain unchanged.

For the new KISS Price/Shipment report, the shipping week would be defined as Sunday through Saturday. Reports for each shipping week would be due no later than 5 p.m. (the close of business) on Tuesday of the following week to insure timely processing of current shipment and price information. Handlers would begin reporting following the first week of the season in which they have shipments. In weeks when no shipments are made, each handler would still be required to file a report indicating that no shipments were made during the reporting period. This would continue until the handler files a final report for the season. The new reporting form proposed by the Committee would have a space for handlers to indicate when they are filing

their final reports of the season. The price data and shipping information received from all affected handlers would be compiled by the Committee and presented to the industry throughout the season in the form of general reports. At the end of each year, the information collected would be summarized and used to prepare the Committee's annual reports and marketing policy statements.

This rule would also make a correction to § 920.160(b). A final rule published in the **Federal Register** on December 10, 1996 [61 FR 64959], made changes to § 920.160(b) and inadvertently removed part of the section. Specifically, the last sentence of § 920.160(b), which specifies the frequency with which the KISS reports shall be filed as well as what information shall be included, was removed. This rule would restore the language that was inadvertently removed.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule would only change the reporting requirements under the domestic handling regulations. No changes to the import regulations would be made.

#### **Initial Regulatory Flexibility Analysis**

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

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

Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on Committee data, there are approximately 30 handlers of kiwifruit subject to regulation under the marketing order and approximately 220

kiwifruit growers in the production area. According to information provided by the Committee, approximately three handlers handle only organic kiwifruit, and four handle both conventional and organic kiwifruit.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2006–07 season at 26,100 tons with an average price of \$911 per ton. Based on the average price and shipment information provided by the CASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This proposal would change the reporting requirements currently prescribed under the order. This rule would add a new reporting requirement and form to the reporting requirements, which would allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Handlers would not be required to report information on shipments of organic kiwifruit on this new form, but would continue to report shipments of organic kiwifruit on existing Committee forms. This change would help the Committee develop its annual reports and marketing policy statements as required under the order and would enable the Committee to provide timely information to the industry as a whole to assist with marketing decisions. This rule would revise § 920.160, which specifies the reporting requirements. In addition to the new shipping and price information collection, this rule would restore a portion of § 920.160(b) that was inadvertently removed from the regulation during a previous rulemaking action. Authority for the collection of shipment and other information is provided in § 920.60 of the order.

Requiring shipment and price reports on a weekly basis would impose an additional reporting burden on handlers who handle 100,000 or more tray equivalents of kiwifruit. However, this data is already being recorded and maintained by most handlers as a routine part of their business. Consequently, any additional costs associated with this change are expected to be minimal. Also, the benefits of having timely information regarding shipments and price are expected to outweigh any costs associated with the

increase in reporting burden. While this change would impose an additional reporting burden on those handlers required to submit the KISS Price/Shipment report, those handlers would no longer be required to submit the shipment report or the KISS/Shipment report, which would offset somewhat the increase in burden. Further, the benefits of this rule are expected to be equally available to all industry members, regardless of their size.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements. However, the Committee believes that collecting weekly shipment and price data would provide valuable information to the industry. The Committee also considered using weekly sales information collected by other entities. However, the Committee believes including the proposed information collection under the order's rules and regulations would make the reports they generate more accurate, and more reflective of the marketing conditions throughout the industry. Therefore, both alternatives were rejected.

This proposal would establish a new reporting requirement. This action would also require a new Committee form, the KISS Price/Shipment report. Therefore, this proposed rule would impose an additional reporting burden on handlers who handle 100,000 tray equivalents or more of kiwifruit, which is discussed in the Paperwork Reduction Act section of this document.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the September 6, 2007; January 30, 2008; and April 22, 2008; meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1/ams.fetchTemplateData.do?template=Template>

*N&page=MarketingOrders*

*SmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided for interested persons to comment on this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting approval from the Office of Management and Budget (OMB) for a new information collection request, under OMB No. 0581-NEW. Upon approval of this new collection by OMB, it will be merged with the forms currently approved for use under OMB No. 0581-0189, Generic OMB Fruit Crops.

*Title:* Kiwifruit Grown in California; Marketing Order No. 920.

*OMB Number:* 0581-NEW.

*Type of Request:* New collection.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California kiwifruit marketing order program, which has been operating since 1984.

On April 22, 2008, the Committee unanimously recommended a new KISS Price/Shipment report for handlers who handle 100,000 tray equivalents or more of kiwifruit to report to the Committee weekly shipment and price information. This action concerns this report, in addition to the accompanying regulation previously discussed, which would require the reports to be submitted to the Committee by handlers. Pursuant to § 920.60(c), handlers would maintain records for at least two succeeding fiscal years to verify the data reported to the Committee on this report.

This form would allow the Committee to collect weekly shipment and price information from handlers who handle 100,000 tray equivalents or more of kiwifruit each season. The Committee would use this information in preparing the marketing policy statement and annual report each year. Also, weekly

industry reports generated from this data would provide handlers with more timely information on which to base their marketing decisions.

The information collected would only be used by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees would be the primary users of the information, and AMS would be the secondary user. The Committee's staff would compile the information collected from handlers and use it to prepare its annual report and marketing policy statement as required under the order. The Committee's staff would also use the data collected to provide general market information to the industry throughout the season. All proprietary handler information would be kept confidential in accordance with the Act and order.

The proposed request for a new information collection under the order is as follows:

#### **KISS Price/Shipment Report**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to be no more than one hour per response.

*Respondents:* Persons who handle California kiwifruit.

*Estimated Number of Respondents:* 15.

*Estimated Number of Responses per Respondent:* 28.

*Estimated Total Annual Burden on Respondents:* 420 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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.

Comments should reference OMB No. 0581-NEW and the Marketing Order for Kiwifruit Grown in California, and should be sent to the USDA in care of the Docket Clerk at the previously-mentioned address or at <http://www.regulations.gov>.

All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the address of the Docket Clerk or at <http://www.regulations.gov>.

Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

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

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

#### **PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### **§ 920.160 [Amended]**

2. § 920.160 is amended by revising the first sentence of paragraph (a), revising paragraph (b), and adding paragraphs (d) and (e) to read as follows:

#### **§ 920.160 Reports.**

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, except as provided in paragraph (e) of this section, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other later time established by the committee: *Provided*, That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year.

\* \* \*

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections "KISS/Add Inventory," "KISS/Deduct Inventory," and "KISS/Shipment," on or before November 5th, or such other later time as the committee may establish. Subsequent KISS forms, including all three sections, shall be filed with the committee by the fifth day and again by the twentieth day of each calendar month, or such other

later time as the committee may establish, and will contain the following information:

(1) The beginning inventory of the handler by size and container type;

(2) The quantity of fruit the handler lost in repack and repacked into other container types;

(3) The total domestic and export shipments of the handler by size and container type; and

(4) Any other adjustments which increase or decrease posted handler inventory.

(c) \* \* \*

(d) *KISS Price/Shipment report.* Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping week is defined as Sunday through Saturday. The report shall show:

(1) The company name, contact person, and phone number of the handler;

(2) Weekly period covered by the report;

(3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and

(4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

Dated: May 29, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9-12995 Filed 6-3-09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1205

[Docket No. AMS-CN-09-0027; CN-08-003]

#### Cotton Research and Promotion Program: Referendum Procedures

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would establish procedures which the Department of Agriculture (USDA) will use in conducting a referenda considering amendments to the Cotton Research and Promotion Order (7 CFR part 1205) (Order) implementing section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), hereinafter the "2008 Farm Bill." USDA is considering amendments to the Order, in a separate action, and referendum procedures would need to be in place prior for the industry to vote and consider these amendments. Referenda among cotton producers and cotton importers are required by the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) to implement, amend, continue, or when appropriate to suspend, or to terminate the Order or any of its provisions. The provisions of this rule would be used for these referenda.

**DATES:** Comments must be received on or before June 15, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through <http://www.regulations.gov>. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224 during regular business hours. A copy of this notice may be found at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-

1718, or e-mail at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

##### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than \$7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

This proposed rule would establish the procedures under which cotton producers and importers vote on

whether they approve the amendments to the Order. This proposal would add a new subpart, which establishes procedures to future referenda. The proposed subpart covers definitions, voting, instructions, ballots, the referendum report, and confidentiality of information.

USDA will keep cotton producers and importers who are eligible to vote informed throughout the referendum process to ensure that they are aware of and are able to participate. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional; however, if cotton producers and importers choose to vote, the burden of voting is minimal and necessary to determine whether or not they favor passage of the amendments to the Order.

In accordance with the Office of Management and Budget (OMB) regulation 5 CFR part 1320 that implements the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) has been previously approved by OMB and assigned OMB Control Number 0581-0093.

USDA considered electronic voting, but the use of computers is not universal. Conducting the referendum from Farm Service Agency county offices and the USDA, Washington, DC office would be more cost-effective and reliable.

### Background

The Act established a national cotton research and promotion program—administered by the Board—that is financed through cotton producer and cotton importer industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of cotton in the marketplace and to establish, maintain, and expand markets for Upland cotton. The program is funded by assessments levied on each bale or bale equivalent of cotton at a rate of \$1 per bale with a supplemental assessment not to exceed one percent of the value of lint of each bale.

The 2009 Board is composed of 38 members and 38 alternate members (23 producer and 15 importer members and alternate members) and one consumer advisor. The Act directed the Board to contract with a separate organization to conduct the research and promotion projects. The Board contracts with Cotton Incorporated (CI) to conduct the Program. CI uses assessment dollars to advance the quality of and demand for cotton fiber through its operating

divisions: (1) Global Product Marketing, (2) Consumer Marketing, (3) Agricultural Research and (4) Textile Research, and (5) Strategic Planning.

This proposed rule would establish procedures which the USDA will use in conducting a referendum under the Act. USDA is considering amendments to the Order to implement section 14202 of the 2008 Farm Bill (Notice of hearing published in the *Federal Register* at 73 FR 72747 on December 1, 2008), and referendum procedures would need to be in place prior for the industry to vote and consider these amendments. Referenda among cotton producers and cotton importers are required by the Act to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions.

A 10-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation requirements used in cotton sign-ups that appear in the Code of Federal Regulations at 7 CFR 1205.10–1205.30, and in previous referenda; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible to consider amendments to the Order authorized under the 2008 Farm Bill. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

### List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1205 is proposed to be amended as follows:

### PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

2. Part 1205 is proposed to be amended by adding a Subpart to read as follows:

#### Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

Sec.

- 1205.200 General.
- 1205.201 Definitions.
- 1205.202 Agencies through which a referendum shall be conducted.
- 1205.203 Voting eligibility.
- 1205.204 Voting.

- 1205.205 Canvass of ballots.
- 1205.206 Reporting results of referendum.
- 1205.207 Challenge of correctness of county summary of ballots.
- 1205.208 Disposition of ballots and records.
- 1205.209 Confidential Information.
- 1205.210 Additional instructions and forms.

#### Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

##### § 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

##### § 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Pub. L. 89–502, as amended).

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

(c) *Agricultural Marketing Service* also referred to as “AMS” means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum* L.

(f) *Department* means the U.S. Department of Agriculture.

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as “DAFO.”

(h) *Farm Service Agency* also referred to as “FSA” means the Farm Service Agency of the Department.

(i) (1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States; and

(2) The term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership,

corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

(n) *Secretary* means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may be hereafter be delegated, the authority to act in the Secretary's stead.

(o) *State* means each of the 50 States.

(p) *United States* means 50 States of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as "CBP."

**§ 1205.202 Agencies through which a referendum shall be conducted.**

(a) *Agricultural Marketing Service*. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum:

(i) By utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to announce the dates, places, or methods of voting, and other pertinent information; and

(ii) By such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) Shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) May provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the

representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided*, That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided*, That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in

weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of cotton in the voters share of cotton imported from each such importer entity: *Provided*, That only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency*. Except for the functions specified in paragraph (a) of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum. Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

**§ 1205.203 Voting eligibility.**

(a) *Special eligibility requirements*. Each person who was engaged in the production of Upland cotton during the representative period and each person who was an importer of cotton and who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum.

(b) *General eligibility requirements*.

(1) (i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested:

*Provided, however*, That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the

production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecroppers on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

#### § 1205.204 Voting.

(a) *Place of voting.* The FSA county office serving the county in which the producer's farm is located shall be the producer's polling place. For a person not participating in an FSA program, the opportunity to vote in a referendum will

be provided at the FSA county office serving the county where the person owns or rents land. A person engaged in the production of Upland cotton in more than one county will vote in the FSA county office where the person does most of his or her business. The U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, DC shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The FSA county office shall establish a register of known eligible producer voters prior to the referendum. AMS shall establish a register of known eligible importer voters prior to the referendum and provide list to FAS.

(c) *Voting.* (1) For Upland producers to vote, eligible persons may obtain form CN-100 in-person, by mail or by facsimile from FSA county offices or through the Internet during the voting period. A completed and signed CN-100 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate FSA county office. Forms obtained via the Internet will be located at <http://www.ams.usda.gov/Cotton>. Upon request by Upland producers, ballots shall be mailed by FSA county offices.

(2) For cotton importers to vote, eligible persons may obtain form CN-100 in-person, by mail or by facsimile from USDA, FSA in Washington, DC or through the Internet during the voting period. In addition, before the referendum, USDA shall mail a request form to each known, eligible, cotton importer. A completed and signed CN-100 and supporting documentation of CBP Form 7501, must be returned USDA, FSA, DAFO, P.O. Box 23704, Washington, DC. Forms obtained via the Internet will be located at <http://www.ams.usda.gov/Cotton>.

(d) *Returning ballot to polling place.* Each person to whom a ballot is issued by Internet, mail, facsimile, or in-person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) In the case of the mailed ballot, it was postmarked not later than midnight of the final day of the referendum

period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by FSA county office or a representative of FSA, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by FSA for producers and importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

#### § 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the FSA offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the FSA county office for producer ballots or an FSA representative for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The county office or FSA representative shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them.

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if:

(1) It is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted; or

(2) It does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the FSA county office and the importer ballot may be challenged by

the representative of FSA. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the FSA county office or representative of FSA as to the eligibility of the voter to vote in the referendum.

**§ 1205.206 Reporting results of referendum.**

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

**§ 1205.207 Challenge of correctness of county summary of ballots.**

The FSA State offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided*, That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

**§ 1205.208 Disposition of ballots and records.**

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

**§ 1205.209 Confidential information.**

(a) The ballots cast or the manner in which any person voted and all

information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1205.210 Additional instructions and forms.**

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Dated: May 28, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9-12931 Filed 6-3-09; 8:45 am]

**BILLING CODE P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 70**

[Docket No. PRM-70-8; NRC-2009-0184]

**Nuclear Energy Institute; Notice of Receipt of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated April 16, 2009, filed by the Nuclear Energy Institute (NEI) (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM-70-8. The petitioner requests that the NRC amend its regulations to clarify the existing event reporting requirements based on experience gained since the requirements were implemented in 2000.

**DATES:** Comments must be submitted by August 18, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments on this petition by any one of the following methods. Comments

submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0184. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* *Rulemaking.Comments@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1677).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You can access publicly available documents related to this document using the following methods:

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0184.

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

For a copy of the petition, write to Betty Golden, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-492-3669, toll

free 800-368-5642,  
*Betty.Golden@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Michael T. Lesar, Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-492-3663, toll free 800-368-5642,  
*Michael.Lesar@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**The Petitioner**

NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities comprising the fuel cycle industry and other nuclear industries. NEI is responsible for coordinating the combined efforts of licensed facilities on matters involving generic NRC regulatory policy issues and generic operational and technical regulatory issues affecting the industry operations of every NRC-licensed operating fuel cycle facility and those under construction.

**Background**

The petitioner states that in a June 2007 white paper, NEI documented challenges posed by implementation of the 2000 version of 10 CFR part 70, appendix A. The petitioner also states that the NRC had also observed inconsistent reporting of events under Appendix A to 10 CFR Part 70 and had developed a matrix of reporting issues based on actual events. A working group, consisting of NRC and industry representatives, was formed to achieve a common understanding of reports required under Appendix A. The petitioner states that industry endorses and is ready to support the following suggested modifications to 10 CFR part 70, appendix A.

**Proposed Action**

The petitioner requests that 10 CFR part 70, appendix A, be amended to clarify the requirements for reportable safety events based on experience to date. The petitioner believes that these modifications will help ensure a more uniform understanding of the requirements by licensees and NRC, as well as more consistent reporting of events by licensees.

The petitioner's suggested changes to 10 CFR part 70, appendix A, are as follows:

1. In the introductory text to Appendix A, remove "except for (a)(1),

(a)(2), and (b)(4), after they have submitted an ISA Summary in accordance with § 70.62(c)(3)(ii). Licensees must comply with (a)(1), (a)(2), and (b)(4) after October 18, 2000." The petitioner states that this text is no longer needed as the exemption expired October 18, 2004.

2. In paragraph (a) of Appendix A, change the time requirement to submit a written report on events reported to the NRC Operations Center within 1 hour of discovery, from 30 days to 60 days. The petitioner states that a 60 day report provides higher assurance of a more complete report without compromising safety and is consistent with equivalent event reporting requirements for operating nuclear power plants in 10 CFR 50.73(a). The petitioner believes that changing the time limit from 30 days to 60 days does not mean that licensees will take longer to develop and implement corrective actions, which are done on a time scale commensurate with the safety significance of the issue. The petitioner believes that for those cases where it does take longer than 30 days to complete root cause analysis, this change will result in fewer reports that require submittal of an amended report.

3. Revise paragraph (a)(2) of Appendix A to clarify that the intake is associated with a person located outside of the controlled area to make reporting commensurate with the performance requirements described in 10 CFR 70.61(b)(3). The petitioner states that the 30 mg limit may be changed to conform to a revised intake limit.

4. Revise paragraph (a)(3) of Appendix A to read, "An acute chemical exposure to an individual inside the controlled area from licensed material or hazardous chemicals produced from licensed material that could endanger the life of a worker; or, a chemical release involving licensed material or hazardous chemicals produced from licensed materials that results in a concentration outside of the controlled area that exceeds the quantitative standards established as required by 10 CFR 70.61(b)(4)(ii)." The petitioner states that the proposed wording eliminates potential confusion regarding quantitative values for individuals located inside the controlled area. The petitioner states that it also requires reporting if the chemical release concentration is such that it exceeds the quantitative standard for an individual located outside of the controlled area, rather than requiring the licensee to determine if such an exposure actually occurred before being required to make a report.

5. Remove paragraph (a)(5) of Appendix A. The petitioner believes that reporting of this type of event (e.g., loss of controls) is currently required by paragraph (b)(2) of Appendix A. The petitioner states that additionally, a one hour reporting requirement for nuclear criticality safety is not consistent with the allowed risk for other high consequence events for which a single item relied on for safety (IROFS) is allowed.

6. In paragraph (b) of Appendix A, change the time requirement to submit written reports on events reported to the NRC Operations Center within 24 hours of discovery, supplemented with the information in 10 CFR 70.50(c)(1) as it becomes available, from 30 days to 60 days. The petitioner states that a 60 day report provides higher assurance of a more complete report without compromising safety and is consistent with equivalent event reporting requirements for operating nuclear power plants in 10 CFR 50.73a. The petitioner believes that changing the time limit from 30 days to 60 days does not mean that licensees will take longer to develop and implement corrective actions, which are done on a time scale commensurate with the safety significance of the issue. The petitioner states that, for those cases where it does take longer than 30 days to complete a root cause analysis, this change will result in fewer reports that require submittal of an amended report.

7. Revise paragraph (b)(3) of Appendix A to read, "An acute chemical exposure to an individual inside the controlled area from licensed material or hazardous chemicals produced from licensed materials that requires medical treatment at an off-site medical facility." The petitioner believes that this proposed change would help ensure event reporting at a threshold that the NRC would generally want to know about, and that licensees would generally notify NRC whether or not reporting was required.

8. In paragraph (b)(4) of Appendix A, remove "or may have affected" to clarify NRC's expectation on reporting any natural phenomenon or other external event, including fires internal and external to the facility. The petitioner believes that if the safety function or availability of an IROFS has been affected, then this phrase is very clear. However, the petitioner states that the phrase "or may have affected" is subjective and difficult to interpret for licensees and the NRC. The petitioner states that, for example, a wind storm "may have" impacted an IROFS if it had been more severe. The petitioner believes that the current approach to

reporting is not consistent with other event reporting requirements.

9. Remove paragraph (b)(5) of Appendix A because it is redundant with paragraph (b)(1) of Appendix A.

10. The petitioner states that the industry understands that additional NRC staff guidance is being prepared concerning the issuance of reports submitted to the NRC Operations Center concurrent to the news release or other notification concerning any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment. The petitioner encourages the NRC to issue the guidance for public comment as soon as possible.

Dated at Rockville, Maryland, this 29th day of May 2009.

For the Nuclear Regulatory Commission,  
**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

[FR Doc. E9-13023 Filed 6-3-09; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket No. EERE-2008-BT-STD-0005]

RIN 1904-AB57

#### Energy Efficiency Program for Consumer Products: Public Meeting and Availability of Framework Document for Battery Chargers and External Power Supplies

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

**ACTION:** Notice of public meeting and availability of a Framework Document.

**SUMMARY:** The U.S. Department of Energy (DOE) is initiating a rulemaking process to consider establishing new energy conservation standards for battery chargers and amending the energy conservation standards for Class A external power supplies, as directed by the Energy Independence and Security Act of 2007 (EISA). Accordingly, DOE will hold an informal public meeting to discuss and receive comments on its planned analytical approach and issues it will address in this rulemaking proceeding. DOE also welcomes written comments from the public concerning this rulemaking. To inform interested parties and to facilitate this process, DOE has prepared two documents: a framework document, which explains the analytical approach and identifies particular issues on which DOE is interested in receiving

comment; and a draft technical report, which details DOE's research and analysis on these products to date. Copies of these and all other documents associated with this rulemaking are available at [http://www.eere.energy.gov/buildings/appliance\\_standards/residential/battery\\_external.html](http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html).

**DATES:** DOE will hold a public meeting in Washington, DC, beginning on July 16, 2009, from 9 a.m. to 5 p.m. The agenda for the public meeting will include the energy conservation standards rulemaking on battery chargers and external power supplies. DOE must receive requests to speak at this public meeting no later than 4 p.m., Thursday, July 2, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., Thursday, July 9, 2009. Written comments on the framework document are welcome, especially following the public meeting, and should be submitted by July 20, 2009.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586-2945 so that the necessary procedures can be completed.

Interested parties may submit comments, identified by docket number EERE-2008-BT-STD-0005 and/or Regulation Identifier Number (RIN) 1904-AB57, by any of the following methods:

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

- *E-mail:* [BC&EPS\\_ECS@ee.doe.gov](mailto:BC&EPS_ECS@ee.doe.gov). Include docket number EERE-2008-BT-STD-0005 and/or RIN 1904-AB57 in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Framework Document for Battery Chargers and External Power Supplies, docket number EERE-2008-BT-STD-0005 and/or RIN 1904-AB57, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW.,

Washington, DC 20024. Please submit one signed paper original.

**Instructions:** All submissions received must include the agency name and docket number or RIN for this rulemaking.

**Docket:** For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards first at the above telephone number for additional information about visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-4549. E-mail: [Victor.Petrolati@ee.doe.gov](mailto:Victor.Petrolati@ee.doe.gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586-9507. E-mail: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone (202) 586-2945. E-mail: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291-6309), subsequently renamed Part A, established the "Energy Conservation Program for Consumer Products Other Than Automobiles."<sup>1</sup> The consumer products subject to this program are referred to as "covered products."

Section 135 of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109-58, amended sections 321 and 325 of EPCA, by defining battery chargers and external power supplies and directing the Secretary to prescribe "definitions and test procedures for the power use of battery chargers and external power

<sup>1</sup> This part was originally titled Part B but it was redesignated Part A in the United States Code for editorial reasons.

supplies” and to “issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes of battery chargers and external power supplies.” (42 U.S.C. 6295(u)(1)(A) and (E))

On December 8, 2006, DOE complied with the first of these requirements by publishing a final rule that prescribed test procedures for a variety of products. 71 FR 71340. That rule, which is currently codified in multiple sections of the Code of Federal Regulations (CFR), included definitions and test procedures for battery chargers and external power supplies. The test procedures for battery chargers and external power supplies are found in 10 CFR Part 430, Subpart B, Appendix Y (“Uniform Test Method for Measuring the Energy Consumption of Battery Chargers”) and 10 CFR Part 430, Subpart B, Appendix Z (“Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.”), respectively.

DOE subsequently published a notice of public meeting and availability of documentation for public review on December 29, 2006. 71 FR 78389. This public meeting, called a “Scoping Workshop,” discussed DOE’s plans for conducting a determination analysis for battery chargers and external power supplies. The Scoping Workshop was held at DOE’s Forrestal Building in Washington, DC, on January 24, 2007. Information pertaining to the Scoping Workshop can be found on DOE’s Web site at [http://www.eere.energy.gov/buildings/appliance\\_standards/residential/battery\\_external.html](http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html).

On December 19, 2007, Congress enacted the Energy Independence and Security Act of 2007 (EISA), Public Law 110–140, which amended, among others, sections 321, 323, and 325 of EPCA. While EPACT 2005 amended EPCA by defining an external power supply as “an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product” (42 U.S.C. 6291(36)(A)), section 301 of EISA amended this definition by creating a subset of external power supplies called “Class A External Power Supplies”—those external power supplies that are “able to convert to only 1 AC or DC output voltage at a time” and that have “nameplate output power that is less than or equal to 250 watts.” (42 U.S.C. 6291(36)(C)(i)) Section 301 of EISA also established for these products energy conservation standards that became effective on July 1, 2008, and directed DOE to conduct an energy conservation

standards rulemaking to review those standards by July 1, 2011.

Additionally, section 309 of EISA amended section 325(u)(1)(E) of EPCA by directing DOE to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or to determine that no energy conservation standard is technologically feasible and economically justified. DOE is bundling together this battery charger rulemaking proceeding with the requirement to review and consider amending the energy conservation standards for Class A external power supplies, as both rulemakings must be completed by July 1, 2011. The new rulemaking requirements contained in sections 301 and 309 of EISA effectively supersede the prior determination analysis that EPACT 2005 required DOE to conduct.

Section 309 of EISA also instructed DOE to “issue a final rule that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies” no later than two years after EISA’s enactment. (42 U.S.C. 6295(u)(1)(E)(i)(I)) Because DOE cannot conduct a determination analysis on whether it should issue energy conservation standards for a product for which standards have already been set, DOE is interpreting these sections jointly as a requirement to determine, in a separate rulemaking to be completed by December 19, 2009, whether energy conservation standards shall be issued for non-Class A external power supplies. Examples of these types of external power supplies include those with nameplate output power greater than 250 watts, those that are able to convert to more than one AC or DC output voltage at the same time, and those that are specifically excluded from coverage under the Class A external power supply definition provided by EISA by virtue of their application (e.g., EPSs used with medical devices).

Finally, section 310 of EISA established definitions for active mode, standby mode, and off mode, and directed DOE to amend its existing test procedures for both BCs and EPSs to measure the energy consumed in standby mode and off mode. (42 U.S.C. 6295(gg)(2)(B)(i)) DOE satisfied this requirement by publishing a final rule that incorporated standby and off mode measurement into the DOE test procedure. 74 FR 13318 (March 27, 2009).

To initiate the bundled battery charger and Class A external power supply rulemaking, DOE has prepared a Framework Document to explain the issues, analyses, inputs, and processes it

anticipates will arise in developing new energy conservation standards for battery chargers and amended energy conservation standards for Class A external power supplies. In addition, DOE has prepared a draft technical report that presents DOE’s research, analysis, and methods on both these products as part of its work on the determination analysis in 2007. The publication of this draft technical report is not intended to set any new precedent for framework document meetings. Instead, DOE believes that it may receive better comment and more precise direction from interested parties on key issues by publishing its previously developed draft analyses in conjunction with this framework document. As discussed earlier, the work on the determination was overtaken by the changes introduced by EISA, which modified both its scope and schedule.

As noted above, DOE will hold a public meeting on Thursday, July 16, 2009, in Washington, DC, to discuss the analyses presented and issues identified in the Framework Document. At the public meeting, the Department will make a number of presentations, invite discussion on the rulemaking process as it applies to battery chargers and external power supplies, and solicit comments, data, and information from participants and other interested parties. DOE will also invite comment on its preliminary analyses of battery chargers and external power supplies, as described in the draft technical report.

The public meeting will be conducted in an informal, facilitated conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, which will be entered into the docket for this rulemaking.

DOE encourages those who wish to participate in the public meeting to read the Framework Document and draft technical report and to be prepared to discuss their contents. Copies of both documents are available at [http://www.eere.energy.gov/buildings/appliance\\_standards/residential/battery\\_external.html](http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html).

Public meeting participants need not limit their comments to the issues identified in the Framework Document. DOE is also interested in receiving comments concerning other relevant issues that participants believe would affect any energy conservation standards for these products. For example, interested parties are invited to comment on external power supplies

not included in Class A. DOE is conducting a separate determination analysis rulemaking for these products, but intends to invite public comment on the scope of coverage for non-Class A external power supplies at the end of the public meeting, if time permits.

DOE invites all interested parties, whether they participate in the public meeting, to submit in writing by July 20, 2009, comments and information on matters addressed in the Framework Document and on other matters relevant to assessment of energy conservation standards for battery chargers and external power supplies.

After the public meeting and the close of the comment period on the Framework Document, DOE will begin collecting data, conducting the analyses as discussed in the Framework Document and at the public meeting, and reviewing the comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the Framework Document, and during each subsequent public meeting and comment period, interactions with and among members of the public provide a balanced discussion of the issues that assists DOE in the standards rulemaking process. Accordingly, anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding this and related rulemakings on battery chargers and external power supplies should contact Ms. Brenda Edwards at (202) 586-2945, or via e-mail at [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

Issued in Washington, DC, on May 26, 2009.

**Steven Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E9-12906 Filed 6-3-09; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

[Docket No. CE296; Notice No. 23-09-02SC]

**Special Conditions: Cessna Aircraft Company, Model 525C (CJ4); Lithium Ion Battery Installation**

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Cessna Aircraft Company, model 525C (CJ4) airplane. This airplane will have a novel or unusual design feature associated with the installation of lithium ion (Li-ion) batteries. Cessna Aircraft Company proposes to use a lithium-ion main battery on the new model 525C (CJ4) commuter category airplane for main battery applications, and is also considering the use of this technology in several other auxiliary battery applications in this airplane. This type of battery possesses certain failure, operational characteristics, and maintenance requirements that differ significantly from that of the nickel cadmium and lead acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** We must receive your comments by July 6, 2009.

**ADDRESSES:** Mail two copies of your comments to Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE296, Room 506, 901 Locust, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE296. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301,

Kansas City, Missouri 64106; telephone (816) 329-4123.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On August 9, 2006, Cessna Aircraft Company applied for an amendment to Type Certificate Number A1WI to include the new model 525C (CJ4). The model 525C (CJ4), which is a derivative of the model 525B (CJ3) currently approved under Type Certificate Number A1WI, is a commuter category, low-winged monoplane with "T" tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. The maximum takeoff weight is 16,950 pounds, the VMO/MMO is 305 KIAS/M 0.77 and maximum altitude is 45,000 feet. Cessna Aircraft Company proposes to utilize lithium Ion (Li-ion) batteries for main battery applications, and is considering the use of this technology in several other auxiliary battery applications in this airplane.

**Type Certification Basis**

Under the provisions of 14 CFR part 21, § 21.101, Cessna Aircraft Company must show that the model 525C (CJ4)

meets the applicable provisions of the requirements incorporated by reference in Type Certificate No. A1W1 or 14 CFR part 23, as amended by Amendments 23-1 through 23-57 thereto. The regulations incorporated by reference in the type certificate are commonly referred to as the original type certificate basis.

In addition, the certification basis includes certain special conditions, and exemptions that are not relevant to these proposed special conditions.

In addition to the applicable airworthiness regulations and special conditions, the model 525C (CJ4) must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the model 525C (CJ4) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

#### Novel or Unusual Design Features

Cessna Aircraft Company, model 525C (CJ4) will incorporate the following novel or unusual design features:

Cessna Aircraft Company proposes to use lithium ion (Li-ion) batteries for main battery applications, and is considering the use of this technology in several other auxiliary battery applications on the Cessna Aircraft Company, model 525C (CJ4) airplane. This type of battery possesses certain failure and operational characteristics, and maintenance requirements that differ significantly from that of the nickel cadmium (Ni-Cd) and lead acid rechargeable batteries currently approved for installation in small airplanes. Current regulations in 14 CFR part 23 do not address installation of Li-ion batteries. This special condition is being proposed to require that all characteristics of the Li-ion battery and

its installation that could affect safe operation of the Cessna Aircraft Company, model 525C (CJ4) airplane are addressed, along with establishing that appropriate maintenance requirements must be provided to ensure electrical power is available from the batteries when needed.

#### Discussion

The applicable part 21 and part 23 airworthiness regulations governing the installation of batteries in general aviation airplanes, including part 23, § 23.1353 were derived from Civil Air Regulations (CAR 3) as part of the recodification that established Federal Aviation Regulation 14 CFR part 23. The battery requirements, which were identified as 14 CFR part 23, § 23.1353, were basically a rewording of the CAR requirements that did not add any substantive technical requirements. An increase in incidents involving battery fires and failures that accompanied the increased use of Nickel-Cadmium (Ni-Cd) batteries in airplanes resulted in rulemaking activities on the battery requirements for business jet and commuter category airplanes. These regulations were incorporated into 14 CFR part 23, § 23.1353(f) and (g), which apply only to Ni-Cd battery installations.

The proposed use of Li-ion batteries on the Cessna Aircraft Company, model 525C (CJ4) airplane has prompted the FAA to review the adequacy of the existing battery regulations with respect to that chemistry. As the result of this review, the FAA has determined that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of Li-ion batteries that could affect safety of the battery installation and the reliability of the Cessna Aircraft Company, model 525C (CJ4) airplane electrical power supply.

Li-ion batteries in general are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their Ni-Cd and lead-acid counterparts. This is especially true for overcharging a Li-ion, which will likely result in explosion, fire, or both. Certain types of Li-ion batteries pose a potential safety problem because of the instability and flammability of the organic electrolyte employed by the cells of those batteries. The severity of thermal runaway increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

Discharge of some versions of the Li-Poly cell beyond a certain voltage below 3.0 volts will subsequently no longer

accept a charge. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status, a problem shared with Ni-Cd batteries.

Unlike Ni-Cd and lead-acid cells, some types of Li-ion cells employ electrolytes that are known to be flammable. This material can serve as a source of fuel for an external fire in the event of a breach of the cell container.

The intent of the proposed special condition is to establish appropriate airworthiness standards for Li-ion battery installations in the Cessna Aircraft Company, model 525C (CJ4) airplane, and to ensure, as required by 14 CFR part 23, § 23.601, that these battery installations do not possess hazardous or unreliable design characteristics. The proposed special condition adopts the following requirements as a means of addressing these concerns:

- Inclusion of those sections of 14 CFR part 23, § 23.1353 that are applicable to Li-ion batteries.
- Inclusion of the flammable fluid fire protection requirements of 14 CFR part 23, § 23.863. In the past, this rule was not applied to the batteries of business jet or commuter category airplanes since the electrolytes utilized in lead-acid and Ni-CD batteries are not considered to be flammable.
- Addition of new requirements to address the potential hazards of overcharging and overdischarging that are unique to Li-ion battery designs.

Addition of maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge (SOC).

#### Applicability

As discussed above, these special conditions are applicable to the Cessna model 525C (CJ4). Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

#### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

#### Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, and 44701; 14 CFR 21.16 and 21.17; 14 CFR 11.38 and 11.19.

### The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cessna Aircraft Company, model 525C (CJ4) airplanes.

#### *Cessna Aircraft Company, Model 525C (CJ4) Lithium Ion Battery Installation*

In lieu of the requirements of 14 CFR part 23, § 23.1353(a) through (e), lithium ion batteries and battery installations on the Cessna Aircraft Company, model 525C (CJ4) airplane must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The Li-ion battery installation must be designed to preclude explosion or fire in the event of those failures.

(2) Li-ion batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gasses emitted by any Li-ion battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Li-ion batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of 14 CFR part 23, § 23.863(a) through (d).

(5) No corrosive fluids or gasses that may escape from any Li-ion battery may damage surrounding airplane structure or adjacent essential equipment.

(6) Each Li-ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Li-ion battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any Li-ion battery installation whose function is required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers, whenever the capacity and SOC of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness (ICAW) must contain recommended manufacturers maintenance and inspection requirements to ensure that batteries, including single cells, meet a safety function level essential to the aircraft's continued airworthiness.

(i) The ICAW must contain operating instructions and equipment limitations in an installation maintenance manual.

(ii) The ICAW must contain installation procedures and limitation in a maintenance manual, sufficient to ensure that cells or batteries, when installed according to the installation procedures, still meet safety functional levels, essential to the aircraft's continued airworthiness. The limitation must identify any unique aspects of the installation.

(iii) The ICAW must contain corrective maintenance procedures to functionally check battery capacity at manufacturers recommended inspection intervals.

(iv) The ICAW must contain scheduled servicing information to replace batteries at manufacturers recommended replacement time.

(v) The ICAW must contain maintenance inspection requirements to visually check for a battery and/or charger degradation.

(10) Batteries in a rotating stock (spares) that have experienced degraded charge retention capability or other damage due to prolonged storage must be functionally checked at manufacturers recommended inspection intervals.

(11) System Safety Assessment process should address the software and complex hardware levels for the sensing, monitoring and warning systems, if these systems contain complex devices. The functional hazard assessment (FHA) for the system is required based on the intended functions described. The criticality of the specific functions will be determined by the safety assessment process for compliance with 14 CFR part 23, § 23.1309, and Advisory

Circular 23.1309-1D contains acceptable means for accomplishing this requirement. For determining the failure condition, the criticality of a function will include the mitigating factors. The failure conditions must address the loss of function and improper operations.

These special conditions are not intended to replace 14 CFR part 23, § 23.1353 in the certification basis of the Cessna Aircraft Company, model 525C (CJ4) airplanes. The proposed special conditions would apply only to Li-ion batteries and battery installations. The battery requirements of 14 CFR part 23, § 23.1353 would remain in effect for batteries and battery installations on the Cessna Aircraft Company, model 525C (CJ4) airplane that do not use Li-ion chemistry.

Issued in Kansas City, Missouri on May 27, 2009.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-12994 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG-2009-0249]

RIN 1625-AA09

#### **Drawbridge Operation Regulations; CSX Railroad, Trout River, Mile 0.9, Jacksonville, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of the CSX Railroad Bridge across the Trout River, mile 0.9, Jacksonville, Florida. This proposed rule would allow the bridge to operate using an automated system, without an onsite bridge tender. Currently, the bridge is required to open on signal from 6 a.m. until 10 p.m.; and from 10 p.m. until 6 a.m. The draw shall open on signal if at least 12 hours notice is given.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 3, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0249 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

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

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

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

To avoid duplication, please use only one of these methods. 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 Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305-415-6743, e-mail [barry.dragon@uscg.mil](mailto:barry.dragon@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-2009-0249), 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 (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment Online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body

of your document so that we can contact you if we have questions regarding your submission.

To submit your comment Online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0249" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0249 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 using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **Background and Purpose**

The CSX Railroad owner has requested that the Coast Guard remove the existing regulations governing the operation of the CSX Railroad Bridge over the Trout River and allow the bridge to operate utilizing an automated system. The request is made because there are only four train transits per day, which require short transit times. Under the proposed rule, the bridge would remain in the open position to vessel traffic at all other times.

The CSX Railroad Bridge is located on the Trout River, mile 0.9, Jacksonville, Florida. The current regulation governing the operation of the CSX Railroad Bridge is published in 33 CFR 117.337 and requires the bridge to open on signal from 6 a.m. until 10 p.m.; and from 10 p.m. until 6 a.m. the draw shall open on signal if at least 12 hours notice is given.

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

The Coast Guard proposes to change the operating regulations of the CSX Railroad Bridge so that the bridge can operate automatically. There are only four train transits per day across this bridge. The proposed action would remove the requirement that a bridge tender be present to open the bridge on signal for vessel traffic. The bridge would remain in the open position until a train approaches to cross the bridge. When a train approaches, the CSX signal department shall send an electronic signal to the bridge to order the closure sequence to begin. The bridge control system will activate a series of scanners along the water level to detect any marine traffic within the bridge closure area. The bridge control system will turn off the green channel markers and turn on the red bridge warning strobe lights and simultaneously sound a signal, which will last throughout the entire closing period. The bridge shall remain closed position to vessel traffic until the train has sufficiently cleared the bridge area. When the train has cleared, the bridge control system shall again sound a signal for the entire period the bridge is opening. When the bridge is in the fully open position, the red bridge warning strobe lights shall turn off, and the green channel marker lights will relight. The bridge will remain in the open to vessel traffic position until the next train crossing. If at any time the scanners detect a vessel within the bridge structure, the opening/closing sequence will automatically be halted until the vessel clears the structure. Additional strobe lighting shall be placed on the

structure to warn vessels of impending closure.

Signs shall be posted on both sides of the navigation channel indicating, "Caution; this bridge operates by remote control." A toll-free, CSX contact telephone number shall be posted on the signs for emergencies.

### 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. Vessel traffic will be able to transit under the bridge with the exception of the short closure periods required for the trains to transit over the bridge.

### 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. The proposed rule will affect vessel traffic under the bridge and daily train crossings over the bridge. However, the proposed rule will not change the number of times the bridge will need to be in a closed position for trains. Additionally, the bridge will remain in the open to navigation position at all other times for the benefit of vessel traffic.

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6743, e-mail [barry.dragon@uscg.mil](mailto:barry.dragon@uscg.mil).

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

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

### Technical Standards

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

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1, and Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g).

2. Revise § 117.337 as follows:

**§ 117.337 Trout River.**

The draw of the CSX Railroad Bridge across the Trout River, mile 0.9 at Jacksonville, operates as follows:

The bridge is not tender.

(a) The draw is normally in the fully open position, displaying green lights to indicate that vessels may pass.

(b) As a train approaches, provided the scanners do not detect a vessel under the draw, the lights change to flashing red and a horn continuously sounds while the draw closes. The draw remains closed until the train passes.

(c) After the train clears the bridge, the lights continue to flash red and the horn again continuously sounds while the draw opens, until the draw is fully open and the lights return to green.

Dated: May 12, 2009.

**R.S. Branham,**

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. E9–12979 Filed 6–3–09; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2009–0342]

RIN 1625–AA00

**Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend 33 CFR Part 165 to amend the rules that restrict vessels from portions of water areas during events that pose a hazard to public safety. The safety zones proposed in this rulemaking are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays, air shows, and other events.

**DATES:** Comments and related materials must reach the Coast Guard on or before July 6, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2009–0342 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

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

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call BM2 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. 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–2009–0342), 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–2009–0342” 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–2009–0342 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 to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

This rule proposes the amendment of regulations in § 165.929, Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. This rule proposes the removal of three events that do not require establishment of a safety zone; revising the location of three safety zones, revising the enforcement date and time of two safety zones; and the addition of three recurring safety zones. These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

#### Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during events in the Captain of the Port Lake Michigan area of responsibility that may pose a hazard to the public. The proposed safety zones will be enforced only immediately before and during events that pose a hazard to the public. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners or Local Notice to Mariners.

#### Regulatory Evaluation

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.

The Coast Guard’s use of these safety zones will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before and during the time the events are occurring. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

#### 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 and operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones in this proposed rule would be in effect for short periods of time and only once per year. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

**ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule 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 proposed rule under that Order and have determined that it does not have implications for Federalism.

#### Unfunded Mandates Reform Act

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

#### Taking of Private Property

This proposed rule will not effect the 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 proposed 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

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these safety zones and fishing rights protection need not be incompatible. We have also determined that this Proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

### Energy Effects

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

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

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

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

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 023-01, 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 not likely to have a significant effect on the human environment. A preliminary environmental analysis check list supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.929 make the following amendments:

- a. In paragraph (a)(4), revise paragraph (ii).
- b. In paragraph (a)(11), revise paragraph (i).

c. In paragraph (a)(15), revise paragraph (ii).

d. In paragraph (a)(26), revise paragraph (i).

e. In paragraph (a), revise paragraph (33).

f. In paragraph (a), remove and reserve paragraph (37).

g. In paragraph (a), revise paragraph (38).

h. In paragraph (a)(49), revise paragraph (i).

i. In paragraph (a), add paragraph (67). The amendments read as follows:

#### § 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) \* \* \*

(4) \* \* \*

(ii) *Enforcement date and time.* The second Saturday of May; 8 a.m. to 5 p.m.

\* \* \* \* \*

(11) \* \* \*

(i) *Location.* All waters of the Grand River within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 43°04'24" N, 086°12'17" W (NAD 83).

\* \* \* \* \*

(15) \* \* \*

(i) \* \* \*

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m., July 4; 9 p.m. to 11 p.m., and July 5; 9 p.m. to 11 p.m.

\* \* \* \* \*

(26) \* \* \*

(i) *Location.* All waters of Muskegon Lake within the arc of a circle with a 1,000-foot radius from a fireworks launch site located on a barge in position 43°14'13" N, 086°15'54" W (NAD 83).

\* \* \* \* \*

(33) *New Buffalo Independence Day Fireworks; New Buffalo, IN.*

(i) *Location.* All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 1,000-foot radius from the fireworks launch site located in position 41°48'09" N, 086°44'49" W (NAD 83).

(ii) *Enforcement date and time.* The first Friday after July 4; 9 p.m. to 11 p.m.

\* \* \* \* \*

(37) [Reserved]

(38) *Gills Rock July 4th Fireworks; Gills Rock, WI.*

(i) *Location.* All waters of Green Bay, in the vicinity of Hedgehog Harbor, within the arc of a circle with a 800-foot radius from the fireworks launch site located on a in position 45°17'20" N, 087°01'32" W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks

are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

\* \* \* \* \*

(49) \* \* \*

(i) *Location*. All waters of Muskegon Lake within the arc of a circle with a 1,000-foot radius from a fireworks barge located in position 43°14'13" N, 086°15'54" W (NAD 83).

\* \* \* \* \*

(67) *Sister Bay Marina Fest Fireworks; Sister Bay, WI*.

(i) *Location*. All waters of Green Bay, in the vicinity of Sister Bay, within the arc of a circle with a 800-foot radius from the fireworks launch site located on a boat in position 45°11'30" N, 087°07'20" W (NAD 83).

(ii) *Enforcement date and time*. The Saturday prior to Labor Day; 9 p.m. to 11 p.m.

\* \* \* \* \*

Dated: May 7, 2009.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E9-12985 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-1126; MB Docket No. 08-117; RM-11450]

### Television Broadcasting Services; St. Paul, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Dismissal.

**SUMMARY:** The Commission dismisses the pending rulemaking petition filed by Twin Cities Public Television, Inc. ("Twin Cities"), the licensee of noncommercial educational station KTCI-TV, analog channel \*17 and KTCI-DT, pre-transition digital channel \*16, and permittee of post-transition digital channel \*26, St. Paul, Minnesota, to substitute digital channel \*38 for its assigned post-transition digital channel \*26. Duluth-Superior Area Educational Television Corporation ("Duluth-Superior"), the licensee of noncommercial educational station WDSE-TV/DT, Duluth, Minnesota, filed comments and a counterproposal in the proceeding. Twin Cities and Duluth-Superior subsequently came to a Commission approved agreement by which Duluth-Superior agreed to withdraw its counterproposal and Twin

Cities agreed to request a different post-transition digital channel substitution.

#### FOR FURTHER INFORMATION CONTACT:

Joyce L. Bernstein, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Order*, MB Docket No. 08-117, adopted May 18, 2009, and released May 22, 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](mailto: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.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.) Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-13052 Filed 6-3-09; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-1125; MB Docket No. 09-71; RM-11533]

### Television Broadcasting Services; St. Paul, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a channel substitution proposed by Twin Cities Public Television, Inc. ("Twin Cities"), the licensee of noncommercial educational station KTCI-TV, analog channel \*17 and KTCI-DT, pre-transition digital channel \*16, and permittee of post-transition digital channel \*26, St. Paul, Minnesota. Twin Cities requests the substitution of digital channel \*23 for its assigned post-transition digital channel \*26 at St. Paul.

**DATES:** Comments must be filed on or before June 19, 2009, and reply comments on or before June 29, 2009.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Lawrence Miller, Esq., Schwartz, Woods & Miller, Suite 610, The Lion Building, 1233 20th Street, NW., Washington, DC 20036-7322.

#### FOR FURTHER INFORMATION CONTACT:

Joyce L. Bernstein, [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov), Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-71, adopted May 18, 2009, and released May 22, 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](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

##### § 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Minnesota, is amended by adding DTV channel \*23 and removing DTV channel \*26 at St. Paul.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-13056 Filed 6-3-09; 8:45 am]

**BILLING CODE 6712-01-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 622

RIN 0648-AW12

##### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B

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

**ACTION:** Notice of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) has submitted Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 15B proposes actions to require a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; require a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook (ELB) and/or video monitor provided by NMFS; prohibit the sale of snapper-grouper harvested under the bag limits by a vessel for which a Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of where the snapper-grouper were harvested; require an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species that are incidentally caught; expand the allowable transfer of a commercial vessel permit under the limited access program and extend the allowable period for renewal of such a permit. Amendment 15B also proposes to revise the stock status determination criteria for golden tilefish and specify commercial/recreational allocations for snowy grouper and red porgy. The intended effects of this amendment are to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught

threatened and endangered sea turtles and smalltooth sawfish.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on August 3, 2009.

**ADDRESSES:** You may submit comments, identified by "0648-AW12", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.
- Fax: 727-824-5308, Attn: Kate Michie.

- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter "N/A" in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Requests for copies of Amendment 15B, which includes an environmental impact statement, a regulatory impact review, a regulatory flexibility analysis, and a fishery impact statement, should be sent to the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone 843-571-4366; fax 843-769-4520; e-mail [safmc@safmc.net](mailto:safmc@safmc.net).

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305; fax: 727-824-5308.

#### SUPPLEMENTARY INFORMATION:

##### Background

The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

##### *Specifying Allocations for Snowy Grouper and Red Porgy*

In order to ensure the adverse socioeconomic impacts of ending overfishing and rebuilding overfished stocks are fairly and equitably distributed, the Council is specifying allocations between the commercial and

recreational sectors for snowy grouper and red porgy. An allocation for snowy grouper and red porgy is needed to divide the future allowable harvest as designated by the rebuilding trajectory between commercial and recreational sectors. Without the designation of an allocation, the Council is unable to identify the allowable catch in either sector.

#### *Updating Management Reference Points for Golden Tilefish*

A recent stock assessment of golden tilefish has provided numerical values for benchmarks, including optimum yield (OY) and minimum stock size threshold (MSST). The OY redefinition is more consistent with National Standard 1 of the Magnuson-Stevens Act, which states conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY for each fishery for the United States fishing industry. The MSST redefinition for golden tilefish is set at a level that establishes a more appropriate difference between an overfished condition and the rebuilding goal.

#### *Modification of Snapper-grouper Sale Provisions*

Through Amendment 15B the Council would prohibit bag limit sales of snapper-grouper in the South Atlantic in order to address socioeconomic, data quality, and enforcement concerns. Current regulations allow the sale of snapper-grouper taken from the South Atlantic EEZ, up to the allowed bag limit, to be sold to a licensed dealer if the seller possesses a state-issued license to sell fish, whether or not the seller has a commercial vessel permit. Fish harvested and marketed in this manner, whether harvested by for-hire vessels or private anglers, are counted against the commercial quotas, resulting in accelerated quota closure and reducing the amount and value of harvests allocated to the commercial sector. Accelerated closures impose additional economic losses through market disruption and forced alteration of fishing practices, including transfer of effort other resources that may be less valuable and/or more expensive to catch. The effects of this situation are exacerbated by the current reduced commercial quotas. In addition, such fish are also counted against the recreational allocations, thus complicating fishery assessments. Accordingly, this rule would prohibit the sale of South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits. The prohibition would apply not only to a

person fishing from a private recreational vessel but also to a person fishing from a vessel operating as a charter vessel or headboat even if such charter vessel/headboat has a commercial vessel permit. In addition, this rule would prohibit the sale of snapper-grouper harvested under the bag limits by a vessel for which a Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of where the snapper-grouper were harvested, i.e., in state or Federal waters.

#### *Improvements to Bycatch Monitoring*

The Council also addresses bycatch issues in the snapper-grouper fishery in Amendment 15B. A significant number of snapper-grouper are released by fishermen, often resulting in incidental mortality of bycatch. Biologically, such bycatch mortality may constitute a significant portion of the mortality for many species and cause ecological changes to the environment in the form of altered predator-prey relationships. Therefore, the Council is seeking to implement a long-term, standardized monitoring and assessment program through the expansion of the existing requirement for fishing reports to include such private recreational vessels as are selected by the Science and Research Director, Southeast Fisheries Science Center, NMFS (SRD). Other actions aimed at improving bycatch monitoring include a requirement for an owner and operator of a vessel with a commercial vessel or charter vessel/headboat permit for South Atlantic snapper-grouper and an owner and operator of a private recreational vessel in that fishery, if selected by the SRD, to carry a NMFS-approved observer on trips selected by the SRD and/or participate in a NMFS sponsored ELB video monitoring reporting program as directed by the SRD. Video monitoring hardware and software could provide a cost-effective and reliable system of monitoring bycatch, release mortality, handling of fish, and other shipboard practices. Pertinent data collected by a video electronic monitoring system would include species caught, number of hooks, location, depth, date, time, and disposition of released organisms. NMFS would also rely on state corporation, specifically funded projects, and the Atlantic Coastal Cooperative Statistics Program's Release, Discard, and Protected Species Module, as the module is implemented.

#### *Reduce Bycatch Mortality of ESA Listed Species*

On June 7, 2006, NMFS completed a formal Section 7 consultation under the

Endangered Species Act on the South Atlantic snapper-grouper fishery. The biological opinion stated the vertical line and bottom longline gear used in the snapper-grouper fishery were likely to adversely affect threatened and endangered sea turtles and smalltooth sawfish, via entanglement, hooking, and/or forced submergence. One of the terms and conditions to implement a reasonable and prudent measure established under the biological opinion, requires NMFS, in cooperation with the Council, to implement sea turtle bycatch release equipment requirements, and sea turtle and smalltooth sawfish handling protocols and/or guidelines in the permitted commercial and for-hire snapper-grouper fishery. Therefore, this amendment would require a vessel for which a commercial or charter vessel/headboat permit has been issued for South Atlantic snapper-grouper to possess a document provided by NMFS titled, "Careful Release Protocols for Sea Turtle Release With Minimal Injury;" post the sea turtle handling and release guidelines placard provided by NMFS on the vessel; have sea turtle release gear on board; and follow specified release handling measures for a sea turtle or smalltooth sawfish that is caught incidentally.

#### *Permit Renewal and Transferability Requirement Modifications*

In Amendment 15B the Council has also included measures to address permit renewal and transferability issues. Currently, South Atlantic commercial snapper-grouper permits must be renewed within 60 days of the date they expire. The Council believes the 60-day requirement is overly restrictive and presents an unnecessary hardship to fishery participants. As a result, the Council is considering extending the commercial snapper-grouper permit renewal deadline to one year. Additionally, current regulations state that a transferable commercial vessel permit issued under the limited access program may be transferred only to an immediate family member of the holder. An "immediate family member" is specified as a husband, wife, son, daughter, brother, sister, mother, or father. This restriction has precluded owners of individually owned vessels from changing to corporate ownership and the realization of the associated benefits. Accordingly, Amendment 15B proposes to allow transfer to a corporation, provided the shareholders of the corporation are limited to the original permit holder and/or his/her immediate family members. Subsequent

additional shareholders would be limited to immediate family members.

The Council has submitted Amendment 15B for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 15B will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a final rule in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 15B, and the associated rationale. If approved, the provisions of Amendment 15B would be specified in regulations.

Public comments received by 5 p.m. eastern time, on August 3, 2009, will be considered by NMFS in the approval/disapproval decision regarding Amendment 15B.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9-13089 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

**RIN 0648-AS65**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Aquaculture

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

**ACTION:** Notice of Availability of the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (FMP); request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted the FMP for review, approval, and implementation by NMFS. The FMP is intended to establish a comprehensive permitting and regulatory framework to manage the development of an environmentally sound and economically sustainable aquaculture industry in the Gulf of

Mexico exclusive economic zone (EEZ). The FMP would establish application and permit requirements, aquaculture operational requirements and restrictions, siting requirements and conditions, and recordkeeping and reporting requirements; specify allowable aquaculture species; provide for evaluation and approval/disapproval of proposed aquaculture systems (e.g., cages or net pens); establish restricted access zones around aquaculture facilities; and establish a regulatory framework for modifying certain aquaculture-related management measures consistent with the provisions of the FMP. In addition, the FMP would establish biological reference points and status determination criteria specific to aquaculture in the EEZ.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on August 3, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-AS65", by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Mail:** Jess Beck, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0233" in the keyword search, then check the box labeled "Select to find documents accepting comments or submissions", then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the FMP may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813-348-1630; fax 813-348-1711; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website

at <http://www.gulfcouncil.org/>. The FMP includes a Programmatic Environmental Impact Statement (PEIS), an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Jess Beck, telephone: 727-824-5301; fax: 727-824-5320; e-mail: [Jess.Beck@noaa.gov](mailto:Jess.Beck@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

Demand for protein is increasing in the United States. Today imports account for over 80 percent of the U.S. seafood consumption. As demand for seafood as protein continues to increase many commercial wild-capture fisheries are being fished at or above sustainable levels and are likely unable to meet such growing demand. Aquaculture of commercially and recreationally important species has been suggested as one method to meet the current and future demands for seafood.

Currently, there is no process for accommodating commercial scale offshore aquaculture in Gulf of Mexico exclusive economic zone, other than live rock aquaculture which is authorized under Amendments 2 and 3 to the Coral and Coral Reefs FMP. NOAA Fisheries Service may issue an exempted fishing permit (EFP) to conduct offshore aquaculture in federal waters; however, an EFP is of limited duration and is not intended for commercial production of fish and shellfish. The Council has submitted the FMP to NMFS for agency review under procedures of the Magnuson-Stevens Act. The purpose of this FMP is to establish a comprehensive permitting and regulatory framework to manage the development of an environmentally sound and economically sustainable aquaculture industry in the EEZ.

The Council chose alternatives that would: establish application and permit requirements, aquaculture operational requirements and restrictions, siting requirements and conditions, and recordkeeping and reporting requirements; specify allowable aquaculture species; provide for evaluation and approval/disapproval of proposed aquaculture systems (e.g., cages or net pens); establish restricted access zones around aquaculture facilities; establish a regulatory

framework for modifying certain aquaculture-related management measures consistent with the provisions of the FMP; and establish biological reference points and status determination criteria specific to aquaculture in the EEZ.

The FMP, including the PEIS, would serve as the basis for evaluating the potential effects of issuing permits to Gulf aquaculture operations. Potential effects falling outside the scope of the actions proposed would be further analyzed through additional National Environmental Policy Act analyses conducted by the Council and NMFS.

The Council has submitted the FMP for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove the FMP will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially

approve, or disapprove the FMP, and the associated rationale.

#### **Consideration of Public Comments**

Public comments received by 5 p.m. eastern time, on August 3, 2009, will be considered by NMFS in the approval/disapproval decision regarding the FMP.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9-13090 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 74, No. 106

Thursday, June 4, 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.

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 1, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Importation of Swine and Swine Products from the European Union.

*OMB Control Number:* 0579-0265.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. In connection with the disease prevention mission, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country.

*Need and Use of the Information:* To help APHIS ensure that classical Swine fever (CSF) is not introduced into the United States, the regulations allow, under specified conditions, the importation of pork, pork products, and swine from the APHIS-defined European Union (EU) CSF region. These requirements necessitate the use of several information collection activities, including certification statements from the importation of pork, pork products, and swine. Failing to collect this information would increase the chances of CSF being introduced into the United States.

*Description of Respondents:* Federal Government.

*Number of Respondents:* 86.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 816.

### Ruth Brown,

*Departmental Information Collection  
Clearance Officer.*

[FR Doc. E9-13049 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-34-P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction

June 1, 2009.

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Agriculture published a document in the **Federal Register** of May 28, 2009, concerning a request for comments on the information collection "Special Use Administration" OMB control number 0596-0082. The document contained incorrect burden hours. The total burden hours should be 161,365 not 247,107 as published.

**Charlene Parker,**

*Departmental Information Collection  
Clearance Officer.*

[FR Doc. E9-13048 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-11-P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0098]

### Notice of Availability of Biotechnology Quality Management System Pilot Project Draft Audit Standard

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is seeking comments on the draft audit standard developed for its Biotechnology Quality Management System pilot project. The Biotechnology Quality Management System is a voluntary compliance assistance program designed to help regulated entities develop sound management practices, thus enhancing compliance with the regulatory requirements for environmental releases and movements of regulated articles in accordance with 7 CFR part 340.

**DATES:** We will consider all comments we receive on or before August 3, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0098> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0098,

Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0098.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Edward Jhee, Biotechnology Quality Management System Program Manager, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 91, Riverdale, MD 20737-1236; (301) 734-6356, [edward.m.jhee@aphis.usda.gov](mailto:edward.m.jhee@aphis.usda.gov). To obtain copies of the draft audit standard, contact Ms. Cindy Eck at (301) 734-0667, e-mail:

[cynthia.a.eck@aphis.usda.gov](mailto:cynthia.a.eck@aphis.usda.gov). The draft audit standard is also available on the Internet at [http://www.aphis.usda.gov/biotechnology/news\\_bqms.shtml](http://www.aphis.usda.gov/biotechnology/news_bqms.shtml).

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) regulates the introduction—meaning the importation, interstate movement, and environmental release—of genetically engineered (GE) organisms that are, or may be, plant pests. Such GE organisms and products are considered “regulated articles.” Applicants that are issued permits or received acknowledgment of notifications to introduce GE organisms are required to comply with all APHIS regulations.

To enhance improvements in compliance, APHIS initiated development of a voluntary, audit-based compliance assistance program known as the Biotechnology Quality Management System (BQMS). On September 20, 2007, APHIS issued a press release announcing plans to establish a BQMS Pilot Development Project.

APHIS selected five volunteer participants for the pilot program after soliciting letters of interest through a notice published in the **Federal Register** on September 2, 2008 (73 FR 51266–

51267, Docket No. APHIS-2008-0098). The main component of the BQMS pilot project is the draft audit standard, which provides criteria used for the objective evaluation of quality management systems to determine if a system will be certified as an APHIS Biotechnology Quality Management System during the audit portion of the pilot program. The regulatory requirements of 7 CFR part 340 for performance standards and permit conditions are the foundation for the draft audit standard.

The draft audit standard is used by pilot participants to develop sound management practices to enhance compliance with the regulatory requirements of 7 CFR part 340 for environmental releases, importations, and interstate movements of regulated articles. Participants have applied the draft audit standard to their organization's regulated biotechnology program to plan, implement, document, and examine the efficacy of quality assurance and quality control measures related to introductions of regulated articles.

APHIS is soliciting comments for a period of 60 days on the draft audit standard currently used in the BQMS pilot project. Within the draft audit standard, Requirement 7 specifies that participants address critical control points for the introduction of regulated articles by developing containment procedures for regulated articles; developing measures for the identification of regulated articles in storage, being moved, imported, or transferred, and in field locations; developing procedures for planning and monitoring environmental releases of regulated articles; developing methods for post-harvest handling activities and methods to maintain the identity of regulated material; developing procedures for the devitalization and disposition of regulated articles; as well as developing procedures for the submission of regulatory compliance incidents to the appropriate regulatory authorities. APHIS is soliciting comments on the draft audit standard as a whole, and Requirement 7 in particular.

1. Do the critical control points in Requirement 7 of the draft audit standard identify all areas and elements that organizations should focus on in order to maintain compliance with the regulatory requirements under 7 CFR part 340?

2. Is the draft audit standard consistent with current best practices used by the regulated community?

3. Can the public identify incentives USDA might employ to encourage

participation in the voluntary program by commercial industry as well as academic institutions?

4. The BQMS is designed to be flexible according to the size of the participating organization. Is this flexibility apparent in the draft audit standard?

Upon conclusion of the BQMS pilot project, APHIS will consider all comments received during the comment period to revise the draft audit standard to improve the efficacy of this project. This feedback, as well as comments from the participants on the pilot BQMS project, will be used to inform the development of a BQMS audit standard and any future BQMS initiative. The BQMS draft audit standard is available for public review as indicated under the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Done in Washington, DC, this 29th day of May 2009.

**Kevin Shea,**

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

[FR Doc. E9-13053 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

[Docket No. APHIS-2007-0016]

**Syngenta Seeds, Inc.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered To Produce an Enzyme That Facilitates Ethanol Production**

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

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** We are reopening the comment period for a petition submitted by Syngenta Seeds, Inc., seeking a determination of nonregulated status for corn designated as transformation event 3272 and its associated environmental assessment prepared by the Animal and Plant Health Inspection Service under our regulations found at 7 CFR part 340. This action will allow interested persons additional time to prepare and submit comments on the petition, environmental assessment, and the revised plant pest risk assessment.

**DATES:** We will consider all comments that we receive on or before July 6, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0016> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2007-0016, Regulatory Analysis and Development, PPD, APHIS, Station 3A03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0016.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Andrea Huberty, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737-1236; (301) 734-0485, e-mail: [andrea.f.huberty@aphis.usda.gov](mailto:andrea.f.huberty@aphis.usda.gov). To obtain copies of the petition, the draft environmental assessment, or the plant pest risk assessment, contact Ms. Cindy Eck at (301) 734-0667, e-mail: [cynthia.a.eck@aphis.usda.gov](mailto:cynthia.a.eck@aphis.usda.gov). The petition, draft environmental assessment, and plant pest risk assessment are also available on the Internet at [http://www.aphis.usda.gov/brs/aphisdocs/05\\_28001p.pdf](http://www.aphis.usda.gov/brs/aphisdocs/05_28001p.pdf), [http://www.aphis.usda.gov/brs/aphisdocs/05\\_28001p\\_ea.pdf](http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_ea.pdf), and [http://www.aphis.usda.gov/brs/aphisdocs/05\\_28001p\\_ra.pdf](http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_ra.pdf).

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe may be plant pests. Such genetically engineered (GE)

organisms and products are considered "regulated articles."

On October 7, 2005, APHIS received a petition seeking a determination of nonregulated status (APHIS Petition No. 05-280-01p) from Syngenta Seeds, Inc., of Research Triangle Park, NC (Syngenta), for corn (*Zea mays* L.) designated as transformation event 3272, which has been genetically engineered to produce a microbial enzyme that facilitates ethanol production. The petition stated that Event 3272 corn is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice<sup>1</sup> published in the **Federal Register** on November 19, 2008 (73 FR 69602-69604, Docket No. APHIS-2007-0016), APHIS announced the availability of the Syngenta petition and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject corn is likely to pose a plant pest risk, and on the draft EA. APHIS received over 13,000 comments on the petition, the draft EA, and the plant pest risk assessment by the close of the 60-day comment period, which ended on January 20, 2009.

There were 40 comments from organizations or individuals that supported the deregulation of the Event 3272 corn. Over 13,000 comments opposed to the deregulation were submitted. The vast majority of the approximately 13,000 comments opposing the deregulation were from letters conveying essentially identical points compiled by organizations generally opposed to any genetic engineering of plants. Several individuals and organizations also submitted documents, many popular press articles or documents published by those opposed to genetic engineering of plants in general, which they assert are relevant to this regulatory decision for Event 3272 corn.

Most of the comments supporting nonregulated status for Event 3272 corn came from organizations representing corn farmers and ethanol production interests. These comments include state-wide corn growers' and agribusiness associations from at least 12 different States where most of the nation's corn is grown. Several national organizations also voiced their support for the deregulation. The principal reasons given by these groups are the benefits anticipated for farmers and the ethanol

production industry, as well as the ability to meet biofuel production mandates and to promote international trading interests. While APHIS does not determine nonregulated status for GE organisms pursuant to its biotech regulations (Part 340) based on economic or marketing factors, the support from farmers of corn does suggest that individuals with a substantial interest in the health of the national corn crop do not perceive that either plant pest risks or economic/marketing risks will arise if Event 3272 corn is granted nonregulated status.

Several of the comments provided scientific support for the deregulation of Event 3272 corn. Many of these supportive statements were based on scientific studies included in the petition (such as evidence of decreased water use in ethanol production, reduced greenhouse gas emissions, other reduced inputs in ethanol production). There were several comments that also provided additional studies that would support deregulation of Event 3272 corn on the basis of diminished environmental impacts compared to current ethanol production practices. These studies supported the findings of lowered greenhouse gas emissions and reduced inputs, and also suggest that there will be no impacts on wet distilled grains and improved dried distilled grains, and that the Event 3272 corn is equivalent to currently grown corn lines in other agronomic and nutritional qualities, demonstrated through field and feed studies.

Many of the comments that opposed deregulation were based on general opposition to the development and use of GE plants, without citing or addressing any specific environmental issues in the EA or the pest risk assessment for the petition for Event 3272 corn. Many of these comments simply assert that APHIS should prepare an Environmental Impact Statement to fully address all the potential issues associated with a decision to grant nonregulated status to Event 3272 corn without specifically explaining what they perceive to be the inadequacies of the draft EA's environmental analysis. There were many general comments expressing generic, nonspecific concerns over possible gene flow, disruption to organic farming practices, and concerns of food and environmental safety.

Another common comment that APHIS received regarding the determination of nonregulated status for Event 3272 corn is the general "energy" concern related to the effectiveness and value of producing ethanol from corn. Many comments suggested that

<sup>1</sup> To view the notice, petition, draft EA, the plant pest risk assessment and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0016>.

producing ethanol from corn is not an efficient method for achieving energy needs or meeting any alternative energy mandates for the United States.

However, in determining the nonregulated status for a genetically engineered plant pursuant to its Part 340 biotechnology regulations, APHIS does not have authority to consider the economic, marketing, or commercial usefulness of the plant, or issues such as the feasibility of meeting energy needs through any particular crop and its related harvesting and processing aspects.

APHIS did receive some comments that raised specific issues of concern if Event 3272 corn was granted nonregulated status. These issues included specific food safety concerns such as the potential for Event 3272 corn to be allergenic, as well as concerns surrounding the potential economic and manufacturing issues if Event 3272 corn were to become present in corn wet-milling processes.

APHIS does believe it is appropriate to address in this notice certain comments submitted that questioned the conclusion that Event 3272 corn is not a plant pest, and that there is no basis for regulatory control of this GE plant under our statutory authorities and Part 340 biotechnology regulations. These comments argue that the alpha-amylase enzyme engineered into Event 3272 corn may cause damage (degradation of corn starch products) to manufactured or processed plant products if Event 3272 corn is included in the manufacturing and processing of corn starch products. The comments claim that this type of damage comes within the definition of a plant pest. One of these comments<sup>2</sup> claims that “a plant pest consists of any living stage of an article similar to or allied with a bacterium or any article similar to or allied with a bacterium that can cause direct damage to a processed plant product. The ‘article’ in this application [petition] is the thermo-stable alpha-amylase enzyme expressed in Event 3272, which has the potential for injury to plant products if misdirected to corn wet milling facilities.

APHIS’ statutory authority to regulate genetically engineered organisms under the Plant Protection Act (PPA) (7 U.S.C. 7701 *et seq.*) and its Part 340 biotechnology regulations is limited to those GE organisms that are plant pests as defined in Section 403, Subsection 14 of the PPA:

Plant Pest—The term “plant pest” means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product:

- (A) A protozoan.
- (B) A nonhuman animal.
- (C) A parasitic plant.
- (D) A bacterium.
- (E) A fungus.
- (F) A virus or viroid.
- (G) An infectious agent or other pathogen.
- (H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.

Thus, in regulating GE organisms under 7 CFR part 340, APHIS takes a “safeguarding” approach and examines the plant pest risk for genetically engineered plants by looking at all regulated genetically engineered plants for their potential to be plant pests (See plant pest risk assessment, pg. 1). However, under its PPA statutory authorities APHIS cannot regulate GE plants that are outside the PPA’s plant pest definition in 7 U.S.C. 7702(14). This statutory definition provides specifically that only a parasitic plant can be a plant pest.

One of the central purposes of the PPA is to prevent the introduction into or dissemination of plant pests within the United States. The PPA at 7 U.S.C. 7702(14) provides that a plant pest must be a living stage of one of a specific list of organisms (“articles”) that cause injury, damage, or disease in plants or plant products, or an article similar to or allied with such an organism (article). An “article” is defined in the PPA (7 U.S.C. 7702(1)) as follows:

Article—The term ‘article’ means any material or tangible object that could harbor plant pests or noxious weeds.

As mentioned above, there were some comments that questioned the conclusion that Event 3272 corn is not a plant pest. These comments argue that the alpha-amylase enzyme in Event 3272 corn is a plant pest because it may interfere with corn starch processing and thus directly or indirectly damage plants or plant products. The developer of Event 3272 corn submitted a document after the close of the document<sup>3</sup> period that argues that Event 3272 corn does not meet the PPA statutory definition of a plant pest. In this document, the commenter provided its analysis of APHIS’ regulatory authority under the PPA, and among other things, suggests that separate constituent parts of an organism (in this case, an enzyme expressed by Event

3272 corn) are excluded from the definition of plant pest in the PPA because the enzyme “cannot be regarded as ‘living.’”

APHIS agrees that enzymes such as alpha-amylase are proteins that catalyze chemical reactions. Enzymes are not “living.” Thus, enzymes cannot be plant pests because they are not living and cannot be a “living stage” of any of the organisms (“articles”) listed in the PPA’s definition of a plant pest in subparagraphs (A) through (G) of 7 U.S.C. 7702(14). Likewise, the Event 3272 corn alpha-amylase enzyme also cannot be a living stage of any article similar to or allied with any of the articles specified in subparagraphs (A) through (G), and thus does not fall within the statutory definition of a plant pest as listed in subparagraph (H) of the PPA’s plant pest definition (*i.e.*, “Any article similar to or allied with any of the articles specified in the preceding subparagraphs”). APHIS has determined that the alpha-amylase enzyme engineered into Event 3272 corn is not a plant pest because the alpha-amylase enzyme in Event 3272 corn is not living and thus cannot itself be a living stage of any organism listed in the PPA’s plant pest definition.

Moreover, Event 3272 corn itself is not a plant pest since it is clearly not a living stage of any of the organisms (articles) listed in subparagraphs (A) through (G) of 7 U.S.C. 7702(14). Nor is Event 3272 corn itself the living stage of any article (organism) similar to or allied with any of the articles specified in subparagraphs (A) through (G) as required by subparagraph (H) of 7 U.S.C. 7702(14). Thus, APHIS has likewise determined that Event 3272 corn itself is not a plant pest as defined by the PPA. Nevertheless, APHIS evaluated the ability of Event 3272 corn to harbor plant pests in the Plant Pest Risk Assessment and determined that Event 3272 corn does not harbor any living stage of any of the organisms (articles) that are defined as potential plant pests in subparagraphs (A) through (G). First, APHIS described the genetic material that was inserted into Event 3272 corn, which included sequences from plant pests, and included an assessment analyzing the plant disease risk posed by the genetic sequences. Second, APHIS also analyzed the risk that Event 3272 corn would disseminate plant pests (*i.e.* act as an ‘article’). APHIS concluded that the inserted genetic material in Event 3272 corn does not cause plant disease and Event 3272 corn does not increase susceptibility to plant disease or insect pests, and therefore does not harbor plant pests. (The comments received on the docket

<sup>2</sup> See <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2007-0016-0175.1>.

<sup>3</sup> See <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2007-0016-0222.1>.

during the initial comment period did not dispute or comment on these particular issues related to APHIS' plant pest risk assessment.)

For the reasons explained above, APHIS has determined that neither Event 3272 corn itself, nor the alpha-amylase enzyme in Event 3272 corn, is a plant pest. To make clear APHIS' above determination that neither Event 3272 corn, nor the alpha-amylase enzyme in Event 3272 corn, is a "living stage" of any of the organisms (articles) listed in subparagraphs (A) through (H) of the PPA's plant pest definition, APHIS has revised the plant pest risk assessment for Event 3272 corn to include the PPA's definition of a plant pest. The revised assessment also concludes that neither Event 3272 corn nor the alpha-amylase enzyme in Event 3272 corn is a plant pest because neither Event 3272 corn nor the alpha-amylase enzyme meets the PPA's definition of a plant pest. These revisions to the plant pest risk assessment are for clarity and further explanation, but do not change the overall conclusions made in the draft plant pest risk assessment that Event 3272 corn is unlikely to pose a plant pest risk.

APHIS welcomes additional comment on the issues raised during this process. APHIS is also requesting comment on the revised plant pest risk assessment, and APHIS' conclusion, as explained above, that Event 3272 corn and the alpha-amylase enzyme in Event 3272 corn are not plant pests. APHIS will carefully evaluate all additional comments received during this process, and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review on the Regulations.gov Web site (see footnote 1 for a link). After reviewing and evaluating the comments on the petition, draft EA, plant pest risk assessment, and other relevant information, APHIS will make its determination, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Event 3272 corn and the availability of APHIS' written regulatory and environmental decision.

Accordingly, we are reopening the comment period on Docket No. APHIS-2007-0016 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between January 21, 2009 (the day after the close of the original comment period), and the date of this notice.

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of May 2009.

**Kevin Shea,**

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

[FR Doc. E9-13055 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### PowerSouth Energy Cooperative; Notice of Finding of No Significant Impact

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, has made a Finding of No Significant Impact (FONSI) with respect to a request from PowerSouth Electric Cooperative (PowerSouth) for assistance to finance the construction and operation of a new 360 megawatt peak-load natural gas-fired generation facility at PowerSouth's existing McIntosh Power Plant in Washington County, Alabama.

**ADDRESSES:** The FONSI is available for public review at USDA Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250-1571; and at PowerSouth's headquarters office located at 2027 East Three Notch Street, Andalusia, Alabama 36420. To obtain copies of the FONSI or for further information, contact Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250-1571; Telephone: (202) 720-0468 or e-mail: [stephanie.strength@wdc.usda.gov](mailto:stephanie.strength@wdc.usda.gov); or PowerSouth's headquarters office located at 2027 East Three Notch Street, Andalusia, Alabama 36420.

**SUPPLEMENTARY INFORMATION:** PowerSouth is proposing to construct a new 360 megawatt peak-load natural gas-fired generation facility at PowerSouth's existing McIntosh Power Plant with an in-service date of late 2010. The proposed project would consist of two 180 megawatt combustion turbine units operated by natural gas. Burns and McDonnell Engineering Company, Inc., an environmental consulting firm, has prepared an

Environmental Analysis (EA) for RUS. Rural Utilities Service has conducted an independent evaluation of the EA and believes that it accurately assesses the impacts of the proposal and has determined that no significant impacts would result from the construction and operation of the proposal.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, Environmental Policies and Procedures.

Dated: May 29, 2009.

**James R. Newby,**

*Acting Administrator, Electric Program, Rural Utilities Service.*

[FR Doc. E9-13114 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Lewis & Clark County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lewis & Clark County Resource Advisory Committee (RAC) will meet on Wednesday, June 10, 2009, from 6 p.m. until 8 p.m., in Helena, Montana. The purpose of the meeting is to conduct welcomes and introductions, review RAC charter, discuss the guidelines for Title II and Title III funding and proposals, discuss operating protocols, brief RAC members on available funding, capture and record preliminary project ideas, discuss outreach process for project proposals, set a next meeting date and receive public comment on the meeting subjects and proceedings.

**DATES:** Wednesday, June 10, 2009, from 6 p.m. until 8 p.m.

**ADDRESSES:** The meeting will be held at the USDA-Helena Ranger District office located at 2001 Poplar, Helena, Montana 59601 (MT 59601).

**FOR FURTHER INFORMATION CONTACT:** Kathy Bushnell, Committee Coordinator, Helena National Forest, 2880 Skyway Drive, Helena, Montana 59602, 406-495-3747; e-mail: [kbushnell@fs.fed.us](mailto:kbushnell@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Welcome and Committee introductions; (2) Review and revise, if necessary, established RAC charter; (3) discussion of requirements related to Title II and

Title III funding; (4) discussion of Committee member roles and operational guidelines; (5) discussion of available funding; (6) discussion of preliminary project ideas and solicitation process to request additional project proposals; (7) review of next meeting purpose, location, and date; (8) and receive public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 21, 2009.

**Duane Harp,**

*Designated Federal Official.*

[FR Doc. E9-12885 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-12-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Alpine County Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Alpine County Resource Advisory Committee (RAC) will hold its second meeting.

**DATES:** The meeting will be held on June 17, 2009, and will begin at 6 p.m.

The meeting will be held in Alpine County at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA 96120.

**FOR FURTHER INFORMATION CONTACT:** Marnie Bonesteel, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Carson Ranger District, 1536 S. Carson Street, Carson City, NV 89701 (775) 884-8140; e-mail [mbonesteel@fs.fed.us](mailto:mbonesteel@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Discuss and vote on committee bylaws and elect a chairperson (2) Review Title H project submittals (3) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 22, 2009.

**Sally Champion,**

*Acting District Ranger.*

[FR Doc. E9-12886 Filed 6-3-09; 8:45 am]

**BILLING CODE 3410-11-M**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, June 12, 2009; 9:30 a.m. EDT.

**PLACE:** 624 9th St., NW., Room 540, Washington, DC 20425.

#### Briefing Agenda

*Topic:* Health Disparities.

- I. Introductory Remarks by Chairman.
- II. Speakers' Presentations.
- III. Questions by Commissioners and Staff Director.
- IV. Adjourn Briefing.

#### Meeting Agenda

This meeting is open to the public.

- I. Approval of Agenda.
- II. Approval of Minutes of May 15, 2009 Meeting.
- III. Announcements.
- IV. Staff Director's Report.
- V. Program Planning.
  - Discussion of 2009 Statutory Report.
- VI. Management & Operations.
  - Motion Regarding Evaluation of Staff Director Performance (Melendez).
  - Motion Regarding Staff Director's Provision of Quarterly Financial Reports to Commission (Melendez).
  - Motion Regarding Commission Preparation of a Public Service Announcement (Melendez).
  - Motion Regarding Review and Standardization of Agency Regulations, Administrative Instructions and Other Practices (Melendez).
- VII. State Advisory Committee Issues.
  - California SAC.
  - New Hampshire SAC.
- VIII. Future Agenda Items.
- IX. Adjourn.

#### CONTACT PERSON FOR FURTHER

**INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8591. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202-376-8105. TDD: (202) 376-8116.

Dated: June 2, 2009.

**David Blackwood,**

*General Counsel.*

[FR Doc. E9-13177 Filed 6-2-09; 4:15 pm]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and

Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Survey of Income and Program Participation, 2008 Panel, Wave 4 Topical Modules.

*Form Number(s):* SIPP 28405(L)

Director's Letter, SIPP/CAPI Automated Instrument, SIPP 28003 Reminder Postcard.

*OMB Control Number:* 0607-0944.

*Type of Request:* Revision of a currently approved collection.

*Burden Hours:* 143,303.

*Number of Respondents:* 94,500.

*Average Hours Per Response:* 30 minutes.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 4 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were cleared under Authorization No. 0607-0944.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2008 Panel Wave 4 are as follows: Assets, Liabilities, and Eligibility; Child Well Being; Medical Expenses and Utilization of Health Care (Adults and Children);

and Work Related Expenses and Child Support Paid. These topical modules were previously conducted in the SIPP 2004 Panel Wave 3 instrument. There will be an additional topical module in this wave to obtain information on the Economic Stimulus Package. Wave 4 interviews will be conducted from September 1, 2009 through December 31, 2009.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and includes thirteen waves which began September 1, 2008. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions.

The Census Bureau developed the 2008 Panel Wave 3 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

*Affected Public:* Individuals or households.

*Frequency:* Every 4 months.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dhynek@doc.gov](mailto:dhynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail ([bharrisk@omb.eop.gov](mailto:bharrisk@omb.eop.gov)).

Dated: May 29, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-12984 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-07-P**

**DEPARTMENT OF COMMERCE**

**Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* International Billfish Angler Survey.

*OMB Control Number:* 0648-0020.

*Form Number(s):* 88-10.

*Type of Request:* Regular submission.

*Burden Hours:* 83.

*Number of Respondents:* 1,000.

*Average Hours per Response:* 5 minutes.

*Needs and Uses:* This Angler Survey began in 1969 and is an integral part of the Billfish Research Program at the Southwest Fishery Science Center (SWFSC). The Angler Survey tracks recreational angler fishing catch and effort for billfish in the Pacific and Indian Oceans used by scientists and fishery managers. The survey is intended for anglers cooperating in the Billfish Program and is entirely voluntary. The National Marine Fisheries Service (NMFS) collects fishing catch and effort information for most domestic and foreign fisheries, as part of Fishery Management Plans whose development is authorized by the *Magnuson-Stevens Fishery Conservation and Management Act* (MSA), 16 U.S.C. 1851 *et seq.* Study of migratory gamefish that spend at least part of their life in

United States waters is also authorized under 16 U.S.C. 760e.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 1, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-13016 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Antarctic Marine Living Resources Conservation and Management Measures**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 3, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Nicole LeBoeuf, (301) 713-9090, ext. 184 or [nicole.leboeuf@noaa.gov](mailto:nicole.leboeuf@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR meets annually to adopt measures to conserve and manage the marine living resources of the Convention Area. The United States (U.S.) is a Contracting Party to the Convention and a member of CCAMLR and its Scientific Committee. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the U.S. to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations implementing AMLRCA are at 50 CFR part 300, subpart G.

The recordkeeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. The reporting requirements included in this collection concern CCAMLR Ecosystem Monitoring Program (CEMP) activities, U.S. harvesting permit applicants and/or harvesting vessel operators, and U.S. importers and re-exporters of Antarctic Marine Living Resources (AMLR).

**II. Method of Collection**

Paper applications, electronic reports, satellite-linked vessel monitoring devices, radio and telephone calls, gear and vessel markings are required from participants and methods of transmittal include the Internet, satellite, facsimile and mail transmission of forms, reports and information.

**III. Data**

*OMB Control Number:* 0648-0194.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit; individuals.

*Estimated Number of Respondents:* 1 research entity; 5 vessel owners; 80 dealers.

*Estimated Time per Response:* One hour to apply for a CEMP research permit; one hour to report on permitted research; 28 hours to supply information on potential new or exploratory fishing; two hours to apply for a harvesting permit; 2 minutes to transmit information by radio; 4 hours to install a vessel monitoring device (VMS); two hours for annual VMS maintenance; 45 minutes to mark a vessel; 40 minutes to mark buoys; 10

hours to mark pot gear; six minutes to mark trawl nets; 15 minutes to apply for a dealer permit to import and/or re-export Antarctic marine living resources; 15 minutes to complete and submit a toothfish catch document; 15 minutes to apply for pre-approval of toothfish imports; 15 minutes to complete and submit re-export catch documents; fifteen minutes to submit import tickets.

*Estimated Total Annual Burden Hours:* 295.

*Estimated Total Annual Cost to Public:* \$132,000.

**IV. Request for Comments**

Comments are invited on: (a) Whether the continuing collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the continuing collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of Chief Information Officer.*

[FR Doc. E9-12993 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; NOAA Teacher at Sea Alumni Survey**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 3, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Hammond, (301) 713-1364 or [Jennifer.Hammond@noaa.gov](mailto:Jennifer.Hammond@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to three weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea themselves. In order to better serve the participants, the Teacher at Sea Program would like to survey the teacher participants on their experience before, during, and after they return from sea. The survey will collect data only from teacher participants, not from applicants.

**II. Method of Collection**

Forms can be completed on-line, printed, and mailed. Persons with full Adobe Acrobat software can save the on-line form and submit it electronically.

**III. Data**

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 375.

*Estimated Time per Response:* 1 hour to read and complete survey, and 1 hour for a follow-up call from the external evaluator.

*Estimated Total Annual Burden Hours:* 750.

*Estimated Total Annual Cost to Public:* \$0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 1, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of Chief Information Officer.*

[FR Doc. E9-13020 Filed 6-3-09; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-831]

**Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

**Background**

On April 27, 2009, the Department of Commerce (the Department) issued the preliminary results of several new shipper reviews of fresh garlic from the People's Republic of China, covering the periods of review of November 1, 2007 through April 30, 2008 for three companies, and November 1, 2007 through June 9, 2008, for three companies. *See Fresh Garlic from the People's Republic of China: Preliminary*

*Results of New Shipper Reviews*, 74 FR 20452 (May 4, 2009).

**Statutory Time Limits**

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued (19 CFR 351.214(i)(1)). However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days. See 19 CFR 351.214(i)(2).

**Extension of Time Limit for Final Results**

The Department determines that these new shipper reviews involve extraordinarily complicated methodological issues, including the continued evaluation of the *bona fide* U nature of each company's sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these final results which is 150 days from the date on which the preliminary results were issued, until September 24, 2009.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-13068 Filed 6-3-09; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-893, A-552-802]

**Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker (China) and Irene Gorelik (Vietnam), AD/CVD Operations, Office

9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-0413 and (202) 482-6905, respectively.

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

On March 9, 2009, the Department of Commerce ("Department") published notices for the preliminary results of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from the People's Republic of China ("PRC") and the Socialist Republic of Vietnam ("Vietnam"), covering the period February 1, 2007, through January 31, 2008. *See Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 10026 (March 9, 2009); and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, in Part, of the Third Administrative Review*, 74 FR 10009 (March 9, 2009). The final results for these administrative reviews are currently due no later than July 7, 2009, the next business day after 120 days from the date of publication of the preliminary results of review.

**Extension of Time Limit for the Final Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

With respect to shrimp from the PRC, the Department requires additional time to properly consider the numerous and complex issues raised by interested parties in their case briefs, including the surrogate country selection. Similarly, with respect to shrimp from Vietnam, the Department requires additional time to consider the issues raised in case briefs from multiple interested parties, including the separate-rate status for numerous non-mandatory companies, and to conduct a public hearing requested by multiple interested parties.

Thus, it is not practicable to complete these reviews within the original time

limit. Therefore, the Department is extending the time limit for completion of the final results of these reviews by 21 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than July 28, 2009.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-13064 Filed 6-3-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-901]

#### **Certain Lined Paper Products from China: Notice of Intent to Rescind, In Part, Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Victoria Cho or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5075 or (202) 482-1168, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On September 2, 2008, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain lined paper products (CLPP) from China. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 51272 (September 2, 2008). Pursuant to a request from the Association of American School Paper Suppliers (petitioner), the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to two companies:

(1) Shanghai Lian Li Paper Products Co., Ltd. (Lian Li), and (2) Watanabe Group, which consists of Watanabe

Paper Products (Shanghai) Co., Ltd., Watanabe Paper Products (Lingqing) Co., Ltd., and Hotrock Stationery (Shenzhen) Co., Ltd. (collectively, Watanabe) for the period of review (POR) September 1, 2007, through August 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 73 FR 64305 (October 29, 2008) (Notice of Initiation).

**Scope of the Order**

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically

incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A

notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen—top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- **Zwipes™**: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially—developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- **FiveStar® Advance™**: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1” wide elastic fabric band. This band is located 2–3/8” from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to

protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar Advance (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- **FiveStar Flex™**: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

#### **Intent to Rescind the 2007–2008 Administrative Review, in Part**

On November 13, 2008, Lian Li submitted a letter certifying that it did not have any shipments of subject merchandise during the POR. The Department conducted an internal Customs data query on November 13, 2008, to investigate Lian Li’s claim, and found that Lian Li had made shipments to the United States during the POR,

which were entered under the Harmonized Tariff Schedule of the United States (HTSUS) numbers for subject merchandise. See Memorandum to File from Joy Zhang titled “Internal Customs Data Query,” dated December 2, 2008. Therefore, on December 2, 2008, the Department issued a questionnaire to Lian Li.

On January 9, petitioner filed comments on Lian Li’s no shipment claim, asking the Department to request product samples from Lian Li. On January 29, 2009, Lian Li submitted product samples of the merchandise it exported to the United States during the POR, which Lian Li claimed were non—subject merchandise. On March 4, 2009, counsel for petitioner inspected Lian Li’s product samples. See Memorandum to the File from Joy Zhang titled “Inspecting the Product Samples by Counsel for the Association of American School Paper Supplies,” dated March 4, 2009.

Based on a review of the product samples submitted by Lian Li and the Customs data, we preliminarily determine that the samples are not subject merchandise, and that Lian Li did not export subject merchandise to the United States during the POR.

In accordance with 19 CFR § 351.213(d)(3), the Department may rescind an administrative review, “with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.” Because we determined that Lian Li did not export subject merchandise to the United States during the POR, pursuant to 19 CFR § 351.213(d)(3), and consistent with our practice, we preliminarily determine to rescind this review with respect to Lian Li. See, e.g., *Welded Carbon Steel Pipe and Tube from Turkey: Notice of Intent to Rescind Antidumping Duty Administrative Review, In Part*, 73 FR 60240 (October 10, 2008), and *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 40492 (July 15, 2008).

After the preliminary partial rescission of Lian Li, only one respondent, Watanabe, remains in this review.

#### **Public Comment**

An interested party may request a hearing within 30 days of publication of this preliminary notice. See 19 CFR § 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice,

or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of this preliminary notice. See 19 CFR § 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than five days after the time limit for filing the case brief 19 CFR § 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of this preliminary notice.

#### **Extension of Time Limit of Preliminary Results**

The preliminary results of this review are currently due no later than June 2, 2009. Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable. Specifically, on January 8, 2009, Watanabe claimed that it did not export subject merchandise to the United States during the POR. However, based on our internal Customs data query, we found that Watanabe made shipments to the United States during the POR, which entered under the HTSUS numbers for subject merchandise.<sup>1</sup> Therefore, we requested that Watanabe respond to the Department's questionnaire. The issue raised by Watanabe has resulted in a delay in Watanabe's response to the Department's questionnaire. In addition, we need additional time to thoroughly review the response to the original questionnaire and to allow time to issue

supplemental questionnaires, if deemed necessary.

Therefore, we are extending the time period for issuing the preliminary results of review by 120 days to September 30, 2009, in accordance with section 751(a)(3)(A) of the Act and 19 CFR § 351.213(h)(2). The preliminary results are now due no later than September 30, 2009. The final results continue to be due 120 days after publication of the preliminary results.

#### **Assessment**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated

antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR § 351.212(c)(1)(i).

This notice is issued and published in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act, and 19 CFR § 351.213(d)(4).

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-13069 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[C-357-813]**

#### **Honey From Argentina: Rescission of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

#### **Background**

On December 1, 2008, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on honey from Argentina. See *Antidumping or*

*Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 31, 2008, the American Honey Producers Association and the Sioux Honey Association (petitioners) timely requested an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2008 through December 31, 2008. In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order on honey from Argentina. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009).

#### **Rescission of Countervailing Duty Administrative Review**

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. See 19 CFR 351.213(d)(1). On February 27, 2009, petitioners submitted a letter withdrawing their request of the review within the 90-day deadline. No other party requested a review of the order. Therefore, the Department is rescinding this administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2008 through December 31, 2008. The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

#### **Notification Regarding Administrative Protective Order**

This notice serves as a final reminder to parties subject to administrative protection orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

<sup>1</sup> See Internal Customs data query, Second Administrative Review of the Antidumping Duty Order on Certain Lined Paper Products from China, Memorandum to the File, from Joy Zhang, Case Analyst, through James Terpstra, Program Manager, dated January 12, 2009.

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for  
Antidumping and Countervailing Duty  
Operations.*

[FR Doc. E9-13067 Filed 6-3-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-837]

#### **Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Rescission of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8362.

**SUPPLEMENTARY INFORMATION:**

Background: On February 4, 2009, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 6013 (February 4, 2009). On February 27, 2009, Dongkuk Steel Mill Co., Ltd. (DSM) (respondent) requested that the Department conduct an administrative review of the countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea with respect to DSM for the period of January 1, 2008, through December 31, 2008, and revoke the above-referenced countervailing duty order with respect to DSM based on the absence of subsidies for at least five consecutive years. Pursuant to this request, the Department published a notice of the initiation of the administrative review of the countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea with respect to the sole respondent, DSM. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*. 74 FR 12310 (March 24, 2009). Pursuant to section 19 CFR

351.213(d)(1), on May 12, 2009, DSM withdrew its request for a review.

#### **Scope of Order**

The products covered by this order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following

products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is currently classifiable under the HTSUS under subheadings:

7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

#### **Rescission of Review**

If a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review, in whole or in part, pursuant to 19 CFR 351.213(d)(1). In this case, DSM withdrew its request for an administrative review within 90 days from the date of initiation. No other interested party requested a review of DSM. Therefore, consistent with 19 CFR 351.213(d)(1), and because DSM is the sole respondent in this review, we are rescinding this review of the countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea.

#### **Assessment**

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess countervailing duties at the cash deposit rate in effect on the date of entry for entries during the period January 1, 2008, through December 31, 2008.

### Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended and 19 CFR 251.213(d)(4).

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-13070 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-423-809]

#### Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel plate in coils from Belgium for the period January 1, 2007, through December 31, 2007. We preliminarily find that ArcelorMittal Stainless Belgium N.V. ("AMS Belgium") did not receive any countervailable subsidies in this review and its rate is, consequently, zero. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Layton or Alexander Montoro, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0371 and (202) 482-0238, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 11, 1999, the Department of Commerce ("the Department")

published a countervailing duty order ("CVD") on stainless steel plate in coils ("SSPC") from Belgium. *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa*, 64 FR 25288 (May 11, 1999) ("CVD Order"). On March 11, 2003, as a result of litigation, the Department published an amended CVD order on stainless steel plate in coils from Belgium. *See Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa*, 68 FR 11524 (March 11, 2003). On May 5, 2008, the Department published a notice of "Opportunity to Request Administrative Review" for this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 24532 (May 5, 2008). On June 2, 2008, we received a request for review from Ugine & ALZ Belgium ("U&A Belgium"), a Belgian producer of SSPC.<sup>1</sup> In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on July 1, 2008, covering the period January 1, 2007 through December 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 37409 (July 1, 2008).

On August 18, 2008, we issued CVD questionnaires to the Government of Belgium ("GOB"), the Commission of the European Union ("EC"), and U&A Belgium. We received responses to these questionnaires on October 15, 2008, from the EC and on October 22, 2008, from the GOB and AMS Belgium (formerly U&A Belgium). On January 28, 2009, we issued supplemental questionnaires to the GOB and AMS Belgium. We received responses for the supplemental questionnaires from both the GOB and AMS Belgium on March 4, 2009. On April 16, 2009, we issued a second supplemental questionnaire to AMS Belgium, and we received its response on April 22, 2009. On May 4, 2009, we issued a second supplemental questionnaire to the GOB. On May 8, 2009, the GOB requested an extension to

<sup>1</sup>The review was originally requested by U&A Belgium. The company previously known as U&A Belgium stated in questionnaire responses that its name changed to ArcelorMittal Stainless Belgium ("AMS Belgium") during the period of review ("POR") pursuant to the merger of Mittal Steel NV with Arcelor S.A. completed on November 11, 2007. *See* AMS Belgium Questionnaire Response dated October 22, 2008 ("AMS QR") at page 1, footnote 1, and page 4, footnote 2.

file its supplemental response, which we granted. *See* Memorandum from Susan Kuhbach to file, entitled "SSPC from Belgium – Meeting with GOB," May 20, 2009.

On January 28, 2009, we extended the time limit for the preliminary results in this review until June 1, 2009. *See Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review*, 74 FR 4940 (January 28, 2009).

#### Scope of the Order

The products covered by the order are imports of certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the order are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.06, 7219.12.00.20, 7219.12.00.21, 7219.12.00.25, 7219.12.00.26, 7219.12.00.50, 7219.12.00.51, 7219.12.00.55, 7219.12.00.56, 7219.12.00.65, 7219.12.00.66, 7219.12.00.70, 7219.12.00.71, 7219.12.00.80, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of the order remains dispositive.

#### Period of Review

The period for which we are measuring subsidies, *i.e.*, the POR, is

January 1, 2007, through December 31, 2007.

### Changes in Ownership

In the CVD investigation that resulted in the order, we examined a single producer/exporter of the subject merchandise, ALZ N.V. ALZ N.V. was owned by Sidmar N.V. See *Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium*, 64 FR 15567 (March 31, 1999) (“SSPC from Belgium Investigation”); See also *Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review*, 66 FR 45007 (August 27, 2001), and accompanying Issues and Decision Memorandum (“SSPC from Belgium First Review”).

In the most recent review, we recognized that Sidmar N.V. had transferred its shares in ALZ N.V. to Arcelor S.A., which was formed in the 2002 merger of Sidmar N.V.’s parent, Arbed S.A., with Aceralia and Usinor S.A., and the company formerly named ALZ N.V. had become U&A Belgium. See *Stainless Steel Plate in Coils From Belgium: Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 32303 (June 6, 2008); unchanged in *Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review*, 73 FR 75673 (December 12, 2008) (“2006 SSPC Final”).

In the current POR, U&A Belgium changed its name to AMS Belgium. AMS Belgium is wholly owned by ArcelorMittal S.A. as a result of the November 13, 2007, merger of Arcelor S.A. and Mittal Steel N.V.

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the CVD context. See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003). The Department’s methodology is based on a rebuttable “baseline” presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life (“AUL”) of the recipient’s assets). *Id.*, at 37127. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm’s length transaction for fair market value. *Id.*

As explained above, AMS Belgium’s ownership changed during the AUL period as a result of various mergers. However, AMS Belgium has not attempted to rebut the Department’s baseline presumption that the non-recurring, allocable subsidies received prior to any changes in ownership continue to benefit the company throughout the allocation period. See AMS QR at page 13.

### Allocation Period and Attribution

In prior reviews, the Department attributed subsidies received by Sidmar N.V. to ALZ N.V., in accordance with 19 CFR 351.525(b)(6)(iii), because ALZ N.V. was a fully consolidated subsidiary of Sidmar N.V.

In *SSPC from Belgium Investigation*, in accordance with a U.S. Court of International Trade (“CIT”) decision, we calculated company-specific allocation periods for non-recurring subsidies using company-specific AUL data. See *British Steel plc v. United States*, 929 F. Supp. 426, 439 (CIT 1996). We determined that the AUL for ALZ N.V. was 15 years, and that the AUL for Sidmar N.V. was 19 years. See *SSPC from Belgium Investigation*, 64 FR at 15568.

In the first administrative review, the Department adopted new CVD regulations, which were applicable to the review, and determined to use a 15-year AUL for the review including any new subsidies received by Sidmar N.V. See *SSPC from Belgium First Review*, and accompanying Issues and Decision Memorandum at Comment 2. See 19 CFR 351.524(d)(2). However, with respect to non-recurring subsidies received prior to the first administrative review which had already been countervailed and allocated based on an allocation period established in *SSPC from Belgium Investigation*, we continued to allocate those non-recurring subsidies over 19 years for Sidmar N.V. As we noted at the time, this methodology was consistent with our approach in *Certain Carbon Steel Products from Sweden: Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997) and *Certain Pasta From Italy: Final Results of the Third Countervailing Duty Administrative Review*, 66 FR 11269 (February 23, 2001) and accompanying Issues and Decision Memorandum at “Allocation Period.” See *SSPC from Belgium First Review*, and accompanying Issues and Decision Memorandum at Comment 2.

In the current administrative review, AMS Belgium has not commented on the Department’s use of the 15-year AUL period or the use of a 19-year AUL for

Sidmar N.V.’s non-recurring subsidies received by the company in the investigation. For the preliminary results, we are using a 15-year AUL for AMS Belgium, in accordance with 19 CFR 351.524(d)(2). The subsidy benefits previously found to have been received by Sidmar N.V. in the investigation and allocated over the 19-year AUL have been fully allocated and, therefore, are not included in the CVD rate established in this review.

### Analysis of Programs

#### I. Programs Preliminarily Determined Not to Have Been Used or Not to Have Provided Benefits

We examined the following programs and preliminarily determine that AMS Belgium did not apply for or receive benefits under these programs during the POR:

##### A. Government of Belgium Programs

1. Subsidies Provided to Sidmar that are Potentially Attributable to ALZ N.V.:
  - a. Water Purification Grants
  2. Societe Nationale pour la Reconstruction des Secteurs Nationaux
  3. Regional Subsidies under the 1970 Law Investment and Interest Subsidies
  4. Regional Subsidies under the Economic Expansion Law of 1970
    - a. Expansion Real Estate Tax Exemption
    - b. Accelerated Depreciation
  5. Reduced Social Security Contributions Pursuant to the Maribel Scheme (Article 35 of the Law of June 29, 1981)
  6. 1987 ALZ Common Share Transaction Between the GOB and Sidmar (also identified as 1985 ALZ Share Subscriptions and Subsequent Transactions in the *CVD Order*)
  7. Industrial Reconversion Zones:
    - a. Alfin
    - b. Albufin
  8. Belgian Industrial Finance Company (“Belfin”) Loans
  9. Societe Nationale de Credite a l’Industrie (“SNCI”) Loans
  10. Conversion of Sidmar’s Debt to Equity (OCPC-to-PB) in 1985
  11. SidInvest Conditional Refundable Advances

##### B. Government of Flanders Programs

1. Regional subsidies under the 1970 Law
  - a. Corporate Income Tax Exemption
  - b. Capital Registration Tax Exemption
  - c. Government Loan Guarantees
  - d. 1993 Expansion Grant
2. Special Depreciation Allowance

3. Preferential Short-Term Export Credit
4. Interest Rate Rebates

#### C. Programs of the European Commission

1. ECSC Article 54 Loans and Interest Rebates
2. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
3. European Social Fund Grants
4. European Regional Development Fund Grants
5. Resider II Program

#### II. Issues for Which More Information is Required

On May 4, 2009, the Department sought information from the GOB concerning a research and development program administered by the Institute for the Promotion of Innovation by Science and Technology in Flanders. See March 4, 2009 AMS Belgium supplemental questionnaire response at pages 12–14 and Appendices S–5 and S–12 through S–17. In the previous review, the Department stated that it would defer examination of this program until a future review. See *2006 SSPC Final*, and accompanying “Issues and Decision Memorandum for the Final Results of the Eighth (2006) Administrative Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Belgium” in the “Analysis of Programs” section. On May 8, 2009, the GOB requested, and we granted, an extension to file its supplemental response on this program. As a result, we will not receive the GOB’s supplemental response until after the preliminary results of this review are issued.

After reviewing the documentation receive to date, we have determined that we do not have sufficient information to make a finding regarding this program at this time. After we receive the GOB’s supplemental questionnaire response, we intend to issue an interim analysis providing preliminary findings with respect to this program so that parties will have the opportunity to comment.

#### Preliminary Results of Review

We preliminarily find that AMS Belgium, the only producer/exporter subject to this administrative review, had no countervailable subsidies during the POR. Therefore, for the period January 1, 2007, through December 31, 2007, we preliminarily determine the net subsidy rate for AMS Belgium to be 0.00 percent *ad valorem*. Consequently, if these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs

and Border Protection (“CBP”) to liquidate shipments of SSPC by AMS Belgium<sup>2</sup> entered or withdrawn from warehouse, for consumption from January 1, 2007, through December 31, 2007, without regard to countervailing duties. See 19 CFR 351.106(c)(1). We intend to issue these instructions 15 days after publication of the final results of this review.

The final results of this review shall be the basis for future deposits of estimated duties. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required. The cash deposit requirement, when imposed, shall remain in effect until further notice.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies covered by the order at the most recent company-specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by the order will be the rate for that company established in the investigation or most recent administrative review. The “all others” rate shall apply to all non-reviewed companies that have not received an individual rate.

#### Public Comment

Interested parties may submit written arguments in case briefs no later than one week after the issuance of the interim analysis. See 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. See 19 CFR 351.309(d). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2) and (d)(2). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

<sup>2</sup> During the current review AMS Belgium has placed the following information on the record. In 2006, U&A Belgium’s parent company, Arcelor S.A., agreed to merge with Mittal Steel N.V. This merger was completed on November 13, 2007. As a result of this merger, U&A Belgium became AMS Belgium on November 13, 2007. The Department has reviewed the information provided by AMS Belgium with regard to the merger and evaluated the company and its affiliates for receipt of countervailable subsidies. In addition, we have reviewed entry data provided by CBP to confirm that U&A Belgium is the only manufacturer of subject merchandise exported from Belgium during the POR. For countervailing duty review purposes, we will consider U&A Belgium to be AMS Belgium for cash deposit purposes. Since the merger happened during the POR, we will issue assessment instructions for both U&A Belgium and AMS Belgium.

Interested parties may request a hearing within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d)(1).

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results. See section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“Act”).

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–13066 Filed 6–3–09; 8:45 am]

BILLING CODE 3510-DS-8

#### DEPARTMENT OF COMMERCE

#### International Trade Administration

[C–552–805]

#### Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Countervailing Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On April 20, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigation of polyethylene retail carrier bags from the Socialist Republic of Vietnam. See *Polyethylene Retail Carrier Bags from Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law on Imports From the Socialist Republic of Vietnam*, 74 FR 19064 (April 27, 2009). Currently, the preliminary determination is due no later than June 24, 2009.

### Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if, among other reasons, petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, petitioner made such a request on May 22, 2009, requesting a postponement until 130 days from the initiation date. Therefore, pursuant to the discretion afforded the Department under 703(c)(1)(A), we are fully extending the due date for the preliminary determination. The deadline for the completion of the preliminary determination is now August 28, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: May 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-13062 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-821]

#### Certain Hot-Rolled Carbon Steel Flat Products from India: Partial Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request for administrative review received on December 31, 2008, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from India covering the period January 1, 2008, through December 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009) (*Initiation*). As a result of withdrawals of request for review, we are rescinding this review, in part, with respect to Essar Steel Limited (Essar), Ispat

Industries Limited (Ispat), and JSW Steel Limited (JSW).

**EFFECTIVE DATE:** June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone (202) 482-3338

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 31, 2008, U.S. Steel Corporation (petitioner) requested that the Department conduct an administrative review of Essar, Ispat, JSW, and Tata Steel Limited (Tata). On February 2, 2009, the Department initiated the review. See *Initiation*. On May 4, 2009, petitioner withdrew its request with respect to Essar, Ispat, and JSW.

##### Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, or a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF) steels, high-strength low-alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is two percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order.

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60,

7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

#### Partial Rescission of Review

Under 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.

The *Initiation* was published on February 2, 2009. Petitioner submitted a timely request for withdrawal on May 4, 2009. No other party requested administrative reviews of Essar, Ispat, and JSW. Therefore, we are rescinding, in part, this review of the countervailing duty order of certain hot-rolled carbon steel flat products from India with regard to Essar, Ispat, and JSW. This review will continue with respect to Tata.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Patrol (CBP) 15 days after publication of this notice. The Department will direct CBP to assess countervailing duties at the cash deposit rate in effect on the date of entry for entries during the period January 1, 2008, through December 31, 2008.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-13071 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### Hydrographic Services Review Panel Meeting; Correction

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The National Oceanic and Atmospheric Administration published a document in the **Federal Register** of May 15, 2009, entitled Hydrographic Services Review Panel Meeting. The information concerning the teleconference dial-in number and passcode were incorrect. The correct teleconference dial-in number and passcode are dial-in number: 888-829-8675 and passcode: 47777 #.

*Date and Time:* As published in the May 15, 2009, **Federal Register**, the conference call will convene at 2 p.m. Eastern Daylight Time, June 8, 2009, and end by 3 p.m., if not earlier.

*Public Participation:* The meeting will be open to the public, with conference connection information below. It is recommended that interested public call in at 2 p.m. when the meeting starts because there is not a fixed time for public comment. The HSRP Chair will ask at large if there are any comments or questions from the public after the Panel discusses recommendations from the April 14-15, 2009, meeting. A final vote on recommendations will follow before the meeting ends.

##### FOR FURTHER INFORMATION CONTACT:

Captain Steven Barnum, NOAA, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301-713-2770, Fax: 301-713-4019; e-mail: [Hydroservices.panel@noaa.gov](mailto:Hydroservices.panel@noaa.gov) or visit the NOAA HSRP Web site at <http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm>.

##### SUPPLEMENTARY INFORMATION:

##### Correction

The National Oceanic and Atmospheric Administration published

a document in the **Federal Register** of May 15, 2009, entitled Hydrographic Services Review Panel Meeting. The information concerning the teleconference dial-in number and passcode were incorrect. The correct teleconference dial-in number and passcode are dial-in number: 888-829-8675 and passcode: 47777 #.

Dated: June 2, 2009.

**Donna Rivelli,**

*Deputy Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.*

[FR Doc. E9-13167 Filed 6-3-09; 8:45 am]

**BILLING CODE 3510-JE-P**

#### COMMISSION OF FINE ARTS

##### Commission of Fine Arts; Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 June 2009, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: <http://www.cfa.gov>. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated May 27, 2009 in Washington DC.

**Thomas Luebke,**

*ALA, Secretary.*

[FR Doc. E9-12888 Filed 6-3-09; 8:45 am]

**BILLING CODE 6330-01-M**

#### DEPARTMENT OF EDUCATION

##### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 3, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

#### **Institute of Education Sciences**

*Type of Review:* Reinstatement.

*Title:* The School Survey on Crime and Safety (SSOCS), 2010 and 2012.

*Frequency:* Biennially.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 2,695.

*Burden Hours:* 2,022.

*Abstract:* The School Survey on Crime and Safety (SSOCS) is a nationally

representative survey of elementary and secondary school principals that serves as the primary source of school-level data on crime and safety in public schools. SSOCS is the only recurring federal survey collecting detailed information on the incidence, frequency, seriousness, and nature of violence affecting students and school personnel from the school's perspective. Additionally, data are collected on frequency and types of disciplinary actions taken for select offenses; perceptions of other disciplinary problems, such as bullying, verbal abuse and disorder in the classroom; and school policies and programs concerning crime and safety. The SSOCS is done on a biennial basis in the spring of even-numbered years.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4057. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-13100 Filed 6-3-09; 8:45 am]

**BILLING CODE 4000-01-P**

## **DEPARTMENT OF EDUCATION**

[CFDA Number 84.405A]

### **Teacher Quality Partnership Grants Program**

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2009; correction.

**SUMMARY:** On May 27, 2009, we published in the **Federal Register** (74 FR 25221) a notice inviting applications for new awards for FY 2009. This notice corrects an error in that notice.

### **Correction**

In the **Federal Register** of May 27, 2009, in FR Doc. E9-12180, on page 25227, in the third column, under the heading *Poverty Data*, at the end of line six, insert the word "not" after the word "serves."

**FOR FURTHER INFORMATION CONTACT:** Teacher Quality Partnership Grants Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W320, Washington, DC 20202. *Telephone:* (202) 260-0563 or by *e-mail:* [TQPartnership@ed.gov](mailto:TQPartnership@ed.gov).

If you use a TDD, call the Federal Relay Service, toll free, at 1-800-877-8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 1, 2009.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. E9-13086 Filed 6-3-09; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL09-47-000, Docket No. EL09-48-000]

**Richard Blumenthal, Attorney General for the State of Connecticut, Complainant v. ISO New England Inc., Brookfield Energy Marketing Inc., H.Q Energy Services (US) Inc., Constellation Energy Commodities Group, Inc. and Other Unidentified Installed Capacity Resources Committed To Import Over the Northern New York AC Interface, Respondent; The Connecticut Department of Public Utility Control and The Connecticut Office of Consumer Counsel, Complainant v. ISO New England Inc., Brookfield Energy Marketing Inc., H.Q Energy Services (US) Inc., Constellation Energy Commodities Group, Inc. and Other Unidentified Installed Capacity Resources Committed To Import Over the Northern New York AC Interface, Respondent; Notice of Complaint**

May 28, 2009.

Take notice that on May 22, 2009, pursuant to sections 206, 222, and 309 of the Federal Power Act, 16 U.S.C. 824(e), 824(v), and 825h (2006) and Rules 206 and 215 of the Rules of Practice and Procedure, 18 CFR 385.206 and 385.215 (2008) and Part 1(c) of the Commission's Rules and Regulations, 18 CFR part 1c, Richard Blumenthal, Attorney General for the State of Connecticut, the Connecticut Department of Public Utility Control, and the Connecticut Office of Consumer Counsel (collectively the Complainants) filed a Consolidated Amended Complaint against the ISO New England Inc., Brookfield Energy Marketing, Inc. HQ Energy Services (US) Inc., Constellation Energy Commodities Group, Inc. and Other Unidentified Installed Capacity Resources Committed to Import over the Northern New York AC Interface (NNY Capacity Resources) (collectively the Respondents), seeking a Commission investigation and hearing into installed capacity resources who received capacity payments but were unavailable to provide capacity services when called upon and seeking market monitor reforms.

The Complainants state that a copy of the complaint has been served on the Respondents and New England Power Pool, Inc, who represents the NNY Capacity Resources.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on June 11, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13003 Filed 6-3-09; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER09-993-000]

**Lake Cogen, Ltd.; Notice of Filing**

May 28, 2009.

Take notice that, on May 26, 2009, Lake Cogen, Ltd. filed to amend its filing in the above-captioned proceeding to include information required under the Commission's regulations. Such filing serves to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on June 16, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13007 Filed 6-3-09; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL09-12-001]

**Bonneville Power Administration; Notice of Filing**

May 27, 2009.

Take notice that on January 28, 2009, the Bonneville Power Administration (Bonneville) filed, in the above-captioned proceeding, an errata to its Tiered Rate Methodology Rate Case, TRM-12-A-02 (errata filing), which accompanied its Petition for Declaratory Order filed on November 11, 2008 (November 11 Filing). Interventions and protests should be limited to Bonneville's errata filing. The Commission will address all interventions and protests for both the

November 11 Filing and this errata filing in its decision.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on June 11, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13008 Filed 6-3-09; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER09-1183-000]

#### **NaturEner Glacier Wind Energy 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

May 28, 2009.

This is a supplemental notice in the above-referenced proceeding of NaturEner Glacier Wind Energy 2, LLC's

application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 18, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13005 Filed 6-3-09; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER09-1184-000]

#### **NaturEner Power Watch, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

May 28, 2009.

This is a supplemental notice in the above-referenced proceeding of NaturEner Power Watch, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 18, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13006 Filed 6-3-09; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. ER09-1182-000]

**NaturEnerg Montana Wind Energy 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

May 28, 2009.

This is a supplemental notice in the above-referenced proceeding of NaturEnerg Montana Wind Energy 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 18, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-13004 Filed 6-3-09; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications; Public Notice**

May 28, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the

Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Exempt:

Docket No.	File date	Presenter or requester
1. CP09-69-009 .....	5-20-09	Hon. John Hoeven.
2. P-606-000 .....	5-19-09	Hon. Dianne Feinstein.
3. P-2113-022 .....	5-20-09	Hon. Russell D. Feingold.
4. P-2210-169 .....	5-26-09	Robert S. Enzinna.
5. P-2210-169 .....	5-26-09	Quita A. Schweizer.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-13002 Filed 6-3-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. RF-009]

#### Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Electrolux From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

**ACTION:** Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and request for public comments.

**SUMMARY:** This notice announces receipt of and publishes the Electrolux Home Products, Inc. (Electrolux) Petition for Waiver (hereafter, "Petition") from parts of the Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Electrolux's specified French door bottom-mount residential refrigerators and refrigerator-freezers, a product line that utilizes a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions in order to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Electrolux has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE is soliciting comments, data, and information concerning Electrolux's Petition and the suggested alternate test procedure. DOE is also publishing notice of its March 3, 2009 grant of an interim waiver to Electrolux. Subsequently, DOE received a request from Electrolux to expand the scope of its interim waiver to four additional products. DOE has decided to grant this request.

**DATES:** DOE will accept comments, data, and information with respect to Electrolux's Petition until, but no later than July 6, 2009.

**ADDRESSES:** You may submit comments, identified by case number [RF-009], by any of the following methods:

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

- *E-mail:* [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov). Include either the case number [RF-009], and/or "Electrolux Petition" in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Petition for Waiver Case No. RF-008, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Instructions:* All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author.

Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of 10 CFR Part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Ms. Sheila A. Millar, Keller and Heckman, LLP, 1001 G Street, NW., Washington, DC 20001. Telephone: (202) 434-4100. *E-mail:* [millar@khlaw.com](mailto:millar@khlaw.com).

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

*Docket:* For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW, (Resource Room of the Building Technologies Program), Washington, DC 20024, (202) 586-9127,

between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586-2945 for additional information regarding visiting the Resource Room. Please note that the DOE's Freedom of Information Reading Room (formerly Room 1E-190 in the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611. E-mail:

[Michael.Raymond@ee.doe.gov](mailto:Michael.Raymond@ee.doe.gov).

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mailstop GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-9507. E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov) or [Micael.Kido@hq.doe.gov](mailto:Micael.Kido@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background and Authority
- II. Petition for Waiver
- III. Application for Interim Waiver
- IV. Alternate Test Procedure
- V. Summary and Request for Comments

#### I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A<sup>1</sup> of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291-6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR Part 430, Subpart B, Appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is

<sup>1</sup> This part was originally titled Part B; however, it was redesignated Part A after Part B was repealed by Public Law 109-58.

determined that the basic model for which the Petition for Waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR Part 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). In general, waivers remain in effect until the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR Part 430.27(m).

## II. Petition for Waiver

On November 6, 2008, Electrolux filed a Petition for Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, Subpart B, Appendix A1. Electrolux is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Electrolux's technology is similar to that used by General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers which were the subject of Petitions for Waiver published April 17, 2007 and July 10, 2008, respectively. 72 FR 19189; 73 FR 39684. GE's waiver was granted on February 27, 2008. 73 FR 10425. Electrolux seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 because it takes neither ambient humidity nor adaptive technology into account. Therefore, Electrolux stated that the test procedure does not accurately measure the energy consumption of Electrolux's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Electrolux has submitted to DOE for approval an alternate test procedure that would allow it to

correctly calculate the energy consumption of this new product line. Electrolux's alternate test procedure is essentially the same as that prescribed for GE refrigerators and refrigerator-freezers (and petitioned for by Whirlpool) that are equipped with the same type of technology. The alternate test procedure applicable to the GE products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the Decision and Order which DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

## III. Application for Interim Waiver

The Electrolux Petition also requests an Interim Waiver. An Interim Waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. (10 CFR 430.27(g))

In view of the above, Electrolux's Application for Interim Waiver does not provide sufficient information to permit DOE to evaluate the economic hardship Electrolux might experience absent a favorable determination on its Application for Interim Waiver. Public policy would tend to favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company (GE) a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted.

Therefore, in light of the recent waiver to GE that DOE granted on March 3, 2009, Electrolux's application for Interim Waiver from testing of its refrigerator-freezer product line

containing relative humidity sensors and adaptive control anti-sweat heaters is also granted. Electrolux subsequently requested that DOE expand the Interim Waiver to cover four additional products. For the same reasons it granted the interim waiver, DOE is extending coverage of that waiver to these additional products. This granting of Interim Waiver may be modified at any time upon a determination that the factual basis underlying the application is incorrect.

## III. Alternate Test Procedure

Electrolux's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total energy consumption will be calculated by the same methodology that was set forth in the GE Petition. For units with an energy saver switch, the energy test results with and without the added heater contribution would be averaged to produce the final energy number for the product. For those units that do not include an energy saver switch, the final energy number would be equal to the test result of the heater-disabled test plus the added heater contribution. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperatures and humidities for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Electrolux is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE and Whirlpool, Electrolux includes in its test procedure a "system-loss factor" to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

#### IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Electrolux's Petition for Waiver from certain parts of the test procedure applicable to Electrolux's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters. DOE is publishing Electrolux's Petition for Waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The Petition contains no confidential information. The Petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Electrolux's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. DOE is interested in receiving comments from interested parties on all aspects of the Petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the ADDRESSES section above.

Issued in Washington, DC, on May 27, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

November 5, 2008

#### Via Overnight Delivery

The Honorable John F. Mizroch,  
Acting Assistant Secretary, Office of  
Energy Efficiency and Renewable  
Energy, U.S. Department of Energy,  
Mail Station EE-10, Forrestal  
Building, 1000 Independence  
Avenue, SW., Washington, DC  
20585-0121.

Re: Petition for Waiver and Application  
for Interim Waiver from the  
Department of Energy Residential  
Refrigerator and Refrigerator-  
Freezer Test Procedures by  
Electrolux Home Products, Inc.

Dear Secretary Mizroch:

On behalf of our client, Electrolux Home Products, Inc. ("Electrolux"), we respectfully submits this Petition for Waiver and Application for interim Waiver requesting exemption by the Department of Energy from certain parts of the test procedure for determining refrigerator-freezer energy consumption under 10 CFR 430.27. The requested waiver will allow Electrolux to test its refrigerator-freezer to the amended procedure set out by this petition.

This petition for waiver contains no confidential business information and

may be released pursuant to Freedom of Information Act requests.

#### I. Background

Electrolux seeks the Department's approval of this proposed amendment to the refrigerator test procedure to be assured of properly calculating the energy consumption and properly labeling its new refrigerator. Recently, General Electric Corporation ("GE") and Electrolux Corporation ("Electrolux") each filed Petitions for Waiver to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters. Electrolux has developed its own adaptive anti-sweat system that uses a humidity sensor to operate the anti-sweat heaters. Electrolux could have designed the system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Electrolux, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerator when used in the home. Accordingly, Electrolux is filing this Petition for Waiver to appropriately modify the relevant portions of the DOE regulations.

The Department's regulations provide that the Assistant Secretary will grant a petition for waiver upon "determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data."<sup>1</sup>

Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant this Petition on both points. First, the refrigerator energy test procedure does not allow the energy used by Electrolux's new refrigerator to be accurately calculated. The new refrigerator contains adaptive anti-sweat heaters (*i.e.*, anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerator cannot be properly tested.

<sup>1</sup> 10 CFR 430.27(l).

Second, testing Electrolux's new refrigerator according to the test procedure would provide results that do not accurately measure the energy used by the new refrigerator.

#### II. The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit ("F").<sup>2</sup> This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70° F ambient temperature with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless of the humidity or amount of sweat on the unit.

#### III. Electrolux's Proposed Modifications

The circumstances of this petition are similar to those in the Department's earlier decisions granting waiver petitions, including the 2001 waiver granted in *In the Matter of Electrolux Home Appliances*.<sup>3</sup> The test procedure at issue in Electrolux's 2001 waiver request was originally developed when simple mechanical defrost timers were the norm. Accordingly, Electrolux sought a test procedure waiver to accommodate its advanced defrost timer. The Assistant Secretary, in granting the waiver, acknowledged the role of technology advances in evaluating the need for test procedure waivers. With this current petition, Electrolux again seeks to change how it tests its new models to take into account advances in sensing technology, *i.e.*, sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat.

The Electrolux models, with the new anti-sweat technology, subject to this Petition are:

<sup>2</sup> 10 CFR Part 430, Subpart B, App. A1.

<sup>3</sup> *Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Electrolux Home Products from the DOE Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF-005)*, 66 FR 40,689 (Aug. 3, 2001).

EI28BS55IW, EI28BS55IB, EI28BS55IS, EW28BS70IW, EW28BS70IB, EW28BS70IS, EI23BC55IW, EI23BC55IB, EI23BC55IS, EW23BC70IW, EW23BC70IB, EW23BC70IS, E23BC78ISS, E23BC78PIS.

Electrolux proposes to run the energy-consumption test with the anti-sweat heater switch in the “off” position and then, because the test chamber is not humidity-controlled, to add to that result the kilowatt hours per day derived by calculating the energy used

when the anti-sweat heater is in the “on” position. This contribution will be calculated by the same method that was proposed by GE and Electrolux in their Petitions for Waiver.<sup>4</sup> The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

In formulating its Petition, GE conducted research to determine the average humidity level experienced across the United States. The result of

this research was that GE was able to determine the probability that any U.S. household would experience certain humidity conditions during any month of the year. This data was consolidated into 10 bands each representing a 10% range of relative humidity. In submitting this Petition, Electrolux is confirming the validity of using such bands to represent the average humidity experienced across the United States and will adopt the same population weighting as proposed by GE. The bands proposed by GE are as follows:

	% Relative humidity	Probability (percent)	Constant designation
1 .....	0–10	3.4	A1
2 .....	10–20	21.1	A2
3 .....	20–30	20.4	A3
4 .....	30–40	16.6	A4
5 .....	40–50	12.6	A5
6 .....	50–60	11.9	A6
7 .....	60–70	6.9	A7
8 .....	70–80	4.7	A8
9 .....	80–90	0.8	A9
10 .....	90–100	1.5	A10

Since system losses are involved with operating anti-sweat heaters, Electrolux proposes to include in the calculation a factor to account for such energy. This additional energy includes the electrical energy required to operate the anti-sweat heater control and related components, and the additional energy required to increase compressor run time to remove heat introduced into the refrigerator compartments by the anti-sweat heater. Based on Electrolux’s experience, this “System-loss Factor” is 1.3. Simply stated, the Correction Factor that Electrolux proposes to add to the energy-consumption test results obtained with the anti-sweat heater switch in the “off” position is calculated as follows:

$$\text{Correction Factor} = (\text{Anti-sweat Heater Power} \times \text{System-loss Factor}) \times (24 \text{ hours/1 day}) \times (1 \text{ kW}/1000 \text{ W})$$

Continue by calculating the national average power in watts used by the anti-sweat heaters. This is done by totaling the product of constants A1–A10 multiplied by the respective heater watts used by a refrigerator operating in the median percent relative humidity for that band and the following standard refrigerator conditions:

- Ambient temperature of 72 °F,
- Fresh food (FF) average temperature of 45 °F; and
- Freezer (FZ) average temperature of 5 °F.

$$\begin{aligned} \text{Anti-sweat Heater Power} = & A1 * (\text{Heater Watts at 5\% RH}) + A2 * \\ & (\text{Heater Watts at 15\% RH}) + A3 * \\ & (\text{Heater Watts at 25\% RH}) + A4 * \\ & (\text{Heater Watts at 35\% RH}) + A5 * \\ & (\text{Heater Watts at 45\% RH}) + A6 * \\ & (\text{Heater Watts at 55\% RH}) + A7 * \\ & (\text{Heater Watts at 65\% RH}) + A8 * \\ & (\text{Heater Watts at 75\% RH}) + A9 * \\ & (\text{Heater Watts at 85\% RH}) + A10 * \\ & (\text{Heater Watts at 95\% RH}) \end{aligned}$$

As explained above, bands A1–A10 were selected as representative of humidity conditions in all U.S. households. Utilizing such weighed bands will allow the calculation of the national average energy consumption for each product.

Based on the above, Electrolux proposes to test its new models as if the test procedure were modified to calculate the energy of the unit with the anti-sweat heaters in the on position as equal to the energy of the unit tested with the anti-sweat heaters in the off position plus the Anti-Sweat Heater Power times the System Loss Factor (expressed in KWH/YR).

**IV. Conclusion**

Electrolux urges the Assistant Secretary to grant its Petition for Waiver and allow Electrolux to test its new refrigerator models as noted above. Granting Electrolux’s Petition for Waiver will encourage the introduction

of advanced technologies while providing proper consideration of energy consumption.

**V. Affected Persons**

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Electrolux Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including freezers. Electrolux will notify all these entities as required by the Department’s rules and provide them with a version of this Petition.

Sincerely,

Sheila A. Millar.

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy

<sup>4</sup>Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test

Procedures, 72 FR 19,189 (Apr. 17, 2007); Publication of the Petition for Waiver of Electrolux Corporation From the Department of Energy

Refrigerator and Refrigerator/Freezer Test Procedures, 73 FR 39,684 (July 10, 2008).

March 24, 2009

**Via Electronic and Overnight Delivery**

Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, Mail Station EE-10, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Re: Request by Electrolux Home Products, Inc. to Expand Coverage of Interim Waiver and Petition for Waiver From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

Dear Assistant Secretary:

We write to respectfully request an expansion of the March 3, 2009, Interim Waiver you granted our client, Electrolux Home Products, Inc. ("Electrolux") to include four additional residential refrigerator-freezer models. We also request the incorporation of these four models into the Electrolux Petition for Waiver, which we understand is still under review by your office, and has not yet been published for public review and comment in the **Federal Register**. The four Electrolux residential refrigerator-freezer models listed below contain the same or similar relative humidity sensors and adaptive control anti-sweat heaters for which the Department of Energy ("Department" or "DOE") recently granted Electrolux the enclosed Interim Waiver from the test procedures at 10 CFR part 430, subpart B, appendix A1:

EI28BS56IW/B/S, EW28BS71IW/B/S, EI23BC56IW/B/S, EW23BC71IW/B/S

This document contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

The Department's regulations provide that the Assistant Secretary will grant a Petition for Waiver upon "determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data."<sup>1</sup> In addition, the Assistant Secretary will grant an Interim Waiver "if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/

or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver."<sup>2</sup>

Although Electrolux would not experience economic hardship without a waiver of the test procedures—indeed, the alternate test procedure imposes an energy penalty—the DOE letter granting the Electrolux Interim Waiver recognized that:

\* \* \* public policy would favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company ("GE") a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted.

As Electrolux noted in its December 15, 2008, Petition for Waiver and Application for Interim Waiver, the Company could have designed its adaptive anti-sweat system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Whirlpool Corporation, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerators when used in the home.<sup>3</sup> Accordingly, Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to include the four additional models listed above as part of the March 3, 2009 Interim Waiver and Petition for Waiver on both points.

First, the refrigerator energy test procedure does not allow the energy used by the above-referenced Electrolux models to be accurately calculated. These new models contain adaptive anti-sweat heaters (*i.e.*, anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by

the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerators cannot be properly tested. Second, testing Electrolux's new refrigerators according to the test procedure would provide results that do not accurately measure the energy used by the new refrigerator. In addition, the DOE regulations make clear that once a waiver has been granted, the Department must take steps to incorporate the new procedure and eliminate the need for continuing waivers:

Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.<sup>4</sup>

Requiring Electrolux to submit a separate Petition for Waiver and Application for Interim Waiver for the identical technology which was granted in an Interim Waiver a bit more than two weeks ago, and for which the Department has indicated "it is very likely Electrolux's Petition for Waiver will be granted" at a minimum violates the spirit of this provision and is inconsistent with advancing sound energy testing objectives.

**The Refrigerator Energy Test Procedure**

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit ("F").<sup>5</sup> This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70° F ambient with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless

<sup>2</sup> 10 CFR 430.27(g).

<sup>3</sup> General Electric Corporation ("GE") and Whirlpool Corporation ("Whirlpool") each filed Petitions for Waiver to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters.

<sup>4</sup> 10 CFR 430.27(m).

<sup>5</sup> 10 CFR Part 430, Subpart B, App. A1.

<sup>1</sup> 10 CFR 430.27(l).

of the humidity or amount of sweat on the unit.

### Test Procedure Modifications From the Electrolux Interim Waiver

The adaptive anti-sweat system in the four Electrolux models referenced above are identical or similar to those addressed by the March 3, 2009 Interim Waiver. Allowing Electrolux to test these models using the Alternate Test Procedure specified in the Interim Waiver would ensure Electrolux energy efficiency tests take into account advances in sensing technology, *i.e.*, sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat consistent with the same method DOE has approved in connection with the Electrolux Interim Waiver and waivers granted to other manufacturers.<sup>6</sup> The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

### Conclusion

Electrolux urges the Assistant Secretary to expand the Interim Waiver granted to Electrolux and to revise the Electrolux Petition for Waiver to allow Electrolux to test for its new refrigerator models, identified by Model numbers EI28BS56IW/B/S, EW28BS71IW/B/S, EI23BC56IW/B/S, EW23BC71IW/B/S, as noted above.

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Whirlpool Corporation.

The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including freezers. Electrolux will notify all these entities as required by the Department's

rules and provide them with a version of this Petition.

Sincerely,  
Sheila A. Millar.  
Enclosure.

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy  
Michael K. Kido, Office of the DOE Assistant General Counsel for Loan Program and Renewable Energy

[FR Doc. E9-12912 Filed 6-3-09; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8913-2]

### Virginia Commonwealth Prohibition on Discharges of Vessel Sewage; Receipt of Application and Tentative Determination

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

**ACTION:** Notice of tentative determination.

**SUMMARY:** Notice is hereby given that an application dated December 8, 2008 was received from the Commonwealth of Virginia on December 11, 2008 requesting a determination by the Regional Administrator, EPA Region III, pursuant to section 312(f) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of the Broad Creek, Jackson Creek and Fishing Bay Watersheds in Middlesex County, VA.

**DATES:** Comments and views regarding this application and EPA's tentative determination may be filed on or before July 6, 2009.

**ADDRESSES:** Comments or requests for information or copies of the State's application should be addressed to Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814-5385. Fax: (215) 814-2301. E-mail: [runowski.bob@epa.gov](mailto:runowski.bob@epa.gov).

**SUPPLEMENTARY INFORMATION:** This application was made by the Virginia Secretary of Natural Resources on behalf of the Commonwealth of Virginia Department of Environmental Quality

(VDEQ). Upon receipt of an affirmative determination in response to this application, VDEQ would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Broad Creek, Jackson Creek and Fishing Bay watersheds in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The Broad Creek, Jackson Creek and Fishing Bay watersheds are located in the eastern-most part of Middlesex County (*i.e.*, Deltaville), Virginia. The Broad Creek discharges north to the Rappahannock River near its confluence to the Chesapeake Bay. Jackson Creek discharges east into the mouth of the Piankatank River, and Fishing Bay discharges directly south to the Piankatank River, which discharges to the east to the Chesapeake Bay. These watersheds, including Porpoise Cove and Moore Creek, encompass an area of land and water of approximately 3.4 sq mi with nearly 18 miles of shoreline. All these water bodies are oligohaline and subject to the action of tides. The majority of the waters outside the bays are shallow with maintained channel depths of six to 10 feet, although some of the areas may not exceed four (4) feet in depth.

Many people enjoy the Broad Creek, Jackson Creek and Fishing Bay watersheds for a variety of activities, including boating, fishing, crabbing, water skiing, and swimming. The shoreline surrounding these three watersheds includes 1,583 housing units (824 year round), public access areas, thirty two (32) marinas, boat launch facilities, and waterside restaurants. Both recreational and commercial large and small boats, personal watercraft, canoes, kayaks, water skiers, and swimmers enjoy these rivers for their recreational benefits. The full time resident population of 1,716 people (increasing to several thousand during the summer months) use these adjacent areas for boating, fishing, and

<sup>6</sup> Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 72 FR 19,189 (Apr. 17, 2007); Publication of the Petition for Waiver of Whirlpool Corporation From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 73 FR 39,684 (July 10, 2008).

commercial shellfish cultivation and harvesting.

The two Creeks and Fishing Bay host threatened, endangered and rare species of plants and animals, including more than forty (40) water dependent species. The waters of both the Rappahannock and Piankatank Rivers and their tributaries are historically known to accommodate migrating populations of more than ten (10) anadromous fish species. Marine mammals, sea turtles, and waterfowl are also dependent on the environmental quality of these three watersheds and surrounding areas.

The waters of the Broad and Jackson Creeks have been under varying levels of shellfish condemnation for more than twenty (20) years. The 2006 Virginia Water Quality Assessment listed Broad, Jackson and Moore Creeks, Fishing Bay and Porpoise Cove as requiring total maximum daily loads' determinations (TMDLs) for dissolved oxygen, aquatic plants and bacteriological impairments from fecal coliform and enterococci bacteria. In 2005, EPA Region III and the Virginia State Water Control Board (SWCB) approved a TMDL for the shellfish harvest use impairments on Broad and Jackson Creeks and the lower Piankatank River. Establishing a No Discharge Zone is one of the Commonwealth strategies in improving overall water quality in the lower Chesapeake Bay, and these identified reaches of the Rappahannock and Piankatank Rivers. The small tributaries to the Rappahannock and Piankatank Rivers noted within the areas to be designated are exceptional state resources in need of greater water quality protection than the current applicable Federal standards afford due to their high utilization by recreational vessels, significant shell- and finfish resources, and direct public contact with the affected waters.

For the purposes of this application:

A. The proposed Broad Creek Watershed No Discharge Zone is defined as all contiguous waters south of the line formed between the points formed by Latitude 37°33'46.3" N and Longitude 76°18'45.9" W and north to Latitude 37°33'47.4" N and Longitude 76°19'24.7" W).

B. The proposed Jackson Creek watershed No Discharge Zone is defined as all contiguous waters west of the line formed between the points formed by Latitude 37°32'40" N and Longitude 76°19'40.6" W at Stove Point Neck and Latitude 37°32'46.8" N and Longitude 76°19'15.6" W) at the western point of the entrance to the eastern prong of Jackson Creek.

C. The proposed Fishing Bay No Discharge Zone is defined as all

contiguous waters north of the line formed between the points formed by the Latitude 37°32'01.9" N and Longitude 76°21'43.5" W) at the southernmost tip of Bland Point and Latitude 37°31'29.4" N and Longitude 76°19'53.6" W) at the southernmost tip of Stove point. This area includes all of Fishing Bay, and encompasses Moore Creek and Porpoise Cove.

The Commonwealth of Virginia Department of Health (VDH) ensures that proper sanitary facilities are present. There are eighteen (18) marinas in Broad Creek, of which nine (9) waterfront marinas operating ten (10) sanitary pumpouts. The remaining nine Broad Creek marinas have no pump outs but seven (7) offer sanitary restroom facilities. In Jackson Creek, five (5) marinas operate six (6) sanitary sewage pumpouts and dump station facilities. The remaining four (4) Jackson Creek marinas have no pump outs but three (3) have sanitary restroom facilities. Within Fishing Bay, there are two (2) sewage pumpouts stations and one (1) under construction in Porpoise Cove. All of these facilities also provide dump stations, restrooms, and informational signage. Costs for pumpouts can vary from no charge to less than \$15.00 Further details:

#### **Broad Creek**

*Walden Brothers Marina* (Deltaville, VA) on the west side of Broad Creek operates a dump station, sewage holding tank and restrooms. The clearly-identified pump-out is accessible to all boaters. The marina has 63 seasonal slips, 6 transient slips and 15 dry storage areas with dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. The facility operates daily 8 a.m. to 5 p.m., 12 months/year.

*Bay Marine* (Deltaville, VA) is adjacent to Walden Brothers. It operates sewage pumpout, dump station and public restrooms. This facility operates a Class II package wastewater treatment unit with a 5,000 gallon holding tank. This facility has sixty (60) seasonal slips, many of which are occupied with houseboats. Dump station, restrooms, fuel, potable water, electricity, solid waste containers are on site. Operations are 8 a.m. to 4:30 p.m. daily, 12 months/year.

*Norton's Marina* (Deltaville, VA) is upstream of Bay Marine. It operates an accessible, clearly posted holding tank pumpout facility, with 42 seasonal slips. Restrooms, fuel, potable water, electricity, solid waste containers and repair facilities are available. Operations are on request, 7 days/week and 12 months/year.

*Timberneck Marina* (Deltaville, VA) is adjacent to Norton's Marina. There are 35 seasonal slips accessible to fuel, potable water, electricity, solid waste containers and repair facilities. The posted pump out station is at the terminus of its dock at Broad Creek. Operations are 8 a.m. to 4:30 p.m., six (6) days/week all year.

*Broad Creek Marina* (Deltaville, VA) has 20 seasonal slips with a posted holding tank pump out unit, dump station, restrooms, fuel, potable water, electricity, solid waste containers. Operations are 8 a.m. to 5 p.m., seven days/week from May through November.

*Walter's Marina* (Deltaville, VA) is adjacent to Broad Creek Marina is managed as a bed/breakfast serving 12 (max) vessels. It offers dump station, restrooms, potable water, electricity, and solid waste containers. Operations are on demand.

*Chesapeake Cove Marina* (Deltaville, VA), further upstream on Broad Creek with 37 seasonal slips and dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. There is a posted holding tank pump out facility. Operations are 8 a.m. to 5 p.m., 7 days/week, April through December.

*J&M Marine* (Deltaville, VA), on the south shore of Broad Creek western branch adjacent to Chesapeake Cove and Coastal Marinas. There are 50 seasonal and 17 dry storage slips, with boat ramp, restrooms, potable water, electricity, solid waste containers and repair facilities. Hours of operation were not listed.

*Coastal Marine* (Deltaville, VA) on the south shore of the western branch of Broad Creek, adjacent to J&M and Deltaville Yachting Center. It offers 12 seasonal slips and potable water, electricity, solid waste containers and repair facilities. Hours of operation were not listed.

*Deltaville Yachting Center* (Deltaville, VA) is adjacent to Coastal Marine and upstream of Norview Marina with 80 seasonal slips, 4 transient slips, 190 dry storage spaces, and two (2) sewage holding tank pumpout stations, in addition to dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8 a.m. to 4:30 p.m. for 6 days/week, March through November/year.

*Norview Marina* (Deltaville, VA) is on the east shore at the mouth of Broad Creek, and adjacent to the Regatta Point Yacht Club, and across Broad Creek from Bay Marine and Walden Brothers Marina. It has 110 seasonal slips, 188 dry storage spaces, boat ramp, dump

station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8 a.m.–6 p.m., 7 days/week, 12 months/year.

*Regatta Point Marina* (Deltaville, VA) is on the eastern shore near the mouth of Broad Creek. There are 80 seasonal slips and dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are May 15 through September 15 yearly, 7 days/week.

*Stingray Point Marina* (Deltaville, VA) is on the eastern branch near the mouth of Broad Creek and adjacent to Regatta Point Yacht Club, and across from Bay Marine and Walden Brothers Marina. There are 178 seasonal slips with dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8 a.m.–4:30 p.m., 7 days/week, March through November/year. In addition, there are at least four (4) additional facilities on the Broad Creek in the Deltaville VA area with nominal amenities for boaters and water recreation craft.

#### Jackson Creek

*Harbour House* (Deltaville, VA) is a private marina at the mouth of Mill Creek meeting Jackson Creek offering 22 seasonal slips, with ramp, electricity, solid waste containers, restrooms and sewage holding tank pump out facilities. Operations are 24 hours/day, 7 days/week, 12 months/year.

*Jackson Creek Harbor Condominium* (Deltaville, VA) is a private marina with 36 seasonal slips and electricity, potable water, and restroom facilities. No times were listed.

*Deltaville Marina* (Deltaville, VA) has 79 seasonal slips, 10 transient slips, two sewage holding tank pumpout facilities in addition to dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8 a.m.–6 p.m., for March through December (2 pumpouts available).

*Powell's Marina* (Deltaville, VA) has 43 seasonal slips with dump station, restrooms, fuel, potable water, electricity, solid waste containers and sewage holding tank pumpout facilities. Operations are 8 a.m.–5 p.m., 7 days/week, 12 months/year.

*Fitzgerald Boat Basin* (Deltaville, VA) has 22 seasonal slips, with dump station, restrooms, potable water, electricity, solid waste containers and sewage holding tank pumpout facilities. Operations are 7 a.m.–7 p.m., 7 days/week, April through November.

*Little Snug Harbor* (Deltaville, VA) has 27 seasonal slips with electricity, potable water and restroom facilities. Operation times were not listed.

*Fishing Bay Yacht Club* (Deltaville, VA) with 80 seasonal slips, and boat ramp, dump station, restrooms, potable water, electricity, solid waste containers and sewage holding tank facilities.

Operations are at no charge, 24 hours/day, 7 days/week, 12 months/year. There are at least two other mooring areas with limited amenities on Jackson Creek accessible to boaters.

#### Fishing Bay

*Ruark's Marina* (Deltaville, VA) is adjacent to Fishing Bay Trace and Fishing Bay Harbor which lie just to the south. The marina operates a dump station, and is contracted to provide a publicly accessible and posted pumpout unit at the terminus of their "A" dock. On site at Ruark's are 72 seasonal slips with potable water, electricity, solid waste containers and restroom facilities. The site is under construction; no hours are yet listed.

*Fishing Bay Trace* (Deltaville, VA) is a private facility which has 12 slips but no dump station, solid waste or pumpout facilities. No times listed.

*Fishing Bay Harbor Marina* (Deltaville, VA) is on the western shore of Fishing Bay and adjacent to Fishing Bay Trace and the Chesapeake Marine Railway. There are 106 slips with fuel, potable water, electricity, solid waste containers, dump station, sanitary pumpout and restroom facilities. Operations are 8 a.m.–5 p.m., 7 days/week from April through December.

#### Porpoise Cove

Porpoise Cove Marina (Deltaville, VA) is located at the southern end of Porpoise Cove on the north shore of the Piankatank River. There are 21 slips with potable water, electricity, solid waste containers, dump station, and restroom facilities. The marina is under contract with the VDH Marina program to build a new pump out station in 2009. No times listed; the facility is under construction.

The Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings specifies requirements for facility design and operation. Routine health department inspections and performance tests are performed to ensure that facilities are available and functioning properly. The Virginia State Water Control Law Section 62.1–44.33 addresses vessel discharges and authorizes the State Water Control Board to adopt regulations controlling discharges from boats, which are listed and defined in 9 VAC 25–71–70, which also addresses, defines and designates No Discharge Zones (9 VAC 25–71–60).

Broken pumpout stations can be reported to the Virginia Department of

Health by calling 1–800–ASK–FISH. These regulations also address treatment of collected vessel sewage from pumpouts and dump stations. In compliance with these regulations, all wastes from marinas within the Broad and Jackson Creeks and Fishing Bay are collected in and transported by haulers who deliver them to municipal waste treatment facilities or private facilities permitted under the Commonwealth of Virginia Pollutant Elimination Discharge System for final treatment and disposal.

According to the Commonwealth of Virginia's application there are approximately 631 vessels operating in the Deltaville VA area (551 registered and 80 documented) on any given day based on boater registrations and observations. Transient boat population was not included in the VDH or VDEQ field reconnaissance. Based on this information, it is assumed that most transient boats are brought in by trailer. Most of these boats would not be of a size expected to have a holding tank. Transient boat counts have been estimated based on boat information given by the operators of the marinas in the Broad and Jackson Creeks and Fishing Bay areas.

The estimated vessel population in all of the affected areas is based on length: 297 vessels less than 16 feet in length, 537 vessels between 16 feet and 26 feet in length, 1,239 vessels between 27 feet and 40 feet in length, and 42 vessels greater than 40 feet in length. Based on the number and size of vessels and EPA guidance for State and local officials to estimate the number of vessels with holding tanks, three (3) pumpouts and one dump station are needed for the Broad Creek. Currently, there are eleven (11) pumpout facilities and nine (9) dump stations in the Broad Creek. In Jackson Creek, four (4) pumpouts and one (1) dump station are required while six (6) pumpouts and three (3) dump stations exist. For Fishing Bay and the adjacent waters of Porpoise Cove and Moore Creek, two (2) pumpouts and one (1) dump station were required, while there are now two (2) pumpouts and two (2) dump stations currently available.

Using the VDH submitted calculations and information, there are sufficient number of pumpout facilities and dump stations at the marinas in the waters in and around the affected areas to adequately service marine sanitary needs. These facilities are easily accessible to all vessels and provide safe and sanitary wastewater removal and treatment. EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary

removal and treatment of sewage from all vessels are reasonably available for the Broad and Jackson Creeks, the Fishing Bay and Porpoise Cove and Moore Creek areas, in and around Deltaville Virginia. The Commonwealth of Virginia has demonstrated that there is adequate and sufficient law enforcement capability of these regulations. The Commonwealth has also submitted data to document that local citizens, advocacy groups, and marina personnel are concerned about the adverse impacts from vessel sanitary discharges into the Broad and Jackson Creeks and Fishing Bay, and adjacent areas. In response to public meetings in May and June 2008, professional and public comments were all supportive of the decision to designate the affected areas as a no discharge zone. There were sufficient agency and environmental groups' comments to also support these measures.

A final determination on this matter will be made following the 30 day period for public comment and may result in a Virginia State prohibition of any sewage discharges from vessels in the Broad and Jackson Creeks and Fishing Bay areas. Comments and views regarding this application and EPA's tentative determination may be filed on or before July 6, 2009. Comments or requests for information or copies of the application should be addressed to Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103. E-mail: [runowski.bob@epa.gov](mailto:runowski.bob@epa.gov). Telephone: (215) 814-5385. Fax: (215) 814-2301.

Dated: May 19, 2009.

**William C. Early,**

*Acting Regional Administrator.*

[FR Doc. E9-13059 Filed 6-3-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2009-0183; FRL-8913-9]

### Human Studies Review Board; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

**DATES:** The public meeting will be held from June 24, 2009 from approximately 9:30 a.m. to approximately 5:30 p.m., through June 25, 2009 from approximately 8:30 a.m. to approximately 4:30 p.m. Eastern Time.

**Location:** Holiday Inn National Airport, 2605 Jefferson Davis Highway (Crystal City), Arlington, VA 22202 (703-684-7200).

**Meeting Access:** Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

**Procedures for Providing Public Input:** Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes further information should contact Jim Downing, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2468; fax: (202) 564-2070; e-mail addresses: [downing.jim@epa.gov](mailto:downing.jim@epa.gov). General information concerning the EPA HSRB can be found on the EPA Web site at <http://www.epa.gov/osa/hsrb/>.

**ADDRESSES:** Submit your written comments, identified by Docket ID No. EPA-HQ-ORD-2009-0183, by one of the following methods:

**Internet:** <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

**E-mail:** [ord.docket@epa.gov](mailto:ord.docket@epa.gov).

**Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**Hand Delivery:** The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566-1744 or email the ORD Docket at [ord.docket@epa.gov](mailto:ord.docket@epa.gov) for instructions. Updates to Public Reading Room access are available on the Web site (<http://www.epa.gov/epahome/dockets.htm>).

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-ORD-2009-

0183. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

## SUPPLEMENTARY INFORMATION:

### I. Public Meeting

#### A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using [regulations.gov](http://www.regulations.gov), you may access this **Federal Register**

document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566-1744 or email the ORD Docket at [ord.docket@epa.gov](mailto:ord.docket@epa.gov) for instructions. Updates to Public Reading Room access are available on the Web site (<http://www.epa.gov/epahome/dockets.htm>).

EPA’s position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early June 2009. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the [regulations.gov](http://www.regulations.gov) website and the EPA HSRB website at <http://www.epa.gov/osa/hsrb/>. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**.

#### C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- a. Explain your views as clearly as possible.
- b. Describe any assumptions that you used.
- c. Provide copies of any technical information and/or data you used that support your views.
- d. Provide specific examples to illustrate your concerns and suggest alternatives.
- e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

#### D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-ORD-2009-0183 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to June 17, 2009. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern time, June 17, 2009 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those

comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, June 17, 2009. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

#### E. Background

##### A. Topics for Discussion

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA’s programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA’s Science Advisor.

The June 24–25, 2009 meeting of the Human Studies Review Board will address scientific and ethical issues surrounding:

- Four unpublished reports of research completed before enactment of the 2006 expanded EPA Regulation 40 CFR part 26 (Protection of Human Subjects rule) on the organophosphate pesticide chlorpyrifos:
  - a. A study by Coulston *et al.* (1972) of the subacute oral toxicity of chlorpyrifos to adult male prisoners.
  - b. A study by Nolan *et al.* (1982) of the metabolism and excretion of chlorpyrifos and cholinesterase activity in adult males after a single oral or dermal exposure.
  - c. A study by Honeycutt and DeGeare (1993) monitoring the Acetylcholinesterase activity and urinary metabolites of chlorpyrifos in agricultural workers who re-entered chlorpyrifos-treated citrus groves.
  - d. A study by Kisicki *et al.* (1999) of the acute oral toxicity of chlorpyrifos to adult male and female volunteers.
- A proposal for new research to be conducted by Carroll-Loye Biological Research to evaluate the repellent efficacy to biting flies in the field of two

registered products containing 20% picaridin.

- The report of a completed laboratory study conducted by ICR, Inc., to evaluate the repellent efficacy to stable flies of two registered products containing 20% picaridin.

- A new scenario design and associated protocol for field studies at five sites from the Agricultural Handlers Exposure Task Force (AHETF), describing proposed research to monitor exposure of professional pesticide handlers who mix and load pesticides formulated as wettable powders in water-soluble packaging.

In addition, the Board will be reviewing its draft February 17, 2009 meeting report for subsequent Board approval. Finally, the HSRB may also discuss planning for future HSRB meetings.

#### B. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at <http://www.epa.gov/osa/hsrb/> and <http://www.regulations.gov>. In addition, information concerning a Board meeting report, if applicable, can be found at <http://www.epa.gov/osa/hsrb/> or from the person listed under **FOR FURTHER INFORMATION**.

Dated: May 29, 2009.

**Kevin Teichman,**

*EPA Acting Science Advisor.*

[FR Doc. E9-13061 Filed 6-3-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8913-4]

### Proposed Settlement Agreement

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

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by American Petroleum Institute (API) in the United States Court of Appeals for the District of Columbia Circuit: *American Petroleum Institute v. EPA*, No. 06-1321 (D.C. Cir.). API filed a petition for review of an EPA rule promulgating regulations requiring new

source performance standards for new stationary compression ignition internal combustion engines. Under the terms of the proposed settlement agreement, EPA agrees to propose revisions to the new source performance standards and to issue guidance specifying particular standards applicable under the regulations.

**DATES:** Written comments on the proposed settlement agreement must be received by *July 6, 2009*.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2009-0354. Online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-5583; fax number (202) 564-5603; e-mail address: [horowitz.michael@epa.gov](mailto:horowitz.michael@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would potentially resolve a petition for judicial review filed by API for review of a rule promulgating new source performance standards for new stationary compression ignition internal combustion engines. Under the terms of the proposed settlement agreement, EPA agrees to propose, no later than one year after execution of the settlement agreement, revisions to the new source performance standards. The proposed revisions would allow owners and operators more options in operating and maintaining their engines, but would require more testing for sources using the additional options. The proposal would also clarify certain provisions of the existing regulations and make minor modifications unrelated to the stringency of the standards. After considering any comment reviewed,

EPA agrees to sign a final rule within one year of the publication of the proposal. If the relevant provisions of the final rule are in substantial conformance with the revisions in the draft agreement, then API agrees to the dismissal of its petition for review. Additionally, based on API concerns that the regulations are not sufficiently clear regarding the not-to-exceed standards and multiples applicable to engines subject to the regulations, EPA agrees to issue guidance specifying the not-to-exceed standards and multiples applicable to such engines.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

##### II. Additional Information About Commenting on the Proposed Settlement Agreement

###### A. How Can I Get a Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2009-0354) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the

system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing Online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

#### *B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address,

or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 28, 2009.

**Richard B. Ossias,**

*Associate General Counsel.*

[FR Doc. E9-13060 Filed 6-3-09; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **Sunshine Act Meeting; Revised Sunshine Notice**

June 1, 2009.

### **FCC To Hold Open Commission Meeting Wednesday, June 3, 2009**

The Federal Communications Commission will hold an Open Meeting on Wednesday, June 3, 2009, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, SW., Washington, DC (*See Sunshine Notice dated May 27, 2009*).

The meeting will include presentations and discussion by senior agency officials as well as industry, consumer groups and others involved in the Digital Television Transition.

#### *Agenda and Witness List*

9:30 a.m. Opening Statements by Chairman and Commissioners.

9:45 a.m. Overview:

William Lake, DTV Coordinator.

10 a.m. Panel 1: FCC and NTIA Reports on the Status of the DTV Transition and Prospects for June 12, 2009.

Eloise Gore, Associate Bureau Chief, Media Bureau, Federal Communications Commission;

Cathy Seidel, Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission;

Andrew Martin, Chief Information Officer, Federal Communications Commission;

Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission;

Dr. Bernadette McGuire-Rivera, Associate Administrator, Office of Telecommunications and

Information Applications, National Telecommunications and Information Administration.

10:45 a.m. Break.

11 a.m. Panel 2: Industry and Consumer Group Reports on the Status of the DTV Transition and Prospects for June 12, 2009.

Jane Mago, Executive Vice President & General Counsel, National Association of Broadcasters;

Larry Sidman, President and CEO, Association of Public Television Stations;

David Donovan, President, MSTV; Kyle McSlarrow, President and CEO, National Cable &

Telecommunications Association; Joel Kelsey, Policy Analyst, Consumers Union;

Christopher A. McLean, Executive Director, Consumer Electronics Retailers Coalition;

Shawn DuBravac, Economist,

Consumer Electronics Association; Erica Swanson, Deputy Director for

Field Operations & Director, LCCREF DTV Assistance Campaign Leadership Conference on Civil Rights Education Fund.

11:45 a.m. Closing Statements/Adjournment.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at <http://www.fcc.gov/realaudio>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993-3100 or go to <http://www.capitolconnection.gmu.edu>.

Copies of materials adopted at this meeting can be purchased from the

FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488-5300; Fax (202) 488-5563; TTY (202) 488-5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E9-13113 Filed 6-2-09; 11:15 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Public Meeting of the Federal Coordinating Council on Comparative Effectiveness Research

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** Authorized by the American Recovery and Reinvestment Act of 2009 (ARRA), the Federal Coordinating Council for Comparative Effectiveness Research will help coordinate research and guide investments in comparative effectiveness research funded by the Recovery Act. The Coordinating Council is holding this meeting to hear from the public about their views on the Council's activities.

**DATES:** The meeting, which is the third of three public meetings that the Coordinating Council expects to convene, will be held on Wednesday, June 10, 2009, from 12 p.m.-3 p.m. EDT.

**ADDRESSES:** The meeting will be held at the Embassy Suites Convention Center, 900 10th St., NW., Washington, DC 20001. In addition, the meeting will be Web cast and individuals may also participate by audioconference.

**FOR FURTHER INFORMATION CONTACT:** Patrick Conway, Office of the Secretary, HHS, Telephone: 202-690-7858; E-mail: [Patrick.conway@hhs.gov](mailto:Patrick.conway@hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Coordinating Council will assist the agencies of the Federal government, including HHS, Departments of Veterans Affairs and Defense, as well as others, to coordinate comparative effectiveness and related health services research. The Coordinating Council also will provide input on priorities for the \$400 million fund in the Recovery Act that the Secretary will allocate to advance this type of research.

The Coordinating Council will not recommend clinical guidelines for

payment, coverage or treatment. The Coordinating Council will consider the needs of populations served by Federal programs and opportunities to build and expand on current investments and priorities.

**Registration and Other Information About the Meeting:** Individuals may participate in the meeting either by attending in person, viewing the meeting over the Internet, or by audioconference. Individuals may also nominate themselves to make a 3-minute statement before the Coordinating Council. In addition, individuals may submit written statements for the Coordinating Council's consideration, regardless of whether individuals are chosen to give an oral statement. The Coordinating Council does request that individuals nominating themselves to make an oral statement make every effort to be present to give their statement in person. However, to facilitate hearing as many different viewpoints as possible, consideration will be given to individuals who would make their oral statements via audioconference.

Oral statements, as well as written statements submitted for the Coordinating Council's consideration, should address the following kinds of questions:

- What types of investments in infrastructure for comparative effectiveness research should the Coordinating Council consider?
- What criteria should the Coordinating Council consider when evaluating different investment options?
- What Federal government activities in the area of comparative effectiveness research should the Coordinating Council focus its attention on?
- How can the Coordinating Council best foster integration of these activities across the programs managed by the Departments of Health and Human Services, Defense, and Veterans Affairs?
- What steps should the Coordinating Council consider to help ensure that public- and private-sector efforts in the area of comparative effectiveness research are mutually supportive?
- What information on the Coordinating Council's activities would be most useful?

The Office of the Secretary requests that interested persons register to participate and indicate (a) whether they will attend in person, view the Coordinating Council's meeting over the Internet, or listen by audioconference; (b) whether they are nominating themselves to give a 3-minute oral statement; and/or, (c) if they intend to submit a written statement for the Coordinating Council to consider. Per

Section 3, "Ensuring Responsible Spending of Recovery Act Funds," 74 FR 12531, 12533 (March 25, 2009), individuals who wish to make an oral statement will be asked to disclose whether they are registered lobbyists.

Individuals should register to participate no later than Monday, June 8, at 5 p.m., EDT. Due to time constraints, not everyone who volunteers to make an oral statement will be able to do so. However, all statements received will be considered by the Coordinating Council as part of their deliberations.

To register, go to <http://www.hhs.gov/recovery/programs/CER/index.html>. Individuals who do not register in advance will only be able to attend the meeting in person if space is available. Information on how to view the meeting over the Internet and participate by audioconference will be sent to registered participants in advance and posted on the Recovery.gov Web site on Tuesday, June 9, 2009. The number of audioconference lines for non-registered participants may be limited.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, at (301) 443-1144.

Each public meeting is scheduled for a three-hour period, but will end sooner if participants have finished providing input before the time period expires. We are asking for input concerning specific topics as follows:

To help interested individuals prepare for the meetings, we invite review of the Act. The full text is set forth on the Internet at: <http://www.gpoaccess.gov/plaws/>(search for Pub. L. 111-50).

Also, the Office of the Secretary has an e-mail notification list to provide interested parties with automatic notification of relevant information posted on Recovery.gov and the HHS Web site (<http://www.hhs.gov/recovery/programs/CER/index.html>) concerning the Federal Coordinating Council. To be added to the e-mail notification list, send your e-mail address to [CoordinatingCouncil@blseamon.com](mailto:CoordinatingCouncil@blseamon.com), and use the words "Add me to the list" in the subject line.

Dated: May 29, 2009.

**Patrick Conway,**

*Executive Director, Federal Coordinating Council for Comparative Effectiveness Research.*

[FR Doc. E9-13075 Filed 6-1-09; 4:15 pm]

BILLING CODE 4151-05-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the second meeting of the HIT Policy Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.).

**DATES:** HIT Policy Committee meeting on June 16, 2009, from 10 a.m. to 1 p.m. [Eastern Time].

**ADDRESSES:** HIT Policy Committee Meeting, Hubert H. Humphrey Building (200 Independence Avenue, S.W., Washington, DC 20201), Conference Room 505A. Please bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** <http://healthit.hhs.gov>.

**SUPPLEMENTARY INFORMATION:** The meeting will include presentations from the HIT Policy Committee Workgroups. Space is limited, and seating is on a first-come, first-served basis. The meeting will be available via Web cast. If you have special needs for the meeting, please contact (202) 690-7151.

Dated: June 1, 2009.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E9-13077 Filed 6-1-09; 4:15 pm]

**BILLING CODE 4150-45-P**

Measuring and Reporting Functional Status and Subcommittee reports.

On the morning of the second day the Committee will discuss Health Data Stewardship and there will be an update on Health Statistics for the 21st Century. There will also be an update from NCHS Board of Scientific Counselors. In addition there will be a discussion of the NCVHS 60th Anniversary celebration and 21st Century Health Statistics update.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: May 25, 2009.

**James Scanlon,**

*Acting Assistant Secretary for Planning and Evaluation.*

[FR Doc. E9-13080 Filed 6-1-09; 4:15 pm]

**BILLING CODE 4151-05-P**

**ADDRESSES:** Submit written comments on the collection of information by fax 202-395-6974 to the OMB Desk Officer for AoA, Office of Information and Regulatory Affairs, OMB.

**FOR FURTHER INFORMATION CONTACT:** Lori Stalbaum at (202) 357-3469, or [lori.stalbaum@aoa.hhs.gov](mailto:lori.stalbaum@aoa.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

#### Describe Collection of Information

AoA is requesting a continuation of an existing collection for Semi-Annual and Final Performance Progress Reports for Older Americans Act Title IV grantees. AoA estimates the burden of this collection of information as follows: *Frequency:* Semi-annually with the Final report taking the place of the semi-annual report at the end of the final year of the grant. *Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations. *Estimated Number of Responses:* 600. *Total Estimated Burden Hours:* 12,000.

Dated: May 29, 2009.

**Edwin L. Walker,**

*Acting Assistant Secretary for Aging.*

[FR Doc. E9-12986 Filed 6-3-09; 8:45 am]

**BILLING CODE 4154-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-09-09AP]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management, Washington, DC or fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

The National Intimate Partner and Sexual Violence Surveillance System (NISVSS)—New—National Center for

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

*Time and Date:* June 10, 2009 9 a.m.–3:30 p.m., June 11, 2009 10 a.m.–1 p.m.

*Place:* National Center for Health Statistics, 3311 Toledo Road, Hyattsville, MD 20782.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Center for Medicare and Medicaid Services, the Office of the National Coordinator (ONC), and the NCVHS Executive subcommittee. In the afternoon there will be a speaker on

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Semi-Annual and Final Reporting Requirements for the Older Americans Act Title IV Discretionary Grants Program

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by July 6, 2009.

Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The health burden of Intimate Partner Violence (IPV), Sexual Violence (SV) and stalking are substantial. Approximately 1.5 million women and 834,700 men are raped and/or physically assaulted by an intimate partner each year. Women are more likely than men to be victimized by almost every type of IPV, including rape, physical assault, and stalking by a current or former intimate partner. The health care costs of IPV exceed \$5.8 billion each year, nearly \$3.9 billion of which is for direct medical and mental health care services.

SV also has a profound and long-term impact on the physical and mental health of the victim. Existing estimates of lifetime experiences of rape range from 15% to 36% for females. Sexual violence against men, although less prevalent, is also a public health problem; approximately, 1 in 6 women and 1 in 33 men have experienced an

attempted or completed rape in their lifetime. Over 302,000 women and 92,000 men were raped in the past 12 months. Thirty percent of rape victims experience major depressions at some time in their lives; 33% of victimized women and 24.2% of victimized men are counseled by a health professional; 31% develop post traumatic stress disorder; 33% contemplate suicide; and 13% attempt suicide.

Each year, approximately 1 million women and 371,000 men in the United States are stalked. There is a strong link between stalking and other forms of violence in intimate relationships; 81% of women who were stalked by a current or former intimate partner were also physically assaulted by that partner and 31% were sexually assaulted by that partner. Furthermore, 76% of female victims of intimate partner homicides were stalked by their partners before they were killed.

Currently, the United States lacks a national data source that systematically and routinely collects valid and reliable information on the magnitude and

trends in IPV, SV and stalking. Such a system is needed to (1) help formulate public policies and prevention strategies related to IPV, SV and stalking; (2) guide and evaluate progress in reducing the huge health and social burden associated with IPV, SV and stalking; and (3) improve the effectiveness of federal agencies responding to IPV, SV and stalking.

In order to address this important public health problem, CDC plans to develop a national surveillance system that will generate national and state level estimates of IPV, SV and stalking. A total of 73,318 eligible households will be screened; out of the households screened approximately 38,318 will not consent or agree to participate and 35,000 will complete the survey each year. The survey will be conducted among English and/or Spanish speaking male and female adults (18 years and older) living in the United States.

There are no costs to respondents other than their time. The total estimated annual burden hours are 18,249.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of responses	Number of responses per respondent	Average burden per response (in hours)
Households .....	Screened .....	73,318	1	3/60
	Surveyed .....	35,000	1	25/60

Dated: May 28, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-13044 Filed 6-3-09; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2009-N-0246]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the guidance document entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile."

**DATES:** Submit written or electronic comments on the collection of information by August 3, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All

comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB

for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile (OMB Control Number 0910-0509)—Extension**

As a direct result of discussions that have been adjunct to the U.S./Chile Free Trade Agreement, Chile has recognized FDA as the competent U.S. food safety authority and has accepted the U.S. regulatory system for dairy inspections.

Chile has concluded that it will not require individual inspections of U.S. firms by Chile as a prerequisite for trade, but will accept firms identified by FDA as eligible to export to Chile. Therefore, in the **Federal Register** of June 22, 2005 (70 FR 36190), FDA announced the availability of a revised guidance document entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile." The guidance can be found at <http://www.cfsan.fda.gov/guidance.html>. The guidance document explains that FDA has established a list that is provided to the Government of Chile and posted on <http://www.cfsan.fda.gov/~comm/expcllst.html>, which identifies U.S. dairy product manufacturers/processors that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e., an injunction or seizure) or a pending warning letter. The term "dairy products," for purposes of this list, is not intended to cover the raw agricultural commodity raw milk. Application for inclusion on the list is voluntary. However, Chile has advised that dairy products from firms not on this list could be delayed or prevented by Chilean authorities from entering commerce in Chile. The guidance

explains what information firms should submit to FDA in order to be considered for inclusion on the list and what criteria FDA intends to use to determine eligibility for placement on the list. The document also explains how FDA intends to update the list and how FDA intends to communicate any new information to Chile. Finally, the guidance notes that FDA considers the information on this list, which is provided voluntarily with the understanding that it will be posted on FDA's Web site and communicated to, and possibly further disseminated by, Chile, to be information that is not protected from disclosure under 5 U.S.C. 552(b)(4). Under the guidance, FDA recommends that U.S. firms that want to be placed on the list send the following information to FDA: (1) Name and address of the firm and the manufacturing plant; (2) name, telephone number, and e-mail address (if available) of the contact person; (3) a list of products presently shipped and expected to be shipped in the next 3 years; (4) identities of agencies that inspect the plant and the date of last inspection; (5) plant number and copy of last inspection notice; and, (6) if other than an FDA inspection, a copy of last inspection report. FDA requests that this information be updated every 2 years.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New written requests to be placed on the list	15	1	15	1.5	23
Biannual update	88	1	88	1.0	88
Occasional updates	25	1	25	0.5	13
Total					124

<sup>1</sup> There are no capital or operating and maintenance costs associated with this collection of information.

The estimate of the number of firms that will submit new written requests to be placed on the list, biannual updates and occasional updates is based on the FDA's experience maintaining the list over the past 4 years. The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list or update its information is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms.

To date, over 175 producers have sought to be included on the list. FDA

estimates that, each year, approximately 15 new firms will apply to be added to the list. We estimate that a firm will require 1.5 hours to read the guidance, to gather the information needed, and to prepare a communication to FDA that contains the information and requests that the firm be placed on the list for a total of 22.5 hours, rounded to 23. Under the guidance, every 2 years each producer on the list must provide updated information in order to remain on the list. FDA estimates that each year approximately half of the firms on the list, 88 firms (175 × 0.5 = 87.5, rounded to 88), will resubmit the information to

remain on the list. We estimate that a firm already on the list will require 1.0 hours to biannually update and resubmit the information to FDA, including time reviewing the information and corresponding with FDA, for a total of 88 hours. In addition, FDA expects that, each year, approximately 25 firms will need to submit an occasional update and each firm will require 0.5 hours to prepare a communication to FDA reporting the change, for a total of 12.5 hours, rounded to 13.

Dated: May 28, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-13041 Filed 6-3-09; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

*Proposed Projects:*

*Title:* Emergency Contingency Fund for Temporary Assistance for Needy Families (TANF) Programs.

*OMB No.:* New Collection.

*Description:* On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act), which establishes the

Emergency Contingency Fund for State TANF Programs (Emergency Fund) as section 403(c) of the Social Security Act (the Act). This legislation provides up to \$5 billion to help States, Territories, and Tribes in fiscal year (FY) 2009 and FY 2010 that have an increase in assistance caseloads and basic assistance expenditures, or in expenditures related to short-term benefits or subsidized employment. The Recovery Act made additional changes to TANF—extending supplemental grants through FY 2010, expanding flexibility in the use of TANF funds carried over from one fiscal year to the next, and adding a hold-harmless provision to the caseload reduction credit for States and Territories serving more TANF families.

The Emergency Fund is intended to build upon and renew the principles of work and responsibility that underlie successful welfare reform initiatives. The Emergency Fund provides resources to States, Territories, and

Tribes to support work and families during this difficult economic period.

We plan to issue a Program Instruction accompanied by the Emergency Fund Request Form (OFA-100), and instructions for jurisdictions to complete the OFA-100 to apply for emergency funds.

Failure to collect this data would compromise ACF's ability to monitor caseload and expenditure data that must increase in order for jurisdictions to receive awards under the Emergency Fund.

Documentation maintenance on financial reporting for the Emergency Fund is governed by 45 CFR 92.20 and 45 CFR 92.42.

*Respondents:* State, Territory, and Tribal agencies administering the Temporary Assistance for Needy Families (TANF) Program that are applying for the Emergency Fund.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Emergency Fund Request Form, OFA-100 .....	93	5	24	11,160

*Estimated Total Annual Burden Hours:* 11,160.

In compliance with the requirements of Section 506(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: [infocollection@acf.hhs.gov](mailto:infocollection@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: June 1, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9-13017 Filed 6-3-09; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of General Medical Sciences; 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 General Medical Sciences, Special Emphasis Panel; Minority Biomedical Research Support.

*Date:* June 25-26, 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, Bethesda, MD 20814.

*Contact Person:* John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301-594-2773, [laffanjo@mail.nih.gov](mailto:laffanjo@mail.nih.gov).

*Name of Committee:* National Institute of General Medical Sciences, Special Emphasis Panel; ARRA Wound Healing Grant Applications.

*Date:* July 1, 2009.

*Time:* 3 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National

Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301-594-2772, [templeocm@mail.nih.gov](mailto:templeocm@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 21, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-12889 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Special Emphasis Panel; ARRA U24 Resource-Related Research Project Review.

*Date:* June 22, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, PhD, Scientific Review Administrator, Division of Extramural Activities NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research

Related to Deafness and Communicative Disorders; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 27, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-12890 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Deafness and Other Communication Disorders; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Temporal Bone.

*Date:* July 2, 2009.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Bethesda, MD, (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, Ph.D., Scientific Review Administrator, Division of Extramural Activities NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 27, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-12892 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-M**

**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; Circadian-Coupled Cellular Function in Heart, Lung, and Blood Tissue.

*Date:* June 16, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

*Contact Person:* David A Wilson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892-7924, 301-435-0299, [wilsonda2@nhlbi.nih.gov](mailto:wilsonda2@nhlbi.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Microbiome of the Lung and Respiratory Tract in HIV-Infected Individuals and HIV-Uninfected Controls.

*Date:* June 29, 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:* 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](mailto:krullh@nhlbi.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 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-13102 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Heart, Lung, and Blood Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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:* Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

*Date:* June 29–30, 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:* Keary A. Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, [copeka@mail.nih.gov](mailto:copeka@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 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–13101 Filed 6–3–09; 8:45 am]

**BILLING CODE 4140–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Cancer Institute; Notice of Closed 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 Cancer Institute Special Emphasis Panel. Feasibility Studies for Collaborative Interaction for Minority Institution/Cancer.

*Date:* June 8, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Legacy Hotel, 1775 Rockville Pike, Rockville, MD.

*Contact Person:* Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329. 301/496–7987. [lovingeg@mail.nih.gov](mailto:lovingeg@mail.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 Cancer Institute Special Emphasis Panel. Manpower & Training Grants.

*Date:* June 23, 2009.

*Time:* 5 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Sonya Roberson, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892. 301–594–1182. [robersons@mail.nih.gov](mailto:robersons@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–12969 Filed 6–3–09; 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; ARRA Competitive Supplements.

*Date:* June 4, 2009.

*Time:* 12 p.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:* 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](mailto:johnsonj9@nia.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 on Aging Special Emphasis Panel; ARRA.

*Date:* June 30, 2009.

*Time:* 12 p.m. to 7 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:* Alicja L. Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, [markowsa@nia.nih.gov](mailto:markowsa@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 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–12968 Filed 6–3–09; 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; Perceived Discrimination and Health Disparities.

*Date:* June 22, 2009.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 201 Wisconsin Avenue, 2C218, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alfonso R. Latoni, Ph.D., Deputy Chief And Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301-402-7702, [latonia@nia.nih.gov](mailto:latonia@nia.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 on Aging Special Emphasis Panel; Muscle Growth and Regeneration in Aging.

*Date:* July 31, 2009.

*Time:* 1 p.m. to 5 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:* 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](mailto:elainelewis@nia.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-12967 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group; Minority Programs Review Subcommittee A.

*Date:* June 29, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-3998, [trempe@mail.nih.gov](mailto:trempe@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 21, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-12893 Filed 6-3-09; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[USCG-2009-0412]

**Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625-0016, 1625-0023, 1625-0027, and 1625-0052**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625-0016, Welding and Hot Work Permits; Posting of Warning Signs; (2) 1625-0023, Barge Fleeting Facility Records; (3) 1625-0027, Vessel Documentation; and (4) 1625-0052, Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before August 3, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket [USCG-2009-0412], please use only one of the following means:

(1) *Online:*

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

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

(3) *Hand Deliver:* 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.

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

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

Copies of the ICRs are available through the docket on the Internet at

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

Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

The Coast Guard invites comments on whether these ICRs should be granted based on the collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2009-0412], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed

postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

**Viewing Comments and Documents:** Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG-2009-0412] in the Search box, and click "Go >>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Information Collection Request**

1. **Title:** Welding and Hot Work Permits; Posting of Warning Signs.

**OMB Control Number:** 1625-0016.

**Summary:** This information collection helps to ensure waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work on certain waterfront facilities; and, the posting of warning signs is required on such facilities.

**Need:** The information is needed to ensure safe operations on certain waterfront facilities and vessels.

**Forms:** CG-4201.

**Respondents:** Owners and operators of certain waterfront facilities and vessels.

**Frequency:** On occasion.

**Burden Estimate:** The estimated burden has increased from 226 hours to 425 hours a year.

2. **Title:** Barge Fleeting Facility Records.

**OMB Control Number:** 1625-0023.

**Summary:** This collection of information requires the person-in-charge of a barge fleeting facility to keep records of twice-daily inspections of barge moorings, movements of barges, and hazardous cargo in and out of the facility.

**Need:** Title 33 CFR 165.803 requirements are intended to prevent barges from breaking away from a fleeting facility and drifting downstream out of control in the congested lower Mississippi River waterway system.

**Forms:** None.

**Respondents:** Operators of barge fleeting facilities.

**Frequency:** Daily.

**Burden Estimate:** The estimated burden has decreased from 61,919 hours to 60,390 hours a year.

3. **Title:** Vessel Documentation.

**OMB Control Number:** 1625-0027.

**Summary:** The information collected will be used to establish the eligibility of a vessel to: (a) Be documented as a "vessel of the United States," (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant, build, tonnage, and markings of a vessel.

**Need:** Title 46 U.S.C. Chapters 121, 123, 125, and 313 requires documentation of vessels. A Certificate of Documentation is required for operation of a vessel in certain trades, serves as evidence of vessel nationality, and permits a vessel to be subject to preferred mortgages.

**Forms:** CG-1258, CG-1261, CG-1270, CG-1280, CG-1340, CG-1356, CG-4593, CG-5397, and CG-5542.

**Respondents:** Owners/builders of yachts and commercial vessels of at least five-net tons.

**Frequency:** Annually.

**Burden Estimate:** The estimated burden has increased from 50,531 hours to 54,466 hours a year.

4. **Title:** Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

**OMB Control Number:** 1625-0052.

**Summary:** The Coast Guard uses results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Such a tank, on an unmanned barge, 30 years and older is subjected to nondestructive testing once every 10 years.

**Need:** Under Title 46 U.S.C. 3703, the Coast Guard is responsible for ensuring safe shipment of liquid dangerous cargoes and has promulgated regulations for certain barges to ensure meeting of safety standards.

**Forms:** None.

**Respondents:** Owners of tank barges.

**Frequency:** Every 10 years.

**Burden Estimate:** The estimated burden has increased from 104 hours to 130 hours a year.

Dated: May 28, 2009.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E9-12975 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[USCG-2009-0396]

**Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625-0008****AGENCY:** Coast Guard, DHS.**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625-0008, Regattas and Marine Parades. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before August 3, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket [USCG-2009-0396], please use only one of the following means:

(1) *Online:* <http://www.regulations.gov>.

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

(3) *Hand Deliver:* 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.

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

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

**Submitting Comments:** If you submit a comment, please include the docket number [USCG-2009-0396], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket.

Enter the docket number for this Notice [USCG-2009-0396] in the Search box, and click "Go >>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Information Collection Request**

1. **Title:** Regattas and Marine Parades.

**OMB Control Number:** 1625-0008.

**Summary:** Title 46 U.S.C. 1233 authorizes the Coast Guard to issue rules promoting safety of life on navigable waters during regattas or marine events. Title 33 CFR 100.17 and 100.18 include the rules for providing notice of, and additional information, for permitting regattas and marine events to the Coast Guard.

**Need:** The Coast Guard needs to determine whether a marine event may present a substantial threat to safety of human life on navigable waters and which measures are necessary to ensure safety of life during the events. Sponsors must notify via the most efficient means for the Coast Guard to learn of the events and address environmental impacts.

**Forms:** None.

**Respondents:** Sponsors of marine events.

**Frequency:** On occasion.

**Burden Estimate:** The estimated burden remains 3,000 hours a year.

Dated: May 28, 2009.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E9-12976 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[USCG-2009-0362]

**Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625-0014, 1625-0038, and 1625-0069****AGENCY:** Coast Guard, DHS.**ACTION:** 60-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit three Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625-0014, Request for Designation and Exemption of Oceanographic Research Vessels; (2) 1625-0038, Plan Approval and Records for Tank, Passenger, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels and Oceanographic Research Vessels—46 CFR Subchapters D, H, I, I-A, R and U; and (3) 1625-0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before August 3, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket [USCG-2009-0362], please use only one of the following means:

(1) *Online:* <http://www.regulations.gov>.

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

(3) *Hand Deliver:* 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.

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

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

Copies of the ICRs are available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION:** Contact Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

The Coast Guard invites comments on whether these ICRs should be granted based on the collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

**Submitting Comments:** If you submit a comment, please include the docket number [USCG-2009-0362], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery,

submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address accordingly.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG-2009-0362] in the Search box, and click "Go >>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Information Collection Request**

1. **Title:** Request for Designation and Exemption of Oceanographic Research Vessels.

**OMB Control Number:** 1625-0014.

**Summary:** This collection requires submission of specific information about a vessel in order to be designated as an Oceanographic Research Vessel (ORV).

**Need:** Title 46 U.S.C. 2113 authorizes the Secretary of the Department of Homeland Security to exempt ORVs, by regulation, from provisions of Title 46—Shipping, Subtitle II—Vessels and Seamen, concerning maritime safety and seaman's welfare laws. This information is necessary to ensure a vessel qualifies for the designation of ORV under 46 CFR Part 3; Part 14, Subpart D.

**Forms:** None.

**Respondents:** Owners or operators of certain vessels.

**Frequency:** On occasion.

**Burden Estimate:** The estimated burden has decreased from 51 hours to 35 hours a year.

2. **Title:** Plan Approval and Records for Tank Vessels, Passenger Vessels, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels and Oceanographic Research Vessels—46 CFR Subchapters D, H, I, I-A, R and U.

**OMB Control Number:** 1625-0038.

*Summary:* This collection requires the shipyard, designer or manufacturer for the construction of a vessel to submit plans, technical information and operating manuals to the Coast Guard.

*Need:* Under 46 U.S.C. 3301 and 3306, the Coast Guard is responsible for enforcing regulations promoting the safety of life and property in marine transportation. Information is used to ensure a vessel meets the applicable standards for construction, arrangement, and equipment under 46 CFR Subchapters D, H, I, I-A, R and U.

*Forms:* None.

*Respondents:* Shipyards, designers, and manufacturers of certain vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has decreased from 13,790 hours to 2,970 hours a year.

3. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

*OMB Control Number:* 1625-0069.

*Summary:* This collection requires the master of a vessel to provide information detailing the vessel operator's ballast water management efforts.

*Need:* The information is needed to ensure compliance with 16 U.S.C. 4711 and the requirements in 33 CFR part 151, subparts C and D regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. The information is also used for research and periodic reporting to Congress.

*Forms:* CG-5662.

*Respondents:* Owners and operators of certain vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has decreased from 60,769 hours to 60,727 hours a year.

Dated: May 28, 2009.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E9-12978 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection

**Activities: Form I-865; Extension of an Existing Information Collection; Comment Request**

**ACTION:** 60-day notice of information collection under review: Form I-865,

Sponsor's Notice of Change of Address; OMB Control Number 1615-0076.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 3, 2009.

During this 60 day period, USCIS will be evaluating whether to revise the Form I-865. Should USCIS decide to revise Form I-865 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-865.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210.

Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail please make sure to add OMB Control Number 1615-0076 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:*

Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-865. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used by every sponsor who has filed an Affidavit of Support under section 213A of the Immigration and Nationality Act to notify the USCIS of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, Telephone number 202-272-8377.

Dated: May 29, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9-12950 Filed 6-3-09; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5281-N-46]

### Personal Financial and Credit Statement

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** This information collection is used to conduct a credit investigation of the sponsor, mortgagor, and general contractor to evaluate the character, capital, and ability to develop, build, complete, and maintain a multifamily project.

**DATES:** *Comments Due Date:* July 6, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502-0001) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Personal Financial and Credit Statement.

*OMB Approval Number:* 2502-0001.

*Form Numbers:* HUD-92417.

*Description of the Need for the Information and Its Proposed Use:*

This information collection is used to conduct a credit investigation of the sponsor, mortgagor, and general contractor to evaluate the character, capital, and ability to develop, build, complete, and maintain a multifamily project.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden .....	2,000	2,000		8		16,000

*Total Estimated Burden Hours:* 16,000.

*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 28, 2009.

**Lillian Deitzer,**  
*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. E9-13092 Filed 6-3-09; 8:45 am]

**BILLING CODE** 4210-67-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5281-N-47]

**Builder's Certification of Plans, Specifications, and Site**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD requires the builder to provide information that notes an adverse site/location factor(s) on the property, including floodplains. Lenders review the form and send it to HUD. This is done so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

**DATES:** *Comments Due Date:* July 6, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502-0496) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Builder's Certification of Plans, Specifications, and Site.

*OMB Approval Number:* 2502-0496.

*Form Numbers:* HUD-92541.

*Description of the Need for the Information and its Proposed Use:*

HUD requires the builder to provide information that notes any adverse site/location factor(s) on the property, including floodplains. Lenders review the form and send it to HUD. This is done so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	10,614	6.18	....	0.15	....	9,848

*Total Estimated Burden Hours:* 9,848.  
*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 28, 2009.

**Lillian Deitzer,**

*Departmental Reports Management Officer,  
 Office of the Chief Information Officer.*

[FR Doc. E9-13095 Filed 6-3-09; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5281-N-49]

**Insurance Termination Request for Multifamily Mortgage**

**AGENCY:** Office of the Chief Information Officer, HUD

**ACTION:** Notice.

**SUMMARY:** This information is submitted to HUD as notification that the mortgagor and mortgagee mutually agree to terminate HUD multifamily mortgage insurance.

**DATES:** *Comments Due Date:* July 6, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502-0416) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Insurance Termination Request for Multifamily Mortgage.

*OMB Approval Number:* 2502-0416.

*Form Numbers:* HUD-9807.

*Description of the Need for the Information and Its Proposed Use:*

This information is submitted to HUD as notification that the mortgagor and mortgagee mutually agree to terminate HUD multifamily mortgage insurance.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting burden .....	600	2.625		0.20		328

*Total Estimated Burden Hours:* 328.  
*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 28, 2009.

**Lillian Deitzer,**

*Departmental Reports Management Officer,  
 Office of the Chief Information Officer.*

[FR Doc. E9-13098 Filed 6-3-09; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5281-N-48]

**Request for Acceptance of Changes in Approved Drawings and Specifications**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** Builders request approval for changes to accepted drawings and specifications of proposed construction properties as required by homebuyers, or determined by the builder to increase market appeal. Builders submit the forms to lenders, who review them and submit them to HUD for approval.

**DATES:** *Comments Due Date:* July 6, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502-0117) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Request for Acceptance of Changes in Approved Drawings and Specifications.

*OMB Approval Number:* 2502-0117.

*Form Numbers:* HUD-92577.

*Description of the Need for the Information and Its Proposed Use:*

Builders request approval for changes to accepted drawings and specifications of proposed construction properties as required by homebuyers, or determined by the builder to increase market appeal. Builders submit the forms to lenders, who review them and submit them to HUD for approval.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden .....	10,000	10,000		0.5		5,000

*Total Estimated Burden Hours:* 5,000.  
*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 28, 2009.

**Lillian L. Deitzer,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. E9-13096 Filed 6-3-09; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5300-N-05]

**Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Indian Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, Office of Native American Programs, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD announces the availability of funds and the funding criteria for the Fiscal Year (FY) 2009 Indian Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages. The Notice of Funding Availability (NOFA) makes approximately \$65 million available under the Department of Housing and Urban Development Appropriations Act 2009 (Pub. L. 111-8, approved March 11, 2009). Applicants for assistance under this NOFA must address applicable requirements in the FY 2009 ICDBG NOFA and the Notice of HUD's Fiscal Year 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the HUD's FY2009 NOFAs for

Discretionary Programs; Notice (also known as the General Section) published on December 29, 2008 (73 FR 79548), as amended on April 16, 2009 (74 FR 17685). Applicants should take particular note that they should follow the application submission instructions contained in the NOFA and not use those in the General Section. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the HUD Web site at <http://www.hud.gov/offices/pih/ih/grants/icdbgl.cfm>.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding specific program requirements should be directed to your Area Office of Native American Programs. A contact list for each Area ONAP can be accessed at <http://www.hud.gov/offices/pih/ih/codetalk/onap/map/nationalmap.cfm>. Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800-877-8339.

Dated: May 18, 2009.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. E9-13081 Filed 6-1-09; 4:15 pm]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Notice of the Annual Price Threshold Determination**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of annual price threshold determination and annual average oil and gas market price calculations, along with their effects for the Gulf of Mexico royalty relief programs.

**SUMMARY:** This notice provides the official MMS determination of which Gulf of Mexico price thresholds have been exceeded by annual market prices for oil or gas, by lease vintage, for calendar year 2008. This notice also explains in detail how MMS calculates the annual oil and gas prices and applicable price thresholds used to determine whether royalty relief applies in calendar year 2008 for our various deepwater and deep depth royalty relief programs.

**FOR FURTHER INFORMATION CONTACT:**

Marshall Rose, Chief, Economics Division at (703) 787-1536.

**SUPPLEMENTARY INFORMATION:**

By various laws (Outer Continental Shelf Lands Act, Deep Water Royalty Relief Act, Energy Policy Act) and regulations (30 CFR 203.48, 203.54, 203.78, 260.110, and 260.122), MMS has authority to impose price thresholds at which otherwise applicable royalty relief is suspended. As prescribed in applicable regulations or lease terms, notwithstanding any provisions for royalty relief, companies are required to pay royalties for those calendar years when annual average New York Mercantile Exchange (NYMEX) market prices for oil or gas exceed the adjusted price thresholds levels. Production generated royalty-free counts against the remaining royalty suspension volume, with one exception. That exception involves deep-gas production from March 1, 2004, through May 2, 2004, from deep wells that qualified for royalty suspension under 30 CFR 203.40 through 203.48 (see 69 FR 24055). As a courtesy, MMS tracks, calculates, and posts on its Web site a variety of relevant information about applicable oil and gas prices and the price threshold levels to be used in determining whether a particular lease continues to be eligible for deep gas, deep water, or other royalty relief. The information contained in this published

notice was previously posted on the MMS Web site. Beginning in the second quarter of each year, the MMS will estimate the average market price at which oil or gas would have to sell during the remainder of the calendar

year for the estimated price threshold to be exceeded for that year.

The following table represents the official MMS price threshold and market price calculation determinations made for calendar year 2008. Any

subsequent inflation adjustments or market price adjustments will not affect these official results or their implication for royalty relief on the designated categories of leases.

APPLICABLE PRICE THRESHOLDS AND MARKET PRICES FOR CALENDAR YEAR 2008

Product	Lease vintage (sale held in)	Annual average NYMEX price (\$/bbl or \$/MMBtu)	Adjusted price threshold level (\$/bbl or \$/MMBtu)	Royalty relief suspended
Deepwater oil .....	Before 1996; 1996–1997 <sup>1</sup> ; 20001; 2002–3/2004; 2007–2008.	99.74	37.18	Yes.
Deepwater oil .....	2001 .....	99.74	33.33	Yes.
Deepwater oil .....	8/2004–2006 .....	99.74	43.28	Yes.
Deepwater gas .....	Before 1996; 1996–1997 <sup>1</sup> ; 20001; 2002–3/2004; 2007–2008.	8.89	4.65	Yes.
Deepwater gas .....	2001 .....	8.89	4.17	Yes.
Deepwater gas .....	8/2004–2006 .....	8.89	7.21	Yes.
Deep gas .....	3/2001 <sup>2</sup> .....	8.89	4.17	Yes.
Deep gas .....	8/2001–2003 <sup>2</sup> .....	8.89	5.95	Yes.
Deep gas <sup>3</sup> .....	Before 2001, 2001–2003 <sup>2</sup> , 2004–2008 ...	8.89	10.37	No.
Deep gas <sup>4</sup> .....	Before 2001, 2001–2003 <sup>2</sup> , 2004–2008 ...	8.89	10.37 and 4.65	No <sup>4</sup> .
Deep gas <sup>5</sup> .....	All years .....	8.89	4.65	Yes.

bbl = barrel, MMBtu = million British Thermal Units, bcf = billion cubic feet.

<sup>1</sup>Price thresholds do not apply to leases issued in deepwater during the years 1998–1999 due to an administrative oversight. If the Kerr-McGee v. DOI, Fifth Circuit Court Decision (1/12/09) is upheld, price thresholds will not apply to deepwater leases issued during the years 1996–2000.

<sup>2</sup>Leases issued in water 0–200 meters deep during 2001–2003 had the option to convert from lower price thresholds under lease terms to higher price thresholds set forth in the regulations.

<sup>3</sup>Applies to qualified deep wells on leases in water 0–200 meters deep that spudded after 3/26/2003 and produced before 5/3/2009, and to qualified ultra-deep wells on leases in water 0–200 meters deep that spudded between 3/26/2003 and 5/17/2007 and produced before 5/3/2009.

<sup>4</sup>Applies to qualified ultra-deep wells on leases in water 0–200 meters deep that spudded on or after 5/18/2007 and produced before 5/03/09. The higher price threshold applies to the first 25 bcf of royalty relief; the lower price threshold applies to the next 10 bcf of royalty relief. For qualified ultra-deep wells on leases in water 0–200 meters deep that spudded on or after 5/3/2009, the lower price threshold applies to the entire 35 bcf of royalty relief.

<sup>5</sup>Applies to qualified deep wells on leases in water 200–400 meters deep that spudded on or after 5/18/2007 and produced before 5/3/2013, and to qualified ultra-deep wells on leases in water 200–400 meters deep that spudded on or after 5/18/2007.

Technical Documentation

The data and methodology used for making the 2008 calculations and determinations are discussed below. This same information for all years since 1996 is available at the Economics Division Web site <http://www.mms.gov/econ/econpt.htm>. Additional information and notes about understanding this Web site are included at the end of this notice.

Methodology for Calculation of the Actual Annual Average NYMEX Nearby Delivery Price

1. We use the price for the nearby delivery month or front month. That is, the price for the first contract or earliest month that you can get the delivery/inventory for buying and selling today's product. For example, on October 1,

2007, the nearby delivery month was November 2007. There are prices for other delivery months that can be bought and sold on October 1, 2007, such as December 2007, January 2008, etc., but the "nearby delivery month" would be November 2007. However, the nearby delivery month is not always the next month because the last trading day of the month differs for oil and gas futures. For example, on March 27, 2008, the nearby delivery month for light sweet crude oil is May 2008 while for natural gas it is still April 2008.

2. The daily NYMEX closing price is listed as the settle price at the end of business trading hours for each commodity. These are listed at <http://www.nymex.com> and also summarized at <http://www.oilenergy.com>.

3. The daily closing average is used to calculate the monthly average. For holidays and weekends, we use the previous business day's closing average. For example, Table A illustrates the calculation of the average NYMEX oil price for the month of December 2008 (Note—this methodology is different from the Minerals Revenue Management's Royalty In-Kind Program that excludes weekends and holidays). Our analysis indicates that inclusion or exclusion of weekends and holidays does not bias the annual average price calculation in either direction. We chose to include the weekends and holidays, as highlighted in Table A, to avoid the necessity to keep track of actual trading days each month all year, and because our source summarizes the monthly price data with the inclusion.

TABLE A—EXAMPLE OF MONTHLY AVERAGE PRICE CALCULATION

Day	Date	Daily closing price (\$/bbl)
Monday .....	12/1/2008	\$49.28
Tuesday .....	12/2/2008	46.96
Wednesday .....	12/3/2008	46.79
Thursday .....	12/4/2008	43.67

TABLE A—EXAMPLE OF MONTHLY AVERAGE PRICE CALCULATION

Day	Date	Daily closing price (\$/bbl)
Friday	12/5/2008	40.81
Saturday	12/6/2008	40.81
Sunday	12/7/2008	40.81
Monday	12/8/2008	43.71
Tuesday	12/9/2008	42.07
Wednesday	12/10/2008	43.52
Thursday	12/11/2008	47.98
Friday	12/12/2008	46.28
Saturday	12/13/2008	46.28
Sunday	12/14/2008	46.28
Monday	12/15/2008	44.51
Tuesday	12/16/2008	43.60
Wednesday	12/17/2008	40.06
Thursday	12/18/2008	36.22
Friday	12/19/2008	33.87
Saturday	12/20/2008	33.87
Sunday	12/21/2008	33.87
Monday	12/22/2008	39.91
Tuesday	12/23/2008	38.98
Wednesday	12/24/2008	35.35
Thursday (Holiday)	12/25/2008	35.35
Friday	12/26/2008	37.71
Saturday	12/27/2008	37.71
Sunday	12/28/2008	37.71
Monday	12/29/2008	40.02
Tuesday	12/30/2008	39.03
Wednesday	12/31/2008	44.60
Average		41.21

4. The monthly average is used to calculate the annual average. For example, Table B illustrates the calculation of the NYMEX oil price for 2008. The calculation for the year-to-date average consists of the monthly averages so far in the year. The dollar amount of the result is rounded to the nearest hundredth decimal point (*i.e.*, cents). We do not weight the average each month by the number of days in that month, again to avoid adding superfluous complexity.

TABLE B—EXAMPLE OF ANNUAL AVERAGE PRICE CALCULATION

Month	Average closing price (\$/bbl)
January	92.94
February	94.92
March	105.15
April	112.58
May	125.61
June	134.60
July	134.42
August	116.73
September	104.41

TABLE B—EXAMPLE OF ANNUAL AVERAGE PRICE CALCULATION—Continued

Month	Average closing price (\$/bbl)
October	76.77
November	57.54
December	41.21
Average	99.74

*Methodology for Calculation of the Applicable Oil and Natural Gas Price Thresholds*

1. The price thresholds are estimates until they are locked-in for a calendar year based on the most current inflation data available after the close of the year. In conjunction with the calculation of the annual market prices for oil and gas above, once the price thresholds are locked in, MMS makes an official determination regarding whether these market prices have exceeded the applicable price thresholds for the calendar year for a given vintage of lease

and royalty relief program. After this official MMS determination is made, any subsequent revisions in the underlying source of the inflation figures will not affect the locked-in price thresholds or the determination of eligibility for royalty relief for that calendar year.

2. The source for inflation data is the Department of Commerce, Bureau of Economic Analysis (BEA) <http://www.bea.gov>: The U.S. Economic Accounts—Gross Domestic Product (GDP), National Income and Products Account (NIPA) Table 1.1.9. The 4th quarter implicit price deflator is not available from BEA until late March of the subsequent calendar year.

3. The implicit price deflator for GDP is used to calculate the applicable annual inflation rate, as illustrated in Table C. The deflator from the applicable year is divided by the deflator from the previous year and subtracted by one. For example, the inflation rate used to set the 2008 price threshold is calculated as  $\{(122.42/119.82) - 1 = 2.2\%$ .

TABLE C—INFLATION RATES (CURRENT AND LOCKED-IN)  
[Derived from BEA data]

Calendar year	Implicit price deflator for GDP (base = 1996)	Implicit price deflator for GDP (base = 2000)	Current annual inflation rate	Locked-in annual inflation rate
1994	96.01			
1995	98.10			
1996	100.00			
1997	101.95			
1998	103.20			
1999	104.65			
2000	107.04	100.00		
2001		102.40	2.4	2.2
2002		104.19	1.7	1.1
2003		106.40	2.1	1.7
2004		109.46	2.9	2.1
2005		113.03	3.3	2.8
2006		116.68	3.2	2.9
2007		119.82	2.7	2.7
2008		122.42	2.2	2.2

4. Because price thresholds are fixed for previous years, the current inflation rate displayed on the BEA Web site (see Table C above) may not correspond precisely to the rate MMS employed to calculate previous price thresholds. For example, the GDP deflator posted on the BEA Web site in March 2008 shows an inflation rate for 2004 of 2.9 percent. However, back in March 2005, when the 2004 price threshold was locked in, the BEA Web site showed an inflation rate of 2.1 percent, which MMS used in a change for the deepwater oil price threshold for most leases, as shown in the first column of the Deepwater Table on the Web site, from \$32.81/bbl in 2003 to \$33.50/bbl in 2004. The figures that were shown on the BEA Web site in March of each year were used to make the adjustments in the price thresholds from year to year. Rounding explains any remaining small differences between calculated locked-in inflation rates and those rates depicted on the MMS Web site. Therefore, to replicate the calculation for previous price thresholds, use the locked-in inflation rate. To replicate the calculation for the estimated price threshold, prior to March of the subsequent year, use the current inflation rate.

Dated: April 20, 2009.

**Chris C. Oynes,**

*Associate Director for Offshore Energy and Minerals Management.*

[FR Doc. E9-13094 Filed 6-3-09; 8:45 am]

BILLING CODE 4310-MR-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R4-ES-2009-N0089; 41910-1112-0000-F2]

**Endangered and Threatened Wildlife and Plants; Permit(s); Road Construction and Associated Storm Water Retention Pond in Lake County, FL**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application for an incidental take permit (ITP); availability of proposed low-effect habitat conservation plans (HCP); request for comment/information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and habitat conservation plan (HCP). Lake County Public Works (applicant) requests a 5-year ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.19 acres (ac) of sand skink (*Neoseps reynoldsi*)—occupied habitat incidental to realignment of a county road (CR) and construction of a storm water retention pond in Lake County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the sand skink.

**DATES:** We must receive any written comments on the ITP application and HCP on or before July 6, 2009.

**ADDRESSES:** If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 7915 Baymeadows Way,

Suite 200, Jacksonville, FL 32256, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to [paula\\_sisson@fws.gov](mailto:paula_sisson@fws.gov). For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904-731-3134.

**SUPPLEMENTARY INFORMATION:**

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE211384-0 for Lake County Public Works in all requests or comments. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

Due to the reduction in quality and acreage of xeric (bare, scrub-like areas with sandy soils, open canopies) upland communities, and the rapid development occurring in these areas, the sand skink is reportedly declining

throughout most of its range. By some estimates, as much as 90 percent of the scrub ecosystem has already been lost to residential development and conversion to agriculture, including citrus groves.

### Applicant's Proposal

The applicant is requesting take of approximately 0.19 ac of occupied sand skink habitat incidental to the project. The 1.06-ac project is located east of State Road 455 within Section 17, Township 21 South, Range 26 East, Lake County, Florida. The proposed project currently includes realignment of a portion of CR 455 that does not meet government safety standards and will include construction of a stormwater retention pond to address runoff associated with the realigned roadway. The applicant proposes to mitigate for the take of the sand skink at a ratio of 2:1 based on Service Mitigation Guidelines. The applicant proposes to mitigate for 0.19 ac of impacts by purchasing 0.40 ac of occupied sand skink habitat in Polk County, Florida, within the boundaries of the Lake Wales Ridge.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we are making a preliminary determination that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). We may revise this preliminary determination based on our review of public comments we receive in response to this notice. A low-effect HCP is one involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

### Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: May 28, 2009.

**David L. Hankla,**

*Field Supervisor, Jacksonville Field Office.*

[FR Doc. E9-13033 Filed 6-3-09; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R4-R-2009-N0061; 40136-1265-0000-S3]

#### Banks Lake National Wildlife Refuge, Lanier County, GA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Banks Lake National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

**DATES:** To ensure consideration, we must receive your written comments by July 6, 2009.

**ADDRESSES:** Send comments, questions, and requests for information to: Ms. Laura Housh, Refuge Planner, Okefenokee NWR, Route 2, Box 3330, Folkston, GA 31537. The Draft CCP/EA is available on compact disk or in hard copy. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Site: <http://southeast.fws.gov/planning>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Housh; telephone: 912/496-7366, ext. 244; fax: 912/496-3322; e-mail: [laura\\_housh@fws.gov](mailto:laura_housh@fws.gov).

### SUPPLEMENTARY INFORMATION:

#### Introduction

With this notice, we continue the CCP process for Banks Lake NWR. We started this process through a notice in the **Federal Register** on December 6, 2007 (72 FR 68892).

#### Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C.

668dd-668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Banks Lake NWR is managed by staff of the Okefenokee NWR. The refuge, which is part of a larger blackwater system, was established in 1985 for the protection and conservation of this unique environment, as well as for migratory and resident wildlife. It totals approximately 3,559 acres.

Development of the CCP began in October 2007, with preplanning activities such as gathering data and information, meeting with Okefenokee NWR staff, and preparing for the public scoping phase of the planning process. A public scoping meeting was held on January 24, 2008, in Lakeland, Georgia. The following issues were identified by the public, intergovernmental partners, and the Service: (1) Threats to biodiversity, listed species, and migratory birds; (2) need for data and comprehensive habitat management; (3) impacts to water quantity and quality; (4) need for an updated acquisition boundary; (5) future land acquisition needs; (6) drainage easement protection; (7) lack of information on refuge cultural resources; (8) need for increased law enforcement; (9) need for increased public use opportunities; and (10) need for adequate resources.

#### CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

##### *Alternative A—No Action Alternative*

Federal- and State-listed species, incidental sightings of wood storks, and

round-tailed muskrats would continue to be recorded. The refuge would respond to nuisance alligators, and bald eagle nests would be protected. There would be no management for listed plants.

Management for migratory birds would remain minimal, with incidental sightings recorded. Aerial surveys would continue to be conducted by partners over refuge and adjacent lands with regard to the bird-aircraft strike program at Moody Air Force Base (MAFB).

With regard to nonnative and nuisance species, the refuge would continue to control water hyacinths through herbicidal applications, while submerged aquatic vegetation would be managed via periodic lake drawdowns. For aquatic wildlife, the refuge would organize apple snail surveys. There would be no management for terrestrial nonnative species.

Apart from aerial mapping conducted as part of The Nature Conservancy's 2003 Grand Bay-Banks Lake Ecosystem Plan, there would be no habitat management for the refuge's marshes, scrub/shrub, Carolina bays, or pine flatwoods. Management of native fishes would include surveys every other year and periodic mercury and lead surveys conducted by the State. Management for reptiles and amphibians would be minimal, consisting of incidental sightings reporting and occasional frog malformation surveys.

Management of water resources on the refuge would include water-quality monitoring during fish surveys. The refuge would continue to work with county governments and landowners to connect private systems to the city sewage utility, minimizing water quality degradation. The refuge would continue collaborative efforts with the city of Lakeland to facilitate running drawdown waters through Lake Irma. In addition, the refuge would protect, as necessary, its water rights from unauthorized private diversions.

Under this alternative, the refuge would not collect data to monitor the potential effects of climate change on its resources.

Approximately one-third of the refuge boundary (north and portion of east side) has been surveyed and signed. The lack of a complete boundary survey has prevented any potential land acquisition opportunities. The refuge would manage potential encroachment issues by working with adjacent landowners to remove any unauthorized structures or water diversion equipment. The refuge has a flowage easement to drain water via a creek through Lake Irma to the Alapaha River. The Georgia Department

of Transportation has a 1,100-acre wetland mitigation area that lies adjacent to the refuge. No cooperative management agreement would be developed for that land. Archaeological and historical resources management would be minimal under the current alternative, with surveys having been conducted at the old mill and dam sites. Law enforcement would consist of an intermittent presence of refuge staff, as well as county and city officers.

The refuge currently does not collect an entrance fee. Visitor welcome and orientation information is provided by an onsite kiosk, while the concession operation also provides information to visitors. State directional signs are in place. The refuge has onsite volunteers for a majority of the year. Outreach efforts consist of periodic articles submitted to the local media and public notices issued for proposed actions.

Hunting is currently not permitted on the refuge, and under this alternative this activity would not be evaluated for potential authorization. The refuge is open year-round, both day and night, for fishing. There is an access area and well-established fishing pier at the entrance area. In addition, an annual kids' fishing day is held in collaboration with partners. Periodic drawdowns are conducted to enhance fisheries. Under this alternative, fishing opportunities would likely remain unchanged. Wildlife observation and photography opportunities are relatively limited and would not increase appreciably under this alternative. The concession offers canoe and kayak rentals, while a boat ramp allows the launching of private watercraft. The fishing pier offers limited wildlife observation and photography opportunities. The refuge does not offer any other recreational opportunities, and camping is not permitted.

In the absence of a friends group, the Okefenokee Wildlife League provides assistance at Banks Lake NWR. Generally, a volunteer is stationed at the refuge year-round, with travel trailer and hook-up provided.

Since no staff is permanently assigned to the refuge, volunteers and Okefenokee NWR staff provide the majority of the management. Some duties are also contracted out to the concessionaire. Staffing is not expected to change under this alternative. Refuge infrastructure (e.g., concession, access area, water control structure, restrooms, sewage system, city water, piers, walkways, boat ramp, hiking trail, volunteer housing and recreational vehicle pad, parking lot, boat storage area, and entrance sign) would be repaired as needed under this

alternative. With regard to intergovernmental coordination, the refuge would continue to meet periodically with a number of Federal, State, and local entities to update them on refuge programs and planned activities.

#### *Alternative B—Expanded Management by the Service (Proposed Alternative)*

Management would include monitoring efforts to determine trends (relative numbers and use patterns) for wood storks and round-tailed muskrats. Management for bald eagles would remain at current levels. The refuge would continue to ban alligator hunting until population data are available. It would increase public awareness of the dangers of feeding alligators. In addition, the refuge would work with the State to respond appropriately to nuisance alligator complaints and to monitor alligator populations. The refuge would coordinate surveys for listed plant species.

For migratory birds, the refuge would determine trends in relative numbers and use patterns through monitoring of waterfowl, wading birds, marshbirds, and raptors. The refuge would conduct breeding bird surveys for neotropical migratory birds. With regard to bird-aircraft collision minimization efforts carried out by MAFB, the refuge would increase surveys and data-sharing regarding wildlife services.

Management of nonnative and nuisance species would increase. The refuge would establish boat and trailer cleaning stations. An annual weed control program would be developed, with a goal of keeping area coverage of water hyacinths to less than 20 percent. It would expand survey efforts for nonnative aquatic wildlife species of regional concern and increase public awareness to promote early detection. The refuge would survey lands for nonnative species on a 3-year cycle, and work with partners to identify, locate, control, and eliminate (where possible) exotic species.

Under this alternative, habitat management would be expanded. For Banks Lake NWR, the refuge would identify benchmarks for initiating drawdowns. In addition, the refuge would map and classify vegetation communities sufficient to manage habitat to achieve the refuge mission and the goals recommended in the Grand Bay-Banks Lake Habitat Site Conservation Plan.

For native fishes, the refuge would expand Alternative A with a creel survey. It would also work with the State to develop a trophy largemouth bass sports fishery. With respect to

reptiles and amphibians, the refuge would obtain baseline information and determine population trends through increased monitoring.

The management of refuge water resources would increase under this alternative. The refuge would establish a permanent water quality monitoring system. In addition, a contaminants monitoring regime for septic, non-point source pollution, and urban/agricultural runoff would be established. Water quantity would be managed the same as under Alternative A. Furthermore, the refuge would establish water budgets, fill drain curves, and other important hydrological parameters for Banks Lake. It would also collaborate with downstream landowners to maximize drawdown capabilities.

The refuge would institute management activities to address the impacts of climate change on refuge resources. The refuge would coordinate with researchers and partners to identify climate change research needs for the refuge, investigating the impacts of climate change on fish and wildlife, listed species, vegetative communities, water quality and quantity, and other important resources.

Management of the refuge would focus on the lands and waters where the Service is confident that it has jurisdiction. Additional title work and a complete survey of the boundary would be required to settle any issue regarding the refuge boundary. The refuge would establish an acquisition boundary and purchase land from willing sellers as funding becomes available. It would identify potential threats early in the planning process and work cooperatively with local planning departments and elected officials to protect the refuge from the impacts of urbanization. The refuge would establish formal cooperative agreements with adjacent landowners to maintain the Banks Lake flowage easement. It would also negotiate a long-term management agreement with the State to manage the wetland mitigation area as part of the refuge. The refuge would conduct a cultural resource survey of remaining uplands. The law enforcement presence on the refuge would be increased as the public use program expanded.

Under this alternative, the refuge would evaluate the potential for an entrance fee program. The refuge would create a refuge brochure with map. Regular information would be provided to the public, with updates on refuge activities and wildlife-dependent recreational opportunities.

A compatibility determination for hunting would be carried out, and

hunting could be authorized under this alternative if adequate opportunities and resources are determined to be available. The refuge would also develop trophy warm-water fishing opportunities through the use of slot and bag limits.

For wildlife viewing and photography opportunities, the refuge would develop a bird list and provide programs that help the public develop wildlife viewing and photography skills. In addition, marked boat trail(s) would be established in the deeper water channels of the lake to provide access to fishing and wildlife viewing areas. The refuge would also evaluate a new canoe trail.

To expand environmental education and interpretation, the refuge would establish a formal program with local schools and Grand Bay Environmental Center to facilitate these programs on the refuge. It would also add infrastructure to assist in these efforts.

Other recreational opportunities would be the same as under Alternative A. In addition to Alternative A, the refuge would encourage commercial visitor services appropriate with the priority public uses as defined in the Improvement Act.

The refuge would also develop a friends group. It would expand Alternative A by developing an active local volunteer group.

Under Alternative B, the following permanent, full-time staff would be assigned to the refuge: Refuge Operations Specialist, Wildlife Biologist, Maintenance worker, and Park Ranger. In addition, a shared Fisheries Biologist would work at the refuge on a part-time basis. With regard to infrastructure, the refuge would add an office and workspace in the visitor contact area to accommodate any staff permanently assigned to the refuge. It would work with State and local authorities to place refuge information signs on Interstate 75. Intergovernmental coordination and partnerships would remain the same as under Alternative A.

#### *Alternative C—Cooperative Administration With State Natural Resource Agencies*

Under this alternative, management of woodstorks and bald eagles would include obtaining population trend data. Additionally, nesting platforms would be constructed to increase breeding opportunities on the refuge, with the added benefit of increasing photography and observation opportunities if these efforts were successful. For alligators, the refuge would work with the State to determine population trends. In

addition, educational programs would be developed to help minimize alligator-human conflicts. Management of round-tailed muskrats and State-listed plants would be the same as under Alternative B. Management of migratory birds would be similar to that under Alternative B, with the exception that photo blinds would be constructed to provide more birding opportunities. Management of native fishes would be increased by working with the State to develop a stocking program, as warranted. For herpetological and nonnative species, habitats, water resources, and climate change management would be the same as under Alternative B.

Management of the refuge boundary and cultural resources would be the same as under Alternative B. The refuge would support land acquisition by partners to develop public State lands adjacent to the refuge. It would also develop a long-term management agreement with State natural resource agencies to manage current refuge access and the concession area. Under this alternative, these State entities would provide additional law enforcement on the refuge, and the State lands would provide additional access points to the public. Law enforcement would be shared between the State and the Service.

Under this alternative, the refuge would coordinate the potential for an entrance fee program with the State. The State would also be the primary information provider to the public. Hunting and fishing opportunities would be the same as under Alternative B.

The State would be responsible for developing wildlife observation and photography opportunities on the refuge, including adding new trails (*e.g.*, land or boat). The State would also be responsible for all environmental education and interpretation opportunities on the refuge.

The State entities would develop nearby camping and other recreational opportunities on their land. Meanwhile, the refuge would continue to issue special use permits for commercial visitor services on refuge lands and waters.

The State entities and refuge would seek to establish a friends group and volunteer program to support both units.

Under this alternative, the refuge would establish the following permanent, full-time positions: Refuge Operations Specialist and Wildlife Biologist. A shared Fisheries Biologist would work part-time on the refuge. Any other positions would be provided

by the State. The operation and maintenance of the current facilities would become the responsibility of the State entities. In addition to the intergovernmental coordination required under Alternative A, a long-term management agreement with the State natural resource agencies would be needed for them to administer the current recreation area and facility. Partnerships would remain as under Alternative A.

#### Next Step

After the comment period ends, we will analyze the comments and address them.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: April 21, 2009.

**Jacquelyn B. Parrish,**

*Acting Regional Director.*

[FR Doc. E9-13036 Filed 6-3-09; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-FHC-2009-N113]; [94300-1122-0000-Z2]

#### Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting June 30 through July 2, 2009. The meeting is open to the public. The meeting agenda will include reports from the Legal, Science Tools & Procedures, and Synthesis Subcommittees, and discussion of the current draft Recommendations to the Secretary.

**DATES:** The meeting is scheduled for June 30 through July 2, 2009. The

sessions will be 8 a.m. to 3:30 p.m. June 30, 8 a.m. to 5:30 p.m. July 1, and 8 a.m. to 3:30 p.m. July 2.

**ADDRESSES:** Austin Convention Center, 500 E. Cesar Chavez, Austin, TX 78701. For more information, see "Meeting Location Information."

**FOR FURTHER INFORMATION CONTACT:** Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358-2161.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 13, 2007, the Department of the Interior published a notice of establishment of the Committee and call for nominations in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is expected to exist for 2 years and meet approximately four times per year, and its continuation is subject to biennial renewal. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter has been filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The Service held five Committee meetings in 2008, and has held four meetings in 2009. All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

##### Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 2 weeks in advance of the meeting.

Persons planning to attend the meeting must register at [http://www.fws.gov/habitatconservation/windpower/wind\\_turbine\\_advisory\\_committee.html](http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html), by June 23, 2009. Seating is limited due to room capacity. We will give preference to registrants based on date

and time of registration. Limited standing room will be available if all seats are filled.

Dated: May 29, 2009.

**David J. Stout,**

*Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.*

[FR Doc. E9-13012 Filed 6-3-09; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCAD06000, L14300000.0000; CACA 50611]

#### Public Land Order No. 7732; Partial Revocation of Power Site Reserve No. 530; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes a withdrawal created by an Executive Order insofar as it affects approximately 11 acres of public land withdrawn for Power Site Reserve No. 530. This order also opens the land to exchange.

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, Realty Specialist, at (916) 978-4675 or via e-mail at [Duane\\_Marti@ca.blm.gov](mailto:Duane_Marti@ca.blm.gov).

**SUPPLEMENTARY INFORMATION:** The Executive Order withdrew those portions of the public lands lying within 50 feet of the centerline of a proposed right-of-way shown on a map included in the 1914 application filed by the Coachella Valley Ice and Electric Company. The transmission line was taken out of service and removed in 1939. The Bureau of Land Management has determined that the withdrawal is no longer needed for that purpose and the partial revocation is needed to facilitate a pending land exchange.

#### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order dated May 25, 1916, which established Power Site Reserve No. 530, is hereby revoked insofar as it affects the following described land:

##### San Bernardino Meridian

All portions of the following described lands lying within 50 feet of the center line of the right of way granted to Coachella Valley Ice and Electric Company:

T. 3 S., R. 5 E.,

Sec. 32, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ .

The area described contains approximately 11 acres in Riverside County.

2. At 10 a.m., on July 6, 2009, the above-described land is hereby made available for exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (2000).

Dated: May 14, 2009

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. E9-13009 Filed 6-3-09; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-LLUTG02000-09-14300000-ES0000-241A.00; UTU-5466801]

#### Notice of Realty Action; Recreation and Public Purposes Act Classification; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease to the City of Ferron, Utah under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869-869-4) 196.48 acres of public land in Emery County, Utah. The City of Ferron proposes to use the land for continuing operation and expansion of the Millsite Golf Course. This action reclassifies 149.36 acres from lease or conveyance to lease only and classifies an additional 47.12 acres for lease only.

**DATES:** Comments regarding the classification for lease must be received by the BLM on or before July 20, 2009. Comments should reference the serial number UTU-5466801.

**ADDRESSES:** Comments may be submitted to the Bureau of Land Management, Green River District, Price Field Office, 125 South 600 West, Price, Utah 84050.

**FOR FURTHER INFORMATION CONTACT:** Mike Robinson, Realty Specialist, *Mike\_Robinson@blm.gov*, BLM Green River District, Price Field Office, (435) 636-3630. Additional detailed information concerning this Notice of Realty Action, including environmental records, is available for review at the BLM Green River District, Price Field Office, at the above address. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

**SUPPLEMENTARY INFORMATION:** The City of Ferron, Utah has developed and managed public lands described below under R&PP Lease UTU-5466801 for the past 23 years for the Millsite Golf Course. The following described lands were classified as suitable for lease or conveyance on November 9, 1986 and lease UTU-5466801 was issued December 8, 1986.

#### Salt Lake Meridian

T. 20 S., R. 6 E.,

Sec. 12: lots 3 and 4.

T. 20 S., R. 7 E.,

Sec. 7: lots 3 and 4, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The area described contains 149.36 acres in Emery County.

The City of Ferron proposes to continue to lease these lands for the golf course, and has filed an application under the provisions of the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869-869-4) to lease additional public lands described below for expansion of the Millsite Golf Course.

#### Salt Lake Meridian

T. 20 S., R. 7 E.,

Sec. 7: SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 18: M&B description: Beginning at the Northwest corner of Section 18, Township 20 South, Range 7 East, Salt Lake Base and Meridian; thence N89°51'39"E along the section line 1307.83 feet; thence S57°10'56"W 157.68 feet; thence S55°50'32"W 176.54 feet; thence S34°13'49"W 205.52 feet; thence S39°49'16"E 112.46 feet; thence S75°52'46"E 77.18 feet; thence N82°23'51"E 112.33 feet; thence S08°11'03"E 188.01 feet; thence S40°02'45"E 37.86 feet; thence S61°38'32"E 92.97 feet; thence S13°36'46"E 76.23 feet; thence S50°12'36"E 168.29 feet; thence S51°32'07"W 271.50 feet; thence South 270.26 feet; thence West 531.17 feet; thence S44°00'35"W 45.51 feet; thence South 131.74 feet; thence West 537.26 feet; thence N00°08'17"W 286.10 feet; thence N15°42'56"W 455.07 feet to the West line of said Section 18; thence along said West line of said Section 18 N01°09'39"W 762.31 feet to the point of beginning.

The area described contains 47.12 acres in Emery County.

This new classification for lease only is for all of the above-described lands aggregating 196.48 acres and changes the previous classification of 149.36 acres from lease or conveyance to lease only.

The land is not needed for any Federal purposes. The R&PP Act provides for leasing of public lands by local governments for public purposes such as golf courses without monetary

consideration. Leasing is consistent with current BLM land use planning, Lands and Realty Decision, LAR-8, of the Price Field Office Resource Management Plan—October 2008, and would be in the public interest.

Upon the effective date of this classification, a new lease will be issued to replace the existing lease and incorporate the expansion area lands. The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior including compliance with the plans of development and management approved on November 26, 1986 and October 2, 2008.

2. The lessee shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of BLM-administered lands under this lease.

3. The lessee shall comply with applicable Federal and State laws and regulations affecting in any manner construction, operation, maintenance or termination of the lease, including water quality, public health and public safety.

4. The lease is subject to existing rights which include the following rights-of-way:

- UTU-54669; Water Storage Tank and Pipeline owned by City of Ferron.
- UTU-66122; Power Line owned by PacifiCorp dba Utah Power and Light.
- UTU-67436; Millsite Dam and Reservoir owned by Utah Division of Water Resources.
- UTU-78704; Oil and Gas Lease held by Henry A Alker.
- UTU-84129; Oil and Gas Lease held by International Petroleum.

5. The lessee shall immediately bring to the attention of the lessor any cultural or paleontological resources discovered during operations under the lease. The lessee shall not disturb any cultural or paleontological resources except as instructed by the lessor. The cost of investigating and protecting cultural and paleontological resources discovered during construction or operations shall be borne by the lessee.

6. The lessee shall protect all survey monuments, witness corners, reference monuments and bearing trees within this lease against disturbance during construction, operation, maintenance, and rehabilitation. If any damage occurs, the lessee shall have a Registered Land Surveyor restore or take other measures found in the *Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition.*

7. No construction may begin until evidence of sufficient funding has been submitted and accepted.

8. The lease may be renewed if the terms of the lease are being met.

9. Construction and other activities potentially disruptive to wintering wildlife are prohibited during the period from December 1 to April 15 for the protection of big game Mule Deer crucial winter habitat.

*Classification Comments:* Interested parties may submit comments involving the suitability of the lands for golf course expansion purposes. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the uses will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a golf course.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Upon publication of this notice in the **Federal Register** the lands described above from both the original lease and the new extension shall be segregated to the extent that they will not be subject to appropriation under the public land laws including the general mining laws except for leasing under the Mineral Leasing Act, per the Price RMP LAR-6 "Manage RPP lease as open to oil and gas leasing subject to major constraint—No Surface Occupancy" and lease under the R&PP Act.

The BLM State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

**Authority:** 43 CFR 2741.5(h).

Dated: March 27, 2009.

**Selma Sierra,**

*State Director.*

[FR Doc. E9-13011 Filed 6-3-09; 8:45 am]

**BILLING CODE 4310-DQ-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLAKA02000.L1430FR; AA-091096]

#### Notice of Realty Action: Recreation and Public Purposes Act Classification; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease under the Recreation and Public Purposes (R&PP) Act, as amended, approximately 1 acre of public land near Delta Junction, Alaska. The State of Alaska, Department of Fish and Game (ADF&G) proposes to use the land for a free public use cabin/administrative use cabin.

**DATES:** Interested parties may submit comments regarding the proposed classification/lease of the lands on or before July 20, 2009.

**ADDRESSES:** Send written comments to the Field Manager, BLM Glennallen Field Office; P.O. Box 147; Glennallen, Alaska, 99588.

**FOR FURTHER INFORMATION CONTACT:** Tami Jindra, Realty Specialist, Bureau of Land Management, Glennallen Field Office at (907) 822-3217.

**SUPPLEMENTARY INFORMATION:** The following described public land has been examined and found suitable for classification for lease, but not conveyance, under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) An unsurveyed parcel containing approximately 1 acre located in:

#### Fairbanks Meridian, Alaska

T. 14 S., R. 10 E.,

Sec. 21, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The area described above contains approximately 1 acre, more or less.

The State of Alaska, Department of Fish and Game proposes using the land for a free public use/administrative cabin to enhance the public use and administrative capacity of the adjacent lake known locally as "Ken's Pond", which is stocked by ADF&G with game fish. The cabin is currently under a short term permit and serialized under AA-087904. Additional detailed information pertaining to this

application, plan of development, and site plan is in case file AA-091096, located in the BLM Glennallen Field Office at the above address.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material laws.

The land is not needed for any Federal purpose. The lease is consistent with the BLM East Alaska Resource Management Plan approved September, 2007, and would be in the public interest. The lease will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease will also be subject to:

Valid existing rights.

*Classification Comments:* Interested persons may submit comments involving the suitability of the land for development of a public use/administrative cabin, including whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. All comments will be considered.

*Application Comments:* Interested persons may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a public use/administrative cabin.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Glennallen Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Alaska State Director, who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the classification and decision to lease the land as described in the notice will become effective on August 3, 2009.

(Authority: 43 CFR 2741.5)

**William Runnoe,**

*Glennallen Field Manager.*

[FR Doc. E9–13010 Filed 6–3–09; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF JUSTICE

[OMB Number 1122–0001]

### Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection

**ACTION:** 60-Day Notice of Information Collection Under Review: Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP (Services\* Training\* Officers\* Prosecutors) Violence Against Women Formula Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for “sixty days” until August 3, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP Formula Grant Program

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0001. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system’s response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders

accountable for their crimes of violence against women. The Department of Justice’s Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000 and VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 1, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–13082 Filed 6–3–09; 8:45 am]

BILLING CODE 4410–FX–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Amended Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 22, 2009, an Amended Consent Decree in *United States v. Northrop Grumman Space & Mission Systems Corp., et al.*, Civil Action No. 09–0866, was lodged with the United States District Court for the Central District of California.

The Amended Consent Decree is nearly identical to the Consent Decree that was lodged by the United States in February of 2009, on behalf of the United States Environmental Protection Agency (“EPA”), and the California Department of Toxic Substances Control (“DTSC”) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, *et seq.*, and Section 7003 of the Resource Conservation and Recovery Act, as

amended, 42 U.S.C. 6973, related to the releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site ("Site") in Los Angeles County, California. The only differences between the Amended Consent Decree and the original are the addition of two entities related to Northrop Grumman Space & Mission Systems Corp. ("Northrop" or "Performing Settling Defendant"), and some minor clerical edits.

The Amended Consent Decree, like the Consent Decree that was lodged in February of 2009, resolves the liability of the Performing Settling Defendant and 43 cashout parties associated with 17 source properties and their related entities ("Contributing Settling Defendants") with respect to the groundwater contamination and its investigation and treatment as set forth in the Interim Record of Decision, as modified by the Explanation of Significant Differences.

The Amended Consent Decree requires the Performing Settling Defendant, on behalf of all of the Settling Defendants, to construct the intermediate zone remedy to address groundwater contamination and operate it for eight years from the operational and functional date of the groundwater treatment system for the intermediate zone at an estimated cost of \$21 million, pay \$465,420.90 to EPA for past costs, and pay \$90,000 to DTSC for past response costs. The Performing Settling Defendant represents that between 2002 and June 30, 2007, it incurred costs in excess of seven million dollars (\$7 million) to implement the intermediate zone remedial action in compliance with Unilateral Administrative Order No. 2002-06 issued on March 21, 2002, pending negotiations of the Consent Decree. Settling Defendants who currently own source properties within the PVOU are required to provide access and all of the Settling Defendants are required to retain records and provide EPA access to information. The Amended Consent Decree gives all Settling Defendants a covenant not to sue. The Amended Consent Decree reserves the United States' right to sue the Settling Defendants for the final Record of Decision and is subject to standard reopeners and reservations of rights.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed

to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Northrop Grumman Space & Mission Systems Corp.*, D.J. Ref. 90-11-2-354/16. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. 6973(d).

The Amended Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Amended Consent Decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$95.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-13018 Filed 6-3-09; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Proposed Consent Decree Under the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Clean Air Act**

Notice is hereby given that on May 29, 2009, a proposed Consent Decree in *United States v. Friction Holdings LLC*, Civ. No. 09-662, was lodged with the United States District Court for the Southern District of Indiana.

The proposed Consent Decree resolved the United States claims against Friction Holdings under the Clean Air Act ("CAA") 42 U.S.C. 7401 *et seq.*, the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. 6901 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601-2692, in connection with Friction's operation of an automotive

and heavy duty wet friction material and parts manufacturing facility in Crawfordsville, Indiana.

Under the proposed Decree, Friction Holdings would be required to: (1) Pay a civil penalty of \$337,500; (2) prepare and implement, under the Clean Water Act, various sampling, monitoring, and operations plans, to insure that cyanide in the facility's waste water is being handled properly; (3) pursuant to RCRA, investigate the facility's groundwater to determine if the groundwater is contaminated with PCBs and other hazardous substance, and if so whether the migration of the contaminated groundwater is under control; (4) pursuant to RCRA, remediate two small areas of suspected PCB contamination; (5) pursuant to TSCA, eliminate several sources of PCB contamination at the facility, and study the need for, and conduct where required, risk-based disposals or remediation of on-Facility PCB contamination. Prior to entering into the Decree, the Defendant brought the facility into compliance with the Clean Air Act and resolved the allegations in the Complaint pertaining to violations of that statute.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Friction Holdings LLC*, D.J. Ref. 90-5-2-1-07285. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, 10 West Market St., Suite 2100, Indianapolis, IN 46204 (contact Asst. U.S. Attorney Thomas Kieper (317-226-6333)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact U.S. EPA Senior Attorney Thomas Kenney (312-886-0708, or U.S. EPA Assistant Regional Counsel Robert Smith, (312-886-0765)). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of

Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.00 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.*

[FR Doc. E9-13038 Filed 6-3-09; 8:45 am]

BILLING CODE 4410-15-P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0052]

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 62, page 15001-15002, on April 2, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 6, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government. Abstract: Under the provisions of the Government Performance and Results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning Office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weaknesses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete an 18 minute questionnaire.

(6) *An estimate of the total burden (in hours) associated with the collection:*

There are an estimated 450 total burden hours associated with this collection.

*If additional information is required, contact:* Lynn Bryant, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 1, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9-13079 Filed 6-3-09; 8:45 am]

BILLING CODE 4410-FY-P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0002]

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Application for Restoration of Firearms Privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 62, page 15002-15003, on April 2, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 6, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the form/Collection:* Application for Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* Certain categories of persons are prohibited from possessing firearms. ATF F 3210.1, Application for Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 250 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

*If additional information is required, contact:* Lynn Bryant, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600,

Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 1, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9-13084 Filed 6-3-09; 8:45 am]

**BILLING CODE 4410-FY-P**

#### DEPARTMENT OF JUSTICE

#### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0039]

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 62, page 15002, on April 2, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 6, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Individuals or households. *Other:* Business or other for-profit. Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 4,000 respondents, who will complete the form within approximately 24 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,600 total burden hours associated with this collection.

If additional information is required, contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 1, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9-13085 Filed 6-3-09; 8:45 am]

**BILLING CODE 4410-FY-P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meeting for the 31st Annual Board of Directors

**TIME AND DATE:** 12:15 p.m., Wednesday, June 3, 2009.

**PLACE:** 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:**

Erica Hall, Assistant Corporate Secretary; (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

**AGENDA:**

- I. Call To Order.
- II. Approval of the Minutes.
- III. Summary Report of the Audit Committee.
- IV. Summary Report of the Corporate Administration Committee.
- V. Summary Report of the Finance, Budget and Program Committee.
- VI. Board Appointments.
- VII. Financial Report.
- VIII. Corporate Scorecard.
- IX. Chief Executive Officer's Quarterly Management Report.
- X. Adjournment.

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. E9-13140 Filed 6-2-09; 11:15 am]

**BILLING CODE 7570-02-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-039-COL; ASLBP No. 09-890-10-COL-BD01]

### PPL Bell Bend, LLC, Bell Bend Nuclear Power Plant; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, see 10 CFR 2.104, 2.300, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: PPL Bell Bend, LLC, (Bell Bend Nuclear Power Plant).

This proceeding concerns requests for hearing from petitioners Gene Stilp in his individual capacity; Gene Stilp for

Taxpayers and Ratepayers United; and Eric Epstein in his individual capacity. The hearing requests were submitted in response to a March 18, 2009 Notice of Hearing, Opportunity to Petition for Leave to Intervene, and Associated Order (74 FR 11,606). Petitioners challenge the application filed by PPL Bell Bend, LLC pursuant to Subpart C of 10 CFR part 52 for a combined license for the Bell Bend Nuclear Power Plant, to be located in Luzerne County, Pennsylvania.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001;

Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001;

Randall J. Charbeneau, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 28th day of May 2009.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. E9-13022 Filed 6-3-09; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2008-0597]

### Notice of Issuance and Withdrawal of Regulatory Guides

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Regulatory Guide (RG) 1.69, Revision 1 and withdrawal of RG 2.1.

**FOR FURTHER INFORMATION CONTACT:** Harriet Karagiannis, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 251-7477 or e-mail to [Harriet.Karagiannis@nrc.gov](mailto:Harriet.Karagiannis@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of RG 1.69, "Concrete Radiation Shields and Generic Shield Testing for Nuclear Power Plants," was issued for public comment with a temporary identification as Draft Regulatory Guide (DG)-1187. RG 1.69 describes a method acceptable to the NRC staff for complying with the regulations with regard to the design and construction of concrete radiation shields in nuclear power plants.

As stated in Title 10, Section 20.1201, "Occupational Dose Limits for Adults," of the *Code of Federal Regulations* (10 CFR 20.1201), NRC licensees shall control the occupational dose to individual adults to the limits stated therein. Furthermore, 10 CFR 20.1101(b) provides that licensees shall use, to the extent practicable, procedures and engineering controls based upon sound radiation principles to achieve occupational doses and doses to members of the public that are as low as reasonably achievable. General Design Criterion 1, "Quality Standards and Records," of Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," requires that structures, systems, and components important to safety be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety function to be performed. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR part 50 requires that measures be established to ensure design control and inspection and test controls. Appendix B also requires that activities affecting quality be accomplished under suitably controlled conditions.

Also, RG 1.69 encompasses applicable material previously endorsed in RG 2.1, "Shield Test Program for the Evaluation of Installed Biological Shielding in Research and Training Reactors." Therefore, RG 2.1 is outdated and it will be withdrawn.

## II. Further Information

In November 2008, DG-1187 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on January 9, 2009. The staff's responses to the public comments received are located in NRC's Agencywide Documents Access and Management System under Accession No. ML090820436. Electronic copies of RG 1.69, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at <http://www.nrc.gov/reading-rm/doc-collections/>.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4209, by fax at (301) 415-3548, and by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 27th day of May, 2009.

For the Nuclear Regulatory Commission.

**R.A. Jervey,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9-13028 Filed 6-3-09; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No.: 70-143; NRC-2008-0487]

### Notice of Issuance of License Amendment to Nuclear Fuel Services, Inc., Erwin, TN

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of issuance of license amendment.

#### FOR FURTHER INFORMATION CONTACT:

Kevin M. Ramsey, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), Mailstop E2C40M, Rockville, Maryland, 20852. Telephone: (301) 492-3123; fax number: (301) 492-3359; e-mail: [kevin.ramsey@nrc.gov](mailto:kevin.ramsey@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

## I. Introduction

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice of the issuance of License Amendment 88 to Material License No. SNM-124, to Nuclear Fuel Services, Inc. (the licensee), which authorizes the licensee to process uranium fluoride compounds in the new Commercial Development line of the licensee's facility in Erwin, Tennessee. The licensee's request for the proposed license amendment was previously noticed in the **Federal Register** on December 31, 2007 (72 FR 74352), with a notice of an opportunity to request a hearing. In accordance with 10 CFR part 51, an environmental assessment of this action was completed and a finding of no significant impact was published in the **Federal Register** on September 2, 2008 (73 FR 51319).

This license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR Chapter 1. Accordingly, this license amendment was issued on May 11, 2009, and is effective immediately.

## II. Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and the NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the SER and accompanying documentation included in the license amendment package, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS accession numbers for documents related to this notice are ML090490686 (letter and SER) and ML090490688 (non-sensitive license conditions). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O-1F21, 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 27th day of May, 2009.

For the U.S. Nuclear Regulatory Commission.

**Kevin M. Ramsey,**

*Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9-13024 Filed 6-3-09; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2009-0226]

### Office of New Reactors; Interim Staff Guidance on Finalizing Licensing Basis Information

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Solicitation of public comment.

**SUMMARY:** The NRC staff is soliciting public comment on its Proposed Interim Staff Guidance (ISG) COL/DC-ISG-011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090550772). This ISG is to clarify the NRC staff position on finalizing licensing basis information at a point during the licensing review, a so-called freeze-point, and the control of licensing basis information during and following the initial review of applications for design certifications (DCs) or combined licenses (COLs). The NRC staff issues COL/DC-ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff intends to incorporate the final approved COL/DC-ISG-011 into the next revision of Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants."

**DATES:** Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB-05-B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Members of the public are invited and encouraged to submit comments electronically to <http://www.nrc.gov>.

[www.regulations.gov](http://www.regulations.gov). Search on Docket ID: NRC-2009-0226 and follow the instructions for submitting comments.

The NRC maintains an ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Reckley, Chief, Project Management and Technical Review Branch, Advanced Reactor Program, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone 301-415-7490 or e-mail at [william.reckley@nrc.gov](mailto:william.reckley@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The agency posts its issued staff guidance in the agency external Web page (<http://www.nrc.gov/reading-rm/doc-collections/isg/>).

The NRC staff is issuing this notice to solicit public comments on the proposed COL/DC-ISG-011. After the NRC staff considers any public comments, it will make a determination regarding the proposed COL/DC-ISG-011.

Dated at Rockville, Maryland, this 28th day of May, 2009.

For the Nuclear Regulatory Commission.

**William F. Burton,**

*Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. E9-13025 Filed 6-3-09; 8:45 am]

**BILLING CODE 7590-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11750 and # 11751]

### West Virginia Disaster Number WV-00012

**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 West Virginia (FEMA-1838-DR), dated 05/15/2009.

*Incident:* Severe Storms, Flooding, Mudslides, and Landslides.

*Incident Period:* 05/03/2009 and continuing.

**DATES:** *Effective Date:* 05/27/2009.

*Physical Loan Application Deadline Date:* 07/14/2009.

*EIDL Loan Application Deadline Date:* 02/15/2010.

**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 West Virginia, dated 05/15/2009 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Mcdowell; Raleigh.

*Contiguous Counties (Economic Injury Loans Only):*

West Virginia: Fayette; Kanawha; Summers.

Virginia: Tazewell.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9-13029 Filed 6-3-09; 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 2.

**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 through 05/22/2009.

**DATES:** *Effective Date:* 05/22/2009.

*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 President's major disaster declaration for the State of Minnesota, dated 04/10/2009 is hereby amended to establish the incident period for this disaster as beginning 03/16/2009 and continuing through 05/22/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9-13031 Filed 6-3-09; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11763 and #11764]

### Florida Disaster #FL-00042

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-1840-DR), dated 05/27/2009.

*Incident:* Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

*Incident Period:* 05/17/2009 and continuing.

**DATES:** *Effective Date:* 05/27/2009.

*Physical Loan Application Deadline Date:* 07/27/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/01/2010.

**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:** Notice is hereby given that as a result of the President's major disaster declaration on 05/27/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Volusia.  
*Contiguous Counties (Economic Injury Loans Only):*

Florida: Brevard, Flagler, Lake, Marion, Orange, Putnam, Seminole.  
The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere: .....	4.875
Homeowners Without Credit Available Elsewhere: .....	2.437
Businesses With Credit Available Elsewhere: .....	6.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere: .....	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere: .....	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere: .....	4.000

The number assigned to this disaster for physical damage is 117636 and for economic injury is 117640.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**  
*Acting Associate Administrator for Disaster Assistance.*  
[FR Doc. E9-13034 Filed 6-3-09; 8:45 am]  
BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #11740 and #11741]

**Alabama Disaster Number AL-00022**

**AGENCY:** U.S. Small Business Administration.  
**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA-1836-DR), dated 05/08/2009.

*Incident:* Severe Storms, Flooding, Tornadoes, and Straight-line Winds.  
*Incident Period:* 04/10/2009 through 04/13/2009.

**DATES:** *Effective Date:* 05/26/2009.  
*Physical Loan Application Deadline Date:* 07/07/2009.  
*Economic Injury (EIDL) Loan Application Deadline Date:* 02/08/2010.

**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 Alabama, dated 05/08/2009, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Lamar.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**  
*Acting Associate Administrator for Disaster Assistance.*  
[FR Doc. E9-13035 Filed 6-3-09; 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 5.

**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 through 05/22/2009.

**DATES:** *Effective Date:* 05/22/2009.  
*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 establish the incident period for this disaster as beginning 03/16/2009 and continuing through 05/22/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**  
*Acting Associate Administrator for Disaster Assistance.*  
[FR Doc. E9-13037 Filed 6-3-09; 8:45 am]  
BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #11762]

**Kentucky Disaster #KY-00023 Declaration of Economic Injury**

**AGENCY:** U.S. Small Business Administration.  
**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the Commonwealth of Kentucky, dated 05/27/2009.

*Incident:* Ice Storms and Heavy Rains  
*Incident Period:* 01/26/2009 through 02/13/2009.  
*Effective Date:* 05/27/2009.  
*EIDL Loan Application Deadline Date:* 03/01/2010.

**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:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Boyle, Christian, Hopkins, Meade, Nelson, Webster.  
*Contiguous Counties:*  
Kentucky: Anderson, Breckinridge, Bullitt, Caldwell, Casey, Crittenden, Garrard, Hardin, Henderson, Larue, Lincoln, Marion, Mclean, Mercer, Muhlenberg, Spencer, Todd, Trigg, Union, Washington.  
Indiana: Crawford, Harrison, Perry.  
Tennessee: Montgomery, Stewart.  
*The Interest Rate is:* 4.000.

The number assigned to this disaster for economic injury is 117620.

The States which received an EIDL Declaration # are Kentucky, Indiana, Tennessee.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 27, 2009.

**Karen G. Mills,**

*Administrator.*

[FR Doc. E9-13032 Filed 6-3-09; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11752 and #11753]

### West Virginia Disaster Number WV-00013

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA-1838-DR), dated 05/15/2009.

*Incident:* Severe Storms, Flooding, Mudslides, and Landslides.

*Incident Period:* 05/03/2009 and continuing.

**DATES:** *Effective Date:* 05/27/2009.

*Physical Loan Application Deadline Date:* 07/14/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/15/2010.

**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 West Virginia, dated 05/15/2009, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* McDowell, Mercer, Raleigh.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9-13030 Filed 6-3-09; 8:45 am]

BILLING CODE 8025-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28751]

### Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

May 29, 2009.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2009. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 2009, and should be accompanied by proof of service on the applicant, 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

*For Further Information Contact:* Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

#### Paradigm Funds Trust [File No. 811-21811]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. As of July 31, 2008, applicant's shareholders had tendered their shares for redemption, based on net asset value. Applicant incurred no expenses in connection with its liquidation.

*Filing Dates:* The application was filed on January 22, 2009.

*Applicant's Address:* 650 Fifth Ave., 17th Floor, New York, NY 10019.

#### Paradigm Multi Strategy Fund I, LLC [File No. 811-21808]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an

investment company. As of July 31, 2008, applicant's shareholders had tendered their shares for redemption, based on net asset value. Expenses of approximately \$218,740 incurred in connection with the liquidation will be paid by applicant out of cash retained for this purpose.

*Filing Date:* The application was filed on January 22, 2009.

*Applicant's Address:* 650 Fifth Ave., 17th Floor, New York, NY 10019.

#### Nagle Funds [File No. 811-21826]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$1,050 incurred in connection with the liquidation were paid by Peter J. Nagle, R.I.A., applicant's investment adviser.

*Filing Date:* The application was filed on April 20, 2009.

*Applicant's Address:* 57 Willow Dr., Little Silver, NJ 07739.

#### Buffalo Balanced Fund, Inc. [File No. 811-8364]; Buffalo Small Cap Fund, Inc. [File No. 811-8509]; Buffalo USA Global Fund, Inc. [File No. 811-8896]; Buffalo High Yield Fund, Inc. [File No. 811-8898]; Buffalo Large Cap Fund, Inc. [File No. 811-8900]

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On either July 29, 2008 or August 19, 2008, each applicant transferred its assets to corresponding series of Buffalo Funds, based on net asset value. Expenses of approximately \$136,941 were incurred in connection with each reorganization and were paid by Kornitzer Capital Management, Inc., applicants' investment adviser, and U.S. Bancorp Fund Services, LLC, applicants' administrative agent.

*Filing Dates:* The applications were filed on January 14, 2009, and amended on May 1, 2009 and May 13, 2009.

*Applicants' Address:* 5420 W 61st Pl., Shawnee Mission, KS 66205.

#### The GNMA Fund Investment Accumulation Program, Inc. [File No. 811-2788]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 29, 2007, applicant transferred its assets to BlackRock GNMA Portfolio, a series of BlackRock Funds II, based on net asset value. Expenses of \$730,792 incurred in connection with the reorganization were paid by applicant and BlackRock

Advisors, LLC, investment adviser to the acquiring fund.

*Filing Dates:* The application was filed on December 11, 2008, and amended on May 12, 2009.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**Sit Money Market Fund, Inc. [File No. 811-4032]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$15,560 incurred in connection with the liquidation were paid by Sit Investment Associates, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on April 28, 2009.

*Applicant's Address:* Sit Mutual Funds, 3300 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

**John Hancock Institutional Series Trust [File No. 811-8852]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 2007, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Date:* The application was filed on April 27, 2009.

*Applicant's Address:* 601 Congress St., Boston, MA 02210.

**Centurion Investment Trust [File No. 811-21959]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 26, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$2,216 incurred in connection with the liquidation were paid by Centurion Investment Partners LLC, applicant's investment adviser.

*Filing Date:* The application was filed on April 28, 2009.

*Applicant's Address:* Centurion Investment Partners LLC, 5860 Ridgeway Center Parkway, Suite 330, Memphis, TN 38120.

**Ziegler Exchange Traded Trust [File No. 811-21827]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 26, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$37,011 incurred in connection with the

liquidation were paid by Ziegler Capital Management, LLC, applicant's investment adviser.

*Filing Date:* The application was filed on April 21, 2009.

*Applicant's Address:* 200 South Wacker Dr., Suite 200, Chicago, IL 60606.

**Legg Mason Permal Global Active Strategies Fund [File No. 811-22194]; Legg Mason Permal Global Active Strategies TEI Fund [File No. 811-22195]; Legg Mason Permal Global Active Strategies Master Fund [File No. 811-22196]**

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The applications were filed on February 26, 2009, and amended on May 5, 2009.

*Applicants' Address:* 55 Water St., New York, NY 10041.

**BlackRock Multi-Strategy Hedge Advantage [File No. 811-21760]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 1, 2008, applicant transferred assets of approximately \$6,758,621 to MSHA Liquidating Trust. On December 8, 2008, applicant made a liquidating distribution in cash to its shareholders, based on net asset value. Expenses of approximately \$154,660 incurred in connection with the liquidation were paid by applicant and BlackRock Advisors, LLC, applicant's investment adviser.

*Filing Dates:* The application was filed on January 12, 2009, and amended on April 24, 2009.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, DE 19809.

**BlackRock Multi-Strategy Hedge Opportunities LLC [File No. 811-21537]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 1, 2008, applicant transferred assets of approximately \$9,704,202 to MSHO Liquidating Trust. Also, on December 1, 2008, applicant made a liquidating distribution in cash to its shareholders, based on net asset value. Expenses of approximately \$85,911 incurred in connection with the liquidation were paid by applicant and BlackRock

Advisors, LLC, applicant's investment adviser.

*Filing Dates:* The application was filed on January 12, 2009, and amended on April 24, 2009.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, DE 19809.

**RIC Coinvestment Fund LP [File No. 811-21900]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 28, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$64,125 incurred in connection with the liquidation will be paid by applicant. Applicant has retained \$72,616 in cash to pay outstanding expenses. Any amount left after payment of outstanding expenses will be distributed pro rata to applicant's shareholders.

*Filing Dates:* The application was filed on January 21, 2009, and amended on February 2, 2009 and April 10, 2009.

*Applicant's Address:* 1345 Avenue of the Americas, 46th Floor, New York, NY 10105.

**Rand Capital SBIC, LP [File No. 811-21097]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Effective December 31, 2008, applicant and its general partner, Rand Capital Management, LLC, both wholly-owned subsidiaries of Rand Capital Corporation, merged into Rand Capital SBIC, Inc. ("Rand SBIC"), another wholly-owned subsidiary of Rand Capital Corporation. As a result of the merger, all of applicant's limited and general partnership interests were converted into common stock of Rand SBIC and distributed to Rand Capital Corporation. Expenses of \$33,300 incurred in connection with the reorganization were paid by Rand Capital Corporation.

*Filing Dates:* The application was filed on February 13, 2009, and amended on April 17, 2009 and May 26, 2009.

*Applicant's Address:* 2200 Rand Building, Buffalo, NY 14203.

**Goldman Sachs Global Equity Long/Short Registered Fund, LLC [File No. 811-21375]; Goldman Sachs Global Relative Value Registered Fund, LLC [File No. 811-21377]; Goldman Sachs Global Event Driven Registered Fund, LLC [File No. 811-21378]; Goldman Sachs Global Tactical Trading Registered Fund, LLC [File No. 811-21379]**

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The applications were filed on March 23, 2009, and amended on May 21, 2009.

*Applicants' Address:* One New York Plaza, 39th Floor, New York, NY 10004.

**Man IP 220, LLC [File No. 811-21451]; Man Dual Absolute Return Fund [File No. 811-22070]**

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

*Filing Date:* The applications were filed on May 8, 2009.

*Applicants' Address:* 123 N. Wacker Dr., 28th Fl., Chicago, IL 60606.

**Pax World Growth Fund, Inc. [File No. 811-8097]; Pax World High Yield Fund, Inc. [File No. 811-9419]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 2, 2007, each applicant transferred its assets to corresponding series of Pax World Funds Series Trust I, based on net asset value. Expenses of approximately \$159,000 and \$112,000, respectively, incurred in connection with the reorganizations were paid by each applicant.

*Filing Date:* The applications were filed on May 8, 2009.

*Applicants' Address:* 30 Penhallow St., Suite 400, Portsmouth, NH 03801.

**Access Capital Strategies Community Investment Fund, Inc. [File No. 811-21889]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 28, 2008, applicant transferred its assets to Access Capital Community Investment Fund, a series of Tamarack Funds Trust, based

on net asset value. Expenses of \$723,000 incurred in connection with the reorganization were paid by Voyageur Asset Management Inc., applicant's subadviser.

*Filing Dates:* The application was filed on December 24, 2008, and amended on May 27, 2009.

*Applicant's Address:* 419 Boylston St., Suite 501, Boston, MA 02116.

**Separate Account VA-2NL of Transamerica Occidental Life Insurance Company [File No. 811-07232]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

*Filing Date:* The application was filed on March 11, 2009.

*Applicant's Address:* 4333 Edgewood Road NE, Cedar Rapids, IA 52499-0001.

**Separate Account VA-2NLNY of Transamerica Financial Life Insurance Company [File No. 811-07370]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

*Filing Date:* The application was filed on March 11, 2009.

*Applicant's Address:* 100 Manhattanville Road, Purchase, NY 10577.

**Genworth Life & Annuity VA Separate Account 3 [File No. 811-21970]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, applicant had less than 100 individual contract owners and was not making a public offering nor was it intending on making a public offering in the future and thus qualified for an exclusion from the definition of "investment company" in Section 3(c)(1) of the 1940 Act.

*Filing Dates:* The application was filed on December 30, 2008, and amended and restated on February 20, 2009 and May 27, 2009.

*Applicant's Address:* 610 West Broad Street, Richmond, Virginia, 23230.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12996 Filed 6-3-09; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

**In the Matter of Patriot Energy Corp.; Order of Suspension of Trading**

June 2, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Patriot Energy Corporation because of questions regarding the accuracy of assertions by Patriot Energy Corporation in press releases to investors concerning, among other things: (1) The company's business agreements and (2) a tender offer for Patriot Energy Corporation's outstanding shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Patriot Energy Corp.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities Patriot Energy Corp. is suspended for the period from 9:30 a.m. EDT on June 2, 2009, through 11:59 p.m. EDT, on June 15, 2009.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E9-13144 Filed 6-2-09; 4:15 pm]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59990; File No. SR-BATS-2009-016]

**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 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 21, 2009, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 22, 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**

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective May 22, 2009, in order to extend the same fee charged by the Exchange for its "CYCLE" routing strategy (\$0.0025 per share) to any executions that result from the Exchange's "RECYCLE" routing. The Exchange recently filed an immediately effective rule change with the Commission that permits the Exchange

to offer Exchange Members the option to mark an order as eligible for re-routing if the order has been routed away from the Exchange then posted to the BATS Book and then another Trading Center locks or crosses such posted order.<sup>5</sup> Such additional routing is referred to by the Exchange as RECYCLE routing. As noted above, the Exchange will charge the same fee for executions that result from RECYCLE routing as it does for CYCLE routing. Accordingly, the Exchange proposes to add a reference to RECYCLE on its fee schedule everywhere that CYCLE is referenced.

##### **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.<sup>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> 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. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

#### **B. Self-Regulatory Organization's Statement on 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 Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2009-016 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2009-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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

<sup>5</sup> SR-BATS-2009-012 (filed May 20, 2009).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 89s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2009-016 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12983 Filed 6-3-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60002; File No. SR-NYSEArca-2009-32]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving the Proposed Rule Change Implementing NYSE Arca Realtime Reference Prices Service on a Permanent Basis

May 29, 2009.

#### I. Introduction

On April 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish the NYSE Arca Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The proposed rule change was published for comment in the **Federal Register** on April 24, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to establish the NYSE Arca Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program.<sup>4</sup> The service allows a vendor

to redistribute, on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Arca Realtime Reference Prices"). The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices, and relieves vendors of administrative burdens. The product is intended to be used for reference purposes, rather than as a basis for making trading decisions.

#### *The Service*

The NYSE Arca Realtime Reference Prices service allows internet service providers, traditional market data vendors, and others (collectively, "NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.<sup>5</sup> The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices, and does not include the size of each trade or bid/asked quotations.

As with the pilot program, under the permanent service the Exchange will not permit NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Arca-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as required by Rule 603(c)(1) of Regulation NMS.

Also, as with the pilot program, the permanent service is intended to eliminate certain administrative burdens associated with the distribution of real-time CTA prices. Specifically, the permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

#### *The Fee*

The Exchange proposes to retain the current \$30,000 monthly flat access fee for the NYSE Arca Realtime Reference Prices service. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers. The pilot program does not impose any

device or end-user fee for the NYSE Arca-Only Vendors' distribution of NYSE Arca Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE Arca-Only Vendor to identify the NYSE Arca trade price by placing the text "NYSE Arca Data" in close proximity to the display of each NYSE Arca Realtime Reference Price or series of NYSE Arca Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE Arca may agree. The NYSE Arca-Only Vendor may make NYSE Arca Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

#### *Contracts*

As with the pilot program, NYSE Arca proposes to allow NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange proposes to require NYSE Arca-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Arca-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE-Arca Only Vendor to provide the NYSE Arca Realtime Reference Prices service to its subscribers and customers. The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service.

#### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59790 (April 20, 2009), 74 FR 18758.

<sup>4</sup> See Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR-NYSEArca-2008-96). The Commission has approved three extensions of the end date for the pilot program, which expires on June 30, 2009. See Securities Exchange Act Release Nos. 58895 (October 31, 2008), 73 FR 66956 (November 12, 2008) (SR-NYSEArca-2008-122); 59184 (December 30, 2008), 74 FR 755 (January 7, 2009) (SR-NYSEArca-2008-143); and 59662 (March 31, 2009),

74 FR 15571 (April 6, 2009) (SR-NYSEArca-2009-25).

<sup>5</sup> The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

exchange.<sup>6</sup> In particular, it is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,<sup>9</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>10</sup> adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>11</sup>

This proposal would make permanent the NYSE Arca Realtime Reference Prices service and make permanent the \$30,000 flat monthly fee for that service.<sup>12</sup> The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.<sup>13</sup> There are a variety of alternative sources

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 17 CFR 242.603(a).

<sup>11</sup> NYSE Arca is an exclusive processor of the NYSE Arca Realtime Reference Prices service under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

<sup>12</sup> See *supra* note 4.

<sup>13</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

of information that impose significant competitive pressures on NYSE Arca in setting the terms for distributing the NYSE Arca Realtime Reference Prices service. The Commission believes that the availability of those alternatives, as well as NYSE Arca's compelling need to attract order flow, imposed significant competitive pressure on NYSE Arca to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE Arca was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSEArca-2009-32), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13039 Filed 6-3-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59987; File No. SR-FINRA-2009-016]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Amended, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

May 27, 2009.

#### I. Introduction

On March 25, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD"))

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed Rule Change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 15, 2009.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as amended.

#### II. Description of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2130 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository system.

FINRA is proposing to adopt NASD Rule 2810 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate investment trusts.

FINRA is proposing to adopt NASD Rule 3115 without material change in the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing.

<sup>4</sup> See Securities Exchange Act Release No. 59771 (April 15, 2009), 74 FR 18411.

systems (“ATs”) <sup>5</sup> that accept orders for security futures <sup>6</sup> to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule provides FINRA with an audit trail of orders for security futures placed on an ATS.

FINRA is proposing to adopt NASD Rule 2342 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office (“GAO”), entitled “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors.” <sup>7</sup>

### III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. <sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, <sup>9</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that that transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD continue to be reasonably designed to ensure that information submitted to

<sup>5</sup> ATs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

<sup>6</sup> A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as “securities” under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

<sup>7</sup> See U.S. Government Accountability Office, “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,” Publication GAO-01-653 (May 25, 2001).

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

and maintained in the CRD is accurate and complete. The Commission believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding FINRA’s members’ participation in public offerings of Investment Programs continue to meet statutory mandates. The Commission believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATs. Finally, the Commission believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, <sup>10</sup> that the proposed rule change (SR-FINRA-2009-016), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. <sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-12997 Filed 6-3-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59999; File No. SR-BX-2009-026]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing

May 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on May 21, 2009, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared

by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act, <sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify the terms and conditions under which the Exchange is affiliated with NASDAQ Options Services, LLC (“NOS”). The Exchange proposes to implement the proposed rule change when NASDAQ OMX PHLX, Inc. (“PHLX”) implements its XL II trading system. <sup>4</sup> There is no proposed rule language.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) acquired the Exchange in August 2008. Prior to the acquisition, the Exchange owned a 21.87% interest in Boston Options Exchange Group, LLC (“BOX LLC”), the operator of the Boston Options Exchange facility (“BOX”). BOXR is a wholly-owned subsidiary of the Exchange, to which the Exchange has delegated, pursuant to a delegation plan, certain self-regulatory responsibilities related to the BOX.

At the closing of the acquisition by NASDAQ OMX, the Exchange transferred its interest in BOX LLC to

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

MX US, a wholly-owned subsidiary of the Montreal Exchange Inc. Although the Exchange no longer holds an ownership interest in BOX LLC, it continues to hold self-regulatory obligations with respect to BOX. The Exchange, together with BOXR, retains regulatory control over BOX and the Exchange, and remains responsible for ensuring compliance with the federal securities laws and all applicable rules and regulations.

In its order approving certain proposed rule changes necessary to allow the acquisition of the Exchange by NASDAQ OMX, the Commission approved the adoption of Chapter XXXIX, Section 2 of the Exchange's rules, which provides that, subject to certain exceptions, the Exchange may not become an affiliate of one of its members unless the terms and conditions of such affiliation are the subject of an effective filing with the Commission.<sup>5</sup> Also in the Acquisition Approval Order, the Commission approved the Exchange becoming an affiliate of Nasdaq Options Services, LLC ("NOS"), which is an indirect subsidiary NASDAQ OMX, a registered broker-dealer, a member of the Exchange, and a BOX market participant.<sup>6</sup>

The NASDAQ Options Market ("NOM") is an options market operated by The NASDAQ Stock Market (the "NASDAQ Exchange"), and NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM. The Commission has approved NOS's affiliation with the Exchange subject to the conditions that: (i) NOS remains a facility of the NASDAQ Exchange; (ii) use of NOS's routing function by NASDAQ Exchange members continues to be optional; and (iii) NOS does not provide routing of orders in options from NOM to the Exchange or any trading facilities thereof, unless such

orders first attempt to access any liquidity on the NOM book. In addition, the Commission noted in the Acquisition Approval Order that NOS is a member of a self-regulatory organization that is unaffiliated with the NASDAQ Exchange and that serves as NOS's designated examining authority.

In SR-PHLX-2009-32,<sup>7</sup> PHLX, another exchange subsidiary of NASDAQ OMX, has proposed establishing NOS as PHLX's routing facility (the "Routing Facility"). The sole use of the Routing Facility by the PHLX's new proposed Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to PHLX rules on behalf of PHLX. Proposed PHLX Rule 1080(m)(iii)(B) would provide that the use of NOS to route orders to other market centers is optional. Parties that do not desire to use NOS must designate orders as not available for routing (*i.e.*, a Do Not Route Order, as described in proposed PHLX Rule 1080(m)(iv)(A)).

Proposed PHLX Rule 1080(m)(iii)(C) would provide that PHLX will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between PHLX and the Routing Facility, and any other entity, including any affiliate of the Routing Facility, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services. In SR-PHLX-2009-32, PHLX further noted that NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and that serves as NOS's designated examining authority.<sup>8</sup>

Finally, proposed PHLX Rule 1080(m)(iii)(D) would state that the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of PHLX, will be deemed to be the books, records, premises, officers, directors, agents, and employees of PHLX for purposes of and subject to oversight pursuant to the Act. The books and records of the Routing Facility, as a facility of PHLX, will be

subject at all times to inspection and copying by PHLX and the Commission.

PHLX has also adopted a rule restricting affiliation between PHLX and its members, comparable to the Exchange's rules. *See* PHLX Rule 985(b). In SR-Phlx-2009-32, PHLX has requested that the Commission allow PHLX to use NOS to provide routing services for orders routed to all destinations, provided they first attempt to access liquidity on PHLX's systems before routing to other exchanges. Thus, the terms and conditions of PHLX's order routing would be substantially similar to those already approved with respect to routing by NOM through NOS.

Because orders from PHLX may be routed to BOX through NOS, it is necessary for the Exchange to submit this filing to establish that BOX may receive such routed orders. Accordingly, the Exchange proposes that NOS be permitted to route orders from PHLX to BOX subject to the following: (i) NOS is approved as and remains a facility of PHLX; (ii) use of NOS's Routing Facility function by PHLX members continues to be optional; (iii) NOS does not provide routing of orders in options from PHLX to the Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the PHLX book, and (iv) NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and the Exchange and that serves as NOS's designated examining authority. The terms and conditions under which BOX would receive orders from PHLX through NOS are the same as the terms and conditions under which it has been approved to receive them from NOM through NOS.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(5) of the Act,<sup>10</sup> 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. The proposed rule change would permit

<sup>5</sup> Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25; SR-BSECC-2008-01) (the "Acquisition Approval Order").

<sup>6</sup> In connection with the adoption of new rules to govern trading of cash equity securities on the Exchange, the Exchange adopted Equity Rule 2140, which, like Chapter XXXIX, Section 2, restricts affiliation between the Exchange and its members. Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48). In the same filing, the Exchange designated Chapter XXXIX, Section 2 for inclusion in the "Grandfathered Rules" of the Exchange, which are rules in effect prior to the acquisition of the Exchange by NASDAQ OMX that continue to apply to BOX market participants, while designating Rule 2140 as an "Equity Rule" applicable to members of the Exchange. Because NOS is both an Exchange member and a BOX market participant, this filing should be construed to relate both to Rule 2140 and Chapter XXXIX, Section 2.

<sup>7</sup> Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1).

<sup>8</sup> The Financial Industry Regulatory Authority ("FINRA") serves as NOS's designated examining authority. FINRA is unaffiliated with the Exchange, PHLX, the NASDAQ Exchange, and BOX.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

inbound routing of orders from PHLX to BOX through NOS in accordance with the terms and conditions governing order routing that have been approved by the Commission with respect to routing of orders from NOM through NOS.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange's proposal is substantially similar to the proposal of another national securities exchange previously approved by the Commission and does

not raise any new substantive issues.<sup>15</sup> The Exchange proposes to implement the proposed rule change when PHLX implements its XLII trading system, and states that waiving the operative delay will ensure that the Exchange is able to implement the proposed rule change at such time.<sup>16</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-026 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2009-026 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12999 Filed 6-3-09; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60004; File No. SR-NYSE-2009-42]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving the Proposed Rule Change Implementing NYSE Realtime Reference Prices Service on a Permanent Basis**

May 29, 2009.

#### **I. Introduction**

On April 16, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish the NYSE Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The proposed rule change was published for comment in the **Federal**

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, 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. The Exchange has satisfied this requirement.

<sup>14</sup> *Id.*

<sup>15</sup> See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31).

<sup>16</sup> See SR-BX-2009-026, Items 2 and 7.

<sup>17</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Register on April 24, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to establish the NYSE Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program.<sup>4</sup> The service allows a vendor to redistribute, on a real-time basis last sale prices of transactions that take place on the Exchange (“NYSE Realtime Reference Prices”). The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices, and relieves vendors of administrative burdens. The product is intended to be used for reference purposes, rather than as a basis for making trading decisions.

### *The Service*

The NYSE Realtime Reference Prices service allows Internet service providers, traditional market data vendors, and others (collectively, “NYSE-Only Vendors”) to make available NYSE Realtime Reference Prices on a real-time basis.<sup>5</sup> The NYSE Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices, and does not include the size of each trade or bid/asked quotations.

As with the pilot program, under the permanent service the Exchange will not permit NYSE-Only Vendors to provide NYSE Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as

required by Rule 603(c)(1) of Regulation NMS.

Also, as with the pilot program, the permanent service is intended to eliminate certain administrative burdens associated with the distribution of real-time CTA prices. Specifically, the permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

### *The Fee*

The Exchange proposes to retain the current \$70,000 monthly flat access fee for the NYSE Realtime Reference Prices service. For that fee, the NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor’s subscribers and customers. The pilot program does not impose any device or end-user fee for the NYSE-Only Vendors’ distribution of NYSE Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE-Only Vendor to identify the NYSE trade price by placing the text “NYSE Data” in close proximity to the display of each NYSE Realtime Reference Price or series of NYSE Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE may agree. The NYSE-Only Vendor may make NYSE Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

### *Contracts*

As with the pilot program, NYSE proposes to allow NYSE-Only Vendors to provide NYSE Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange proposes to require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user’s receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE-Only Vendors to enter into the form of “vendor” agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the “Network A Vendor Form”). The Network A Vendor Form will authorize

the NYSE-Only Vendor to provide the NYSE Realtime Reference Prices service to its subscribers and customers. The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide terms and conditions that are unique to the NYSE Realtime Reference Prices service.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, it is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,<sup>9</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>10</sup> adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>11</sup>

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 17 CFR 242.603(a).

<sup>11</sup> NYSE is an exclusive processor of the NYSE Realtime Reference Prices service under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

<sup>3</sup> See Securities Exchange Act Release No. 59791 (April 20, 2009), 74 FR 18755.

<sup>4</sup> See Securities Exchange Act Release Nos. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR-NYSE-2007-04) and 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR-NYSE-2008-79). The Exchange initially proposed to end the pilot program on November 1, 2008. The Commission has approved three extensions of the end date for the pilot program, which expires on June 30, 2009. See Securities Exchange Act Release Nos. 58893 (October 31, 2008), 73 FR 66093 (November 6, 2008) (SR-NYSE-2008-113); 59185 (December 30, 2008), 74 FR 749 (January 7, 2009) (SR-NYSE-2008-141); and 59653 (March 30, 2009), 74 FR 15536 (April 6, 2009) (SR-NYSE-2009-34).

<sup>5</sup> The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

This proposal would make permanent the NYSE Realtime Reference Prices service and make permanent the \$70,000 flat monthly fee for that service.<sup>12</sup> The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.<sup>13</sup> There are a variety of alternative sources of information that impose significant competitive pressures on NYSE in setting the terms for distributing the NYSE Realtime Reference Prices service. The Commission believes that the availability of those alternatives, as well as NYSE's compelling need to attract order flow, imposed significant competitive pressure on NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSE-2009-42), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13001 Filed 6-3-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60001; File No. SR-NYSEAmex-2009-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123E To Be More Consistent With the Exchange's Current Designated Market Maker System

May 29, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 22, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Exchange. NYSE Amex filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders it 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 NYSE Amex Equities Rule 123E ("DMM Combination Review Policy") to be more consistent with the Exchange's current Designated Market Maker ("DMM") system. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 123E ("DMM Combination Review Policy") to be more consistent with the Exchange's current Designated Market Maker ("DMM") system. These amendments are proposed to conform to amendments filed by the New York Stock Exchange LLC ("NYSE").<sup>6</sup>

##### I. Background

As described more fully in a related rule filing,<sup>7</sup> NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext now called NYSE Amex LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").<sup>8</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Amex Trading Systems") are operated by the NYSE on behalf of the Exchange.<sup>9</sup>

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.<sup>10</sup> The NYSE

<sup>6</sup> See Securities Exchange Act Release No. 59383 (February 11, 2009), 74 FR 7947 (February 20, 2009) (SR-NYSE-2009-07).

<sup>7</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>10</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities

Continued

<sup>12</sup> See *supra* note 4.

<sup>13</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order. In addition, the Commission notes that it recently found that NYSE was subject to competitive forces when setting the terms of its NYSE OpenBook nonprofessional subscriber fee. See Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

#### II. NYSE Amex Equities Rule 123E

Currently, pursuant to NYSE Amex Equities Rule 123E, the Exchange is responsible for reviewing proposed DMM unit combinations, subject to certain considerations, when the proposed DMM unit combination would result in an aggregate of more than five percent (“Tier 1 combination”), 10 percent (“Tier 2 combination”) or 15 percent or more (“Tier 3 combination”) in any one of four concentration measures: (1) Common stocks listed on the Exchange; (2) the 250 most active listed common stocks; (3) the total trading volume of common stock listed on the Exchange; and (4) the total dollar value of common stock listed on the Exchange.

Where a proposed combination involves or would result in a DMM unit accounting for more than five percent of any of the “concentration measures,” the Exchange is required to review the proposed combination to take into consideration:

(1) The effects of the proposed combination in terms of the following criteria:

(a) Strengthening the capital base of the resulting DMM unit;

(b) minimizing both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole; and

(c) maintaining or increasing operational efficiencies;

(2) commitment to the Exchange market, focusing on whether the constituent DMM units have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(3) the effect of the proposed combination on overall concentration of DMM units.

Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (implementing the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

Where a DMM unit currently exceeds five percent of any concentration measure, and then proposes a combination that would not result in increasing its concentration measure by more than two percentage points, or not result in the combined unit moving into a higher tier classification, the Exchange shall not review the proposed combination.

When a proposed combination has a concentration percentage of 10% or higher in any of the four measures set forth above, NYSE Amex Equities Rule 123E(c)(1)(a)(i)–(iv) requires the combined entity to prove by a preponderance of the evidence that the proposed combination: (1) Would not create or foster concentration in the DMM business detrimental to the Exchange and its markets; (2) would foster competition among DMM units; (3) would enhance the performance of the constituent DMM unit and the quality of market of stocks involved; and (4) would demonstrate that, if approved, the proposed combination is otherwise in the public interest.

Moreover, pursuant to NYSE Amex Equities Rule 123E(d), proposed combinations that would result in the DMM units accounting for more than 10% of a concentration measure require the proponents of the combination to submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the unit’s management and operations.<sup>11</sup> The proponents must also submit an acceptable risk management plan with respect to any line of business in which they engage.

If the proposed combination has a concentration percentage greater than 15%, NYSE Amex Equities Rule 123E(c)(1)(b)(i)–(iv) further requires the combined entity to prove that the measures set forth for combination of 10% are satisfied by clear and convincing evidence.

#### III. Proposed Amendments to NYSE Amex Equities Rule 123E

The Exchange proposes to amend the DMM Combination review to more clearly define what constitutes a DMM Combination that requires review and approval by the Exchange. The Exchange further seeks to clarify the administrative process associated with that review.

The Exchange proposes to amend NYSE Amex Equities Rule 123E to eliminate the current “Tier” system as the mechanism for determining the

<sup>11</sup> The initial rationale behind this additional requirement was to minimize the risk of financial and/or operational failure of larger specialist units.

nature of the review for a proposed DMM combination. Today, there are four DMM units approved to operate on the Exchange; as such, any proposed combination has the potential to have significant impact on the Exchange’s ability to maintain its DMM system and to provide a fair and orderly market place. Accordingly, the Exchange proposes to eliminate threshold concentration levels as the instigating factor for the Exchange to review a proposed DMM combination. Pursuant to proposed NYSE Amex Equities Rule 123E(a), any “proposed combination” must be approved by the Exchange.

Proposed NYSE Amex Equities Rule 123E(b) defines a “proposed combination” to include changes to the current DMM unit business that has the potential to have a significant impact on the Exchange’s market. As such, the Exchange will review when: (1) Two or more DMM units merge or otherwise combine their businesses with the result that the total number of existing DMM units will be reduced; (2) two or more DMM units combine their businesses with the result that the existing number of DMM units is not reduced, but one or more of the surviving units is substantially reduced in size; or (3) a DMM unit merges or otherwise combines with a non-DMM business resulting in a change of control of the existing DMM unit.<sup>12</sup>

The current rule does not specify where the correspondence regarding a proposed combination should be directed. Through this amendment, the Exchange would require the proponents of a proposed combination to direct the correspondence to the Office of the Corporate Secretary.<sup>13</sup> This department will be able to coordinate and facilitate the timely review of the request.

Similar to the current rule, the written submission should address all of the factors for review as well as: (1) Performance in any securities received through previous combinations or transfers of registrations during the

<sup>12</sup> The current provisions of NYSE Amex Equities Rule 123E(g)(4) will be deleted and not incorporated in the text of the proposed definition of “proposed combination.” NYSE Amex Equities Rule 123E(g)(4) includes as a definition of a DMM combination: “an individual DMM leaving an existing unit and proposing to take securities with him or her to join another existing unit.” Securities allocated on the Exchange are assigned to DMM units pursuant to NYSE Amex Equities Rule 103B with an individual employed by the unit assigned as the DMM. As such, the individual DMM on the NYSE [sic] is not permitted to take securities with him or her if the DMM becomes employed by another DMM unit. Accordingly, this concept is not being carried over into proposed NYSE Amex Equities Rule 123E.

<sup>13</sup> See proposed NYSE Amex Equities Rule 123E(c).

preceding two years; (2) whether the resulting DMM unit will maintain staffing adequate to the needs of the market place; (3) whether the proposed combined unit will have a real-time surveillance system that monitors DMM trading and uses exception alerts to detect unusual trades or trading patterns; (4) whether the proposed combined unit will have disaster recovery facilities for its computer network and software; (5) whether it has designated specific individuals to handle unusual situations on the Floor (if so, the names of the individuals); (6) whether the combined unit will employ a "zone" or other management system on the Floor (with identification of the names of the individuals and their specific responsibilities, as applicable); and (7) whether the combined unit will designate a senior staff member to be responsible for reviewing DMM performance data, with specific procedures for correcting any deficiencies identified.<sup>14</sup>

The Exchange further proposes to rescind the requirement to submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations for proposed combinations as it related to proposed combinations of 10% or higher, as required by NYSE Amex Equities Rule 123E(d).

The Exchange believes that the management and operational concerns contemplated by this requirement do not exist today. Specifically, the Exchange submits that its current rules already address and monitor the management and operational requirements originally contemplated by the performance of an independent consultant and therefore, such outside certification is duplicative and unnecessary.

As a result of the New Multi-Party Regulatory Services Agreement ("Multi-Party RSA") signed by FINRA, NYSE and NYSE Amex on October 1, 2008, FINRA oversees NYSE and NYSE Amex Member Firm Regulation and carefully reviews organizations seeking membership with FINRA, NYSE and NYSE Amex.<sup>15</sup> All prospective member

organizations are required to comply with the Securities and Exchange Act of 1934 as well as its rules with regard to the creation and preservation of books and records, the corporate structure of the proposed member organization, the supervision and control, and the net capital requirements of the proposed member organization. Furthermore, these rules require annual audits of the member organization's financial statements by an independent public account and the submission of an audited financial and operational report to the respective Exchanges.<sup>16</sup>

The structure and regulatory concerns that accompany applications for membership on the Exchange in today's market have been carefully considered and addressed in the FINRA and NYSE Consolidated Rules. These Rules create a multi-tiered level of review to ensure that requirements related to appropriate managerial and financial capabilities for DMM units are in place from the onset of membership with the Exchange to the approval of members as DMMs.

For example, NYSE Amex Equities Rules 98, 103, and 104 set forth various criteria required for the operation, management and responsibilities of a DMM unit on the Exchange.

There are currently two versions of NYSE Amex Equities Rule 98 in the NYSE Amex Equities Rulebook. In either form, NYSE Amex Equities Rule 98 governs the relationship between a DMM unit and its approved persons (both versions of NYSE Amex Equities Rule 98) or the other departments, divisions or aggregation units of the member organization that operate an NYSE Amex DMM unit (Current NYSE Amex Equities Rule 98). NYSE Amex Equities Rule 98 Former applies to those DMM member organizations and associated approved persons that were approved before October 1, 2008 for an exemption under Amex Rule 193, which was the Amex analog to NYSE Amex Equities Rule 98.

responsibilities for selected NYSE rules. The Agreement includes a list of all of those NYSE rules for which FINRA has assumed regulatory responsibilities ("Common Rules"). NYSE and NYSE Amex entered into a regulatory contract under which NYSE Regulation performs regulatory functions on behalf of NYSE Amex. Some of those contracted regulatory functions will be performed by FINRA, pursuant to the Multi-Party RSA.

Pursuant to NYSE Rule 2, approved member organizations of NYSE Amex are approved as NYSE member organizations. Likewise, NYSE Amex Equities Rule 2 provides that approved NYSE member organizations are approved NYSE Amex member organizations. Both NYSE and NYSE Amex Equities Rule 2(b) define a member organization as a registered broker or dealer that is a member of FINRA and approved by its respective Exchange as a member organization.

<sup>16</sup> See, e.g., NYSE, NYSE Amex Equities and FINRA Rules 104, 311, 325–328, 382, and 418.

When an NYSE Amex DMM unit either operates within a larger member organization with other business units or has approved persons, NYSE Amex Equities Rule 98 provides additional regulatory authority for NYSE Regulation, Inc. and FINRA to review the structure of a member organization's information barriers between the DMM unit and the rest of the member organization. Additionally, NYSE Amex Equities Rule 98 requires that these DMM units maintain the necessary net capital requirements in compliance with NYSE Amex Equities Rule 103.20, separate and apart from the rest of the member organization.<sup>17</sup>

NYSE Amex Equities Rule 103 sets forth the criteria that an Exchange member must satisfy in order to apply as a DMM unit. As part of the approval process, the Exchange reviews the member organization's market making ability and the capital available for market making. NYSE Amex Equities Rule 103.20 imposes stringent net capital requirements for all DMM units and requires the DMM unit to immediately notify FINRA, on behalf of NYSE Regulation, if it is unable to comply with these prescribed requirements. DMM units that anticipate falling below the warning level of its tentative capital requirements must notify the Exchange, which will work closely with the DMM unit in order to develop a written plan to assist the DMM unit in meeting its capital requirement.<sup>18</sup> Thereafter, compliance with the established plan is monitored by the Exchange and FINRA. These net capital requirements apply to all DMM units whether these units are stand-alone businesses or part of a larger member organization.

NYSE Amex Equities Rule 104 sets forth the dealings and responsibilities of DMMs and requires the DMM units to maintain compliance at all times with NYSE [sic] and SEC regulations. NYSE Regulation's Division of Market Surveillance and FINRA reviews assess whether DMM units are complying with their obligations as DMMs.

Once approved as a DMM unit, FINRA and NYSE Regulation continue to monitor for compliance with these rules. FINRA reviews a DMM unit's

<sup>17</sup> NYSE Amex Equities Rule 98 is not intended to assess the fitness of a DMM unit; rather, it assesses whether the DMM unit is properly walled off from approved persons or a parent member organization. If a DMM unit is a stand-alone business without any affiliates, approved persons, or parent company, NYSE Amex Equities Rule 98 is inapplicable. Currently, two of the four NYSE Amex DMM units are stand-alone firms and therefore not subject to NYSE Amex Equities Rule 98.

<sup>18</sup> NYSE Amex Equities Rule 103.20(a)(x).

<sup>14</sup> *Id.*

<sup>15</sup> On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the "Agreement") to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007 ("Dual Members"), by allocating to FINRA certain regulatory

compliance with net capital requirements on a daily basis and examines DMM units on an annual basis for compliance with Exchange rules. The Exchange submits that the FINRA and NYSE [sic] rules applicable to DMMs, combined with the FINRA exam program, provide for appropriate monitoring and review of organizations seeking initial membership to the Exchange and the ability to operate as a DMM on the Exchange on an ongoing basis. This regulatory structure obviates the need for an independent consultant to perform a review of a proposed combination's management and operational efficiencies. The Exchange therefore believes that the requirement for an independent, nationally recognized management consulting organization review with respect to all aspects of the proposed combined entity's management and operations is no longer warranted.

The Exchange further seeks to make the criteria for the Exchange's review of a proposed combination consistent with the requirements for operating a DMM unit. Under the proposed rule change, the Exchange will review whether the proposed combined entity will be able to comply with the provisions of NYSE Amex Equities Rule 103B, Section II<sup>19</sup> which sets forth the process of allocating securities to the DMM units. The Exchange will further review the proposed combination to determine whether that proposed combination can comply with the provisions of NYSE Amex Equities Rules 98, 103 and 104 which set forth the requirements for the operation of a DMM unit. Additionally, the Exchange proposes to retain the criteria set forth in the current process and include as part of its review: (1) Whether the proposed combination minimizes both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole; (2) whether the proposed combination maintains or increases operational efficiencies; (3) the surviving DMM unit's commitment to the Exchange's market; and (4) the effect of the proposed combination on overall concentration of DMM units.<sup>20</sup>

<sup>19</sup> The NYSE established an allocation system based on a single objective measure to determine a DMM unit's eligibility to participate in the allocation process. See Securities Exchange Release No. 58363 (August 14, 2008), 73 FR 49514 (August 21, 2008) (SR-NYSE-2008-52). NYSE Amex adopted this allocation policy pursuant to the Equities Relocation.

<sup>20</sup> In addition, the Exchange seeks to eliminate references to certain legacy programs that were operated by the NYSE that no longer exist. Specifically, NYSE Amex Equities Rule 123E, Supplementary Material .10(a) refers to participation in a "FACTS" program.

The Exchange's ultimate determination to approve or disapprove a proposed combination will be based upon a determination that the proposed combination has satisfied the criteria set forth in proposed NYSE Amex Equities Rule 123E(d)(1)-(5) and the Exchange determines that the proposed combination would: (1) Not create or foster concentration in the DMM business detrimental to the Exchange and its markets; (2) foster competition among DMM units; and (3) enhance the performance of the constituent DMM unit and the quality of the markets in the securities involved.<sup>21</sup> The Exchange may condition its approval upon compliance by the resulting DMM unit with any steps the Exchange may specify to address any concerns it may have in regard to considerations of the above criteria.

To ensure the fairness of the new process, pursuant to proposed NYSE Amex Equities Rule 123E(f), the Exchange must approve or disapprove a proposed combination within ten (10) business days of the written submission. The Exchange reserves the right to extend its review process if the information submitted by the proponents of the DMM combination is inadequate or requires additional time to review in order for the Exchange to reach a decision.

In any instance where the Exchange does not approve a proposed combination, the proponents of such proposed combination have a right to have such decision reviewed by the Exchange's Board of Directors.

#### Conclusion

The Exchange believes that the proposed modifications to the Exchange's current administrative procedures relating to the review of a proposed DMM combination reflect the current operational structure of DMM systems on the Exchange. These proposed modifications also clarify what constitutes a proposed combination and amends the criteria used to review the proposed combination. Moreover, by establishing a deadline for the completion of the review and a right to appeal to the Exchange Board of Directors, NYSE Amex believes that its process will be fair and allow member organizations to properly manage their business initiatives.

Finally, the Exchange notes that these proposed amendments would conform the DMM Combination Policy of NYSE Amex Equities Rule 123E to the DMM

Combination Policy of its affiliated exchange, the New York Stock Exchange LLC.

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>22</sup> which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which it reviews proposed combinations of DMM units. Through the instant filing to make its internal administrative process related to the Exchange review of a proposed DMM combination consistent with the underlying requirements for DMMs and maintaining criteria that fosters the DMM system, the Exchange believes that it is facilitating transactions.

Specifically, the Exchange believes that the proposed changes to the DMM combination review process are necessary to facilitate the continuation of its DMM system which allows the Exchange to provide its market participants with a market maker that is responsible for: (i) Providing liquidity to the market when there is a recognized need for additional liquidity; (ii) bridging the gap between supply/demand by purchasing when no one else is buying or selling when no one else is selling; and (iii) overall maintaining a fair and orderly market, that ultimately removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>21</sup> See Proposed NYSE Amex Equities Rule 123E(f).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Act<sup>23</sup> and Rule 19b-4(f)(6) thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>25</sup> 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 Exchange believes that the instant filing is non-controversial because the proposed amendments remove impediments to and perfect the mechanism of a free and open market and a national market system by creating systems and procedures for the Exchange to efficiently evaluate and approve proposed DMM combinations in light of the evolving market system. The Commission notes that these proposed amendments would conform the DMM Combination Review Policy of NYSE Amex Equities Rule 123E to the DMM Combination Review Policy of its affiliated exchange, NYSE.

The Exchange believes that good cause exists to justify waiver of the 30-day operative delay in order to immediately eliminate the disparity between NYSE's and NYSEAmex's

DMM Combination Review Policies and to immediately allow the Exchange to implement procedures for reviewing proposed mergers, acquisitions and other combinations between or among DMM units that are appropriate in the current marketplace. The proposed rule changes update the combination review policy that was created in 1994, for the NYSE market structure, which did not adequately contemplate the conditions of today's market.

Additionally, the Exchange believes that good cause exists to justify waiver of the 30-day operative delay in order to avoid potential delays in proposed DMM combinations that would support, strengthen, and advance the Exchange and its market, and would ultimately benefit its investors and the public interest. The Exchange believes that this proposed rule change provides guidelines to proposed combinations and ensures that these proposed combinations do not foster business detrimental to the Exchange, but also enhances the performance of the DMM unit and the quality of markets. By doing so, the Exchange believes, this proposed rule change ultimately protects the customers and the public interest and should be immediately effective in order to promote investor protection.

In light of the forgoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>26</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>27</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room 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-NYSEAmex-2009-21 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13000 Filed 6-3-09; 8:45 am]

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 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.

<sup>26</sup> 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).

<sup>27</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59996; File No. SR-NYSE-2009-48]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the Exchange's Continued Listing Standards on a Pilot Program Basis

May 28, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 12, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") on a pilot program basis (the "Pilot Program") through October 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Section 802.01B(I) of the Manual provides that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" set forth in Section 102.01C(V) (the "NYSE Arca Transfer Standard") will be considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$75 million and, at the same time, total stockholders' equity is less than \$75 million. The Exchange proposes to amend this requirement on a Pilot Program basis through October 31, 2009, to provide that companies that listed under the initial listing standards set forth in the immediately preceding sentence will only be considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. For companies listed under the Earnings Test, this rule change returns continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.<sup>4</sup> Companies that are below compliance with the current continued listing requirements will be deemed to have returned to compliance at the time of effectiveness of this filing, unless they are below the levels established under the Pilot Program.

In 2005, when the Exchange effectively amended its continued listing standards for companies that listed under the Earnings test, there were very few companies that were below the requirements at that time and there was an expectation that very few companies would fall below compliance with those requirements for the then foreseeable future in light of relatively stable market and economic conditions. As such, the heightened continued listing standards were considered a reasonable response to the financial environment at that time and did not

lead to any meaningful increase in the number of companies that fell below compliance. Conditions in the capital markets have changed considerably over the last year, with a dramatic decline in stock prices and market capitalizations of many listed companies and an increase in market volatility. As such, a far greater number of companies have fallen below the continued listing standards in the last eighteen months than at any time since the effective date of the amendment to the continued listing standards in 2005. Many companies have fallen below \$75 million in total market capitalization and it seems likely that the stock prices of many of these companies will have difficulty returning to their pre-recession level for a considerable period of time. Consequently, the Exchange believes that a \$50 million market capitalization requirement is more appropriate under current market conditions than the current \$75 million requirement.

Similarly, a large number of listed companies have recorded—or are expected to soon record—significant write downs in the value of their assets or significant impairment charges. It is reasonable to assume that it will take many of these companies a long time to raise their stockholders' equity back to pre-recession levels. The Exchange notes that companies that list under the Earnings Test and the NYSE Arca Transfer Standard are not subject to any stockholders' equity requirement at the time of initial listing, while companies that list under the Assets and Equity Test must demonstrate \$50 million in stockholders' equity. Yet, companies that listed under any of these standards that have suffered a significant diminution in market capitalization are required to have \$75 million in stockholders' equity to avoid becoming noncompliant or to cure an event of noncompliance, notwithstanding the fact that they were required to demonstrate a lower level of stockholders' equity—or none at all—at the time of original listing. In light of that fact, the Exchange believes that a stockholders' equity requirement of \$50 million is more appropriate as an element in its continued listing standard under current market conditions.

Because the continued listing standards proposed under the Pilot Program are the same as those that were previously in place for companies that listed under the Earnings Test, the Exchange has considerable experience with the continued listing of companies that have continued to trade on the Exchange with global market capitalization and stockholders' equity

<sup>4</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

each below \$75 million, but without triggering the continued listing standard proposed under the Pilot Program. Based on that experience, the Exchange believes that companies that exceed the proposed continued listing standard are suitable for continued listing on the Exchange. The Exchange notes that (i) under the Earnings Test, companies can list on the basis of positive sustained earnings history and a \$60 million IPO public float (\$100 million for a transfer), (ii) under the Assets and Equity Test, companies can list on the basis of \$150 million in global market capitalization, \$75 million in total assets and \$50 million in total stockholders equity and a \$60 million IPO public float (\$100 million for a transfer) and (iii) under the NYSE Arca Transfer Standard, companies can list on the basis of \$75 million in global market capitalization and \$20 million in aggregate market value of publicly-held shares, with no minimum requirement as to stockholders' equity. Any significant diminution in the market capitalization of a company listing under any of these standards that did not have significant stockholders' equity could quickly lead to such company being below compliance. The Exchange believes that continued listing standards need to be established at a level that appropriately corresponds to initial listing standards in the context of current market and economic conditions, so that companies do not move rapidly from initial listing qualification to being below compliance. The Exchange believes that the proposed continued listing standards under the Pilot Program will achieve this objective, given the current financial environment.

The Exchange notes that the continued listing standards to be adopted under the Pilot Program are higher than those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, because the continued listing standards under the Pilot Program are the same as those that were in place on January 8, 2004, the adoption of the Pilot Program does not affect the status of NYSE listed securities under Exchange Act Rule 3a51-1(a) (the "Penny Stock Rule").<sup>5</sup>

<sup>5</sup> 17 CFR 240.a51-1(a). The Commission notes that the listing standards of the Exchange are no longer included in the "grandfather" exception. See Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17). As a result of losing this exception, the Exchange is required to satisfy the requirements of Exchange Act Rule 3a51-1(a)(2). The Commission

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that the proposed continued listing standards are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the requirements of the continued listing standards.

### 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 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

believes that the continued listing standards to be adopted under the Pilot Program meet the requirements established in Exchange Act Rule 3a51-1(a)(2)(ii) in that they are reasonably related to the initial listing standards set forth in paragraph (a)(2)(i) of Exchange Act Rule 3a51-1. The Commission notes that the \$50 million in total stockholders' equity requirement contained in the Pilot Program exceeds the \$5 million contained in Exchange Act Rule 3a51-1(a)(2)(i)(A). The Commission further notes that the \$50 million in average global market capitalization over a 30 trading-day period is reasonably related to the \$50 million in market value of listed securities for 90 consecutive days prior to initial listing contained in Exchange Act Rule 3a51-1(a)(2)(i)(A).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE to immediately implement, on a pilot basis, new continued listing standards. The Commission notes that the new continued listing standards will apply to companies qualified to list under: (i) the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I); (ii) the Assets and Equity Test set forth in Section 102.01C(IV); or (iii) the "Initial Listing Standards for Companies Transferring from NYSE Arca" as set forth in Section 102.01C(V). The Commission also notes that the standards being adopted under the Pilot Program are identical, for those companies qualifying under the Earnings Test, to those in effect on the Exchange prior to the adoption of the current standards in 2005.<sup>12</sup> The Commission further notes that the continued listing standards proposed under the Pilot Program are higher than similar standards currently in place on other exchanges. In addition, the Commission notes that these continued listing standards are being adopted on a pilot basis and absent a proposed rule change by NYSE to either extend the pilot period or make these changes permanent, the new listing standards will expire after October 31, 2009. The pilot period will allow the NYSE and

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20).

the Commission to assess how the lower standards have worked should the NYSE wish to extend the pilot. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-48 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-2009-48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-48 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12998 Filed 6-3-09; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 6651]

### **U.S. Department of State Advisory Committee on Private International Law: Working Group I of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services**

A study group of the Advisory Committee reviews and provides comments on an initiative by the United Nations Commission for International Trade Law (UNCITRAL) to revise the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (Model Procurement Law), and its Guide to Enactment, available at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/procurement\\_infrastructure/1994Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html). The UNCITRAL Model Procurement Law is not intended to be applied by the United States, but it is cited and relied upon in many other nations as a model procurement code.

The UNCITRAL Working Group, tasked with making recommendations for an updated model law, has focused on new practices and technological developments; in particular, those resulting from the use of electronic communications in public procurement. These topics have included the use of electronic means of communication in the procurement process, publication of procurement-related information, the procurement technique known as the electronic reverse auction, abnormally low tenders, and the method of contracting known as framework

agreements. The Working Group also decided that the Model Law and the Guide should take into account the question of conflicts of interest. In this regard, the United Nations Convention Against Corruption, which entered into force in December 2005, specifically calls for anti-corruption measures in procurement to address conflicts of interest. See also Report of Working Group I (Procurement A/CN.9/668) on the work of its fifteenth session (New York, 2-6 February 2009) available at [http://www.uncitral.org/uncitral/en/commission/working\\_groups/1Procurement.html](http://www.uncitral.org/uncitral/en/commission/working_groups/1Procurement.html).

It is possible that a revised model procurement law will be presented for final review by UNCITRAL in 2009. The issue has been placed on the agenda of the Commission for its June 29-July 17 session in Vienna. The UNCITRAL Working Group has recommended that the Model Law be considered for adoption by UNCITRAL in advance of the completion of an updated Guide to Enactment. UNCITRAL has also scheduled a Working Group meeting from May 26th through 29th, 2009, to work on the recommendations.

In order to assist the U.S. Delegation at the Annual UNCITRAL Commission meeting in July, a public meeting to review and discuss the current status of the proposed reforms will be held on June 17, 2009.

*Time and Place:* The public meeting will take place at The George Washington University Law School, Dean Conference room, 2000 H Street, NW., Washington, DC on June 17, 2009 from 10 a.m. to 12 noon EDT.

*Public Participation:* Comments may be submitted prior to or after the meeting to the Office of Private International Law, U.S. Department of State, 2430 E Street, NW., Washington, DC 20037-2851, attn: Michael Dennis, or by facsimile to 202-776-8482, or by electronic e-mail to [DennisMJ@State.gov](mailto:DennisMJ@State.gov). Persons wishing to attend the meeting should call Trisha Smeltzer at 202-776-8423 or contact by e-mail at [SmeltzerTK@state.gov](mailto:SmeltzerTK@state.gov). Any requests for reasonable accommodations should be made as soon as possible; requests made after June 10th will be considered but might not be possible to fill.

Dated: May 20, 2009.

**Michael Dennis,**

*Attorney-Adviser, Office of Private International Law, Department of State.*

[FR Doc. E9-12944 Filed 6-3-09; 8:45 am]

**BILLING CODE 7410-08-P**

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****[Docket No. FRA-2009-0001-N-12]****Notice of Request for Comments on Information Collection Requirements****AGENCY:** Federal Railroad Administration, DOT.**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 24, 2009 (74 FR 12443).

**DATES:** Comments must be submitted on or before July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 24, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 74 FR 12443. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Filing of Dedicated Cars  
*OMB Control Number:* 2130-0502

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words "Dedicated Service" must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5 (c) (2), 215.5 (d).

*Form Number(s):* N/A.

*Annual Estimated Burden Hours:* 4 hours.

*Title:* Remotely Controlled Switch Operations.

*OMB Control Number:* 2130-0516.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are

simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

*Form Number(s):* N/A.

*Annual Estimated Burden Hours:* 60,038 hours.

*Title:* Bad Order and Home Shop Card.

*OMB Control Number:* 2130-0519.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

*Form Number(s):* N/A.

*Annual Estimated Burden Hours:* 15,750 hours.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including

whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on May 29, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management,  
Federal Railroad Administration.*

[FR Doc. E9–13042 Filed 6–3–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2009–0054]

#### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before June 15, 2009.

**ADDRESSES:** You may submit comments [identified by DOT Docket No. NHTSA–2009–0054] by any of the following methods:

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

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.

- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Timothy M. Pickrell, NHTSA, 1200 New Jersey Avenue, SE., W55–204, NVS–421, Washington, DC 20590. Mr. Pickrell's telephone number is (202) 366–2903.

Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* The National Survey on the Use of Booster Seats.

*OMB Control Number:* 2127–0644.

*Affected Public:* Motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

*Form Number:* NHTSA Form 1010.

*Abstract:* The National Survey of the Use of Booster Seats is being conducted to respond to Section 14(i) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The Act directs the Department of Transportation to reduce the deaths and injuries among children in the 4 to 8 year old age group that are caused by failure to use a booster seat by 25%. Conducting the National Survey of the Use of Booster Seats provides the Department with invaluable information on who is and is not using booster seats, helping the Department better direct its outreach programs to ensure that children are protected to the greatest degree possible when they ride in motor vehicles. The OMB approval for this survey is scheduled to expire on July 31, 2009. NHTSA seeks an extension to this approval in order to obtain this important survey data, saving more children and helping to comply with the TREAD Act requirement.

*Estimated Annual Burden:* 320 hours

*Estimated Number of Respondents:* Approximately 4,800 adult motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden

of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: May 7, 2009.

**Marilena Amoni,**

*Associate Administrator, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S.*

*Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.*

[FR Doc. E9-13076 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2009-0106]

**Petition for Declaratory Order by Fullington Trailways, LLC**

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

**ACTION:** Notice of petition for declaratory order; request for comments.

**SUMMARY:** FMCSA invites all interested persons to comment on a petition submitted by Fullington Trailways, LLC (Fullington) for a declaratory order requesting that FMCSA find that certain regularly scheduled passenger bus service provided by Fullington is in interstate commerce and not subject to the jurisdiction of the Pennsylvania Public Utilities Commission.

**DATES:** *Initial comments* are due on or before August 3, 2009. In order to allow adequate time and notice for commenters to prepare reply comments, initial comments received after the deadline will not be considered.

*Reply comments* are due on or before September 2, 2009. The Agency will only consider reply comments responding directly to issues raised in the initial round of comments. Commenters may not use reply comments to raise new issues.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2009-0106, by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the FDMS Web site that is listed first. It will provide the most efficient

and timely method of receiving and processing your comments.

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

- *Fax:* 1-202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations (M-30), Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Courier or in person:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

*Public Participation:* The FDMS is available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the "help" section of the Web site. For confirmation that FMCSA received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line. Copies or abstracts of all documents referenced in this notice are in the Docket No. FMCSA-2009-0106. To read background documents or comments received in the docket, go to <http://www.regulations.gov> at any time, or visit Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing dates indicated above will be considered and will be available for examination in the docket at the above address. Initial comments received after the initial comment closing date will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Genevieve D. Sapir, (202) 366-7056, Office of the Chief Counsel (MC-CCR), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Fullington Trailways, LLC currently provides passenger bus service along various routes in Pennsylvania. Along two such routes, Lewistown to Harrisburg and

State College to Harrisburg, Fullington held intrastate authority from the Pennsylvania Public Utilities Commission (PPUC) and then subsequently obtained interstate authority along these same routes from the FMCSA. Fullington seeks to discontinue early morning service on the State College/Harrisburg route and raise rates for early morning service on the Lewistown/Harrisburg route. A regular passenger on Fullington's routes filed a complaint with the PPUC opposing these changes.

The PPUC concluded that, to the extent the State College/Harrisburg and Lewistown/Harrisburg routes were properly characterized as operations in interstate commerce under Federal law, it did not have jurisdiction over the complaint. However, the PPUC further concluded that it lacked jurisdiction to make this determination and that FMCSA had primary jurisdiction to determine whether the routes at issue were in fact interstate.

The PPUC instructed Fullington to seek a determination from FMCSA on the following three issues with respect to its State College/Harrisburg and Lewistown/Harrisburg routes: (1) Whether its operations are within the scope of its Federal operating authority; (2) whether PPUC regulation as to rates and schedules is preempted; and (3) whether Fullington's operations qualify as a "special operation" or "intrastate commuter bus operation" under 49 U.S.C. 13902.

On September 17, 2008, Fullington submitted a Petition for Declaratory Order to FMCSA seeking a determination on these issues. This Petition is available for review in the docket for this proceeding. Before making its determination on the matters raised in the Petition, the Agency invites public comment on these issues.

Issued on May 28, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

[FR Doc. E9-13043 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Environmental Impact Statement in Seattle, WA**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this Notice to advise the public, Tribes, and agencies that it intends to prepare a

Second Supplemental Draft Environmental Impact Statement (SSDEIS) for a proposed highway project to replace the Alaskan Way Viaduct (SR 99) in Seattle, King County, Washington. This Notice revises a Notice of Intent for the Alaskan Way Viaduct and Seawall Replacement Project, which was published on August 3, 2005 (70 FR 44716). Furthermore, this Notice rescinds the Notice of Intent published on July 16, 2008 (73 FR 40908). The 2008 Notice of Intent anticipated the preparation of an Environmental Impact Statement that would evaluate various transportation modes and systems between the south Seattle city limits and N. 85th Street and Elliott Bay and Lake Washington, in addition to replacing the Alaskan Way Viaduct and Seawall. Rather than pursuing this more broad, multi-agency proposal, this Notice re-establishes FHWA's intent to continue the process begun with the publication of a Notice of Intent on June 22, 2001 (66 FR 33602), as revised on September 26, 2003 (68 FR 55712), and again in 2005. That process has resulted in the issuance of a Draft Environmental Impact Statement in March 2004, and a Supplemental Draft Environmental Impact Statement in July 2006. The planned SSDEIS will build on these earlier documents and the alternatives evaluated therein. However, there are some important changes to the earlier proposal. The major change is that this proposal will now consider one or more alternatives that no longer include the seawall along the Elliott Bay shoreline, known as the Alaskan Way Seawall. The Seawall was the subject of a Notice of Intent issued by the U.S. Army Corps of Engineers on March 31, 2006 (71 FR 16293). The SSDEIS will also set forth a revised Purpose and Need for the proposed project, re-evaluate previous Viaduct replacement alternatives in light of the revised Purpose and Need, and introduce and evaluate at least one new build alternative—a bored tunnel.

**FOR FURTHER INFORMATION CONTACT:**

Randy Everett, Major Projects Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, WA 98174; telephone: (206) 220-7538; and e-mail: [Randolph.Everett@dot.gov](mailto:Randolph.Everett@dot.gov). The FHWA Washington Division's Oversight Manager's regular office hours are between 8 a.m. and 4:30 p.m. (Pacific Time).

**SUPPLEMENTARY INFORMATION:** FHWA, Washington State Department of Transportation (WSDOT), and the City of Seattle (City) will prepare a SSDEIS

to document the environmental consequences of alternatives for the proposed replacement of the Alaskan Way Viaduct located in downtown Seattle, King County, Washington. The intent of the proposed project is to improve public safety by replacing the existing Alaskan Way Viaduct with a transportation facility with improved earthquake resistance that provides for the efficient movement of people and goods through downtown Seattle. The Alaskan Way Viaduct is at the end of its useful life and must be replaced to protect public safety. Mobility through downtown Seattle is vital to maintaining local, regional, and statewide economic health.

In March 2004 a draft EIS was published evaluating five build alternatives; rebuild, aerial, cut and cover tunnel, bypass tunnel, and surface (<http://www.wsdot.wa.gov/Projects/Viaduct/library-environmental.htm#deis>). A supplemental draft EIS was published in July 2006 extending the project north of Battery Street Tunnel (<http://www.wsdot.wa.gov/Projects/Viaduct/library-environmental.htm#sdeis>). This document reduced the number of alternatives from five to two, a cut-and-cover tunnel and an elevated structure, based on information presented in the Draft EIS, public comments, and further study and design, and also evaluated different approaches to construction and their likely impacts.

In an advisory ballot measure in March 2007, Seattle voters rejected both a cut-and-cover tunnel and an elevated structure. The vote caused the agencies to reassess the problem of replacing the aging Viaduct, and in doing so, they hoped they would find a solution that had not yet emerged. Therefore, WSDOT, the City and King County Department of Transportation with support from FHWA took a fresh look at the transportation systems surrounding the Viaduct, and considered whether a systems-level solution could be found. Concurrently, FHWA determined the portion of the Viaduct south of King Street was an independent project. A Finding of No Significant Impact for improvements to this portion of SR 99 was published in February 2009. (<http://www.wsdot.wa.gov/Projects/Viaduct/library-environmental.htm>)

As part of the reassessment, the agencies considered improvements to SR 99, Interstate 5, Seattle streets, transit service, and transportation demand and systems management programs. An advisory group of stakeholders representing a wide range of interests was formed to provide input to the agencies. Public meetings were

also held periodically throughout the reassessment process. During the reassessment process a bored tunnel emerged as an alternative that merited further consideration.

This SSDEIS will focus on evaluating the bored tunnel alternative. In addition, other alternatives that emerged during the reassessment process will be reviewed. Further, the Purpose and Need for the project will be revised based on comments received on the previous environmental documents, and the issues that emerged during the reassessment process—providing through capacity for vehicles, avoiding extensive construction impacts, and reconnecting the waterfront with the downtown. In light of the revised Purpose and Need, previous alternatives considered will be re-evaluated. Finally, the southern terminus will be revised to connect to the Holgate to King Street project, which has completed its separate, independent environmental review, and is under construction.

**DATES:** Scoping meetings will be held on June 8, 2009, at Seattle City Hall, Bertha Knight Landes Room, 600 Fourth Avenue, Seattle, WA, from 5 to 7 p.m.; June 10, 2009, at Madison Middle School, 3429 45th Ave., SW., Seattle, WA from 6 to 8 p.m.; and June 11, 2009, at Leif Erikson Hall, 2245 NW. 57th St., Seattle, WA from 6 to 8 p.m. FHWA invites agencies, Tribes, and the public to comment on the process that has been conducted up to now, the revised Purpose and Need, the bored tunnel alternative, and any potentially reasonable alternatives not previously considered to replace the aging Viaduct structure.

In lieu of, or in addition to, providing comments at any of the scoping meetings, comments and questions concerning this action and the SSDEIS may be submitted to FHWA at the address provided above or provided via e-mail to [SDEIS2scopingcomments@wsdot.wa.gov](mailto:SDEIS2scopingcomments@wsdot.wa.gov). FHWA requests that written comments be received by July 10, 2009.

**Authority:** 23 U.S.C. 771.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Randy Everett,**

*Major Projects Oversight Manager.*

[FR Doc. E9-12988 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-RY-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Third Meeting—Special Committee 221—Aircraft Secondary Barriers & Alternative Flight Deck Security Procedures**

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

**ACTION:** Notice of RTCA Special Committee 221 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers & Alternative Flight Deck Security Procedures.

**DATES:** The meeting will be held June 23–24, 2009. From 12 p.m. to 5 p.m. on June 23 and 9 a.m. to 5 p.m. on June 24.

**ADDRESSES:** The meeting will be held at RTCA, Inc., MacIntosh-NBAA and Hilton-ATA Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (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 221, Aircraft Secondary Barriers. The agenda will include:

- Opening Plenary (Welcome/ Introductions/Administrative Remarks);
- Approval of Summary of the Second Meeting held March 3–4, 2009, RTCA Paper No. 120-09/SC221-008;
- Leadership Comments;
- Review of Threat Work Group—Status Report;
- Review of Alternative Methods Work Group—Status Report;
- Review of Installed Physical Secondary Barrier (IPSB) Work Group—Status Report;
- Presentation/Discussion of SC-221 Schedule and Milestones;
- Discussion of Working Group reports: Re-allocation of groups, capture learning points, discuss additional or follow-on goals;
- Approval and Tasking of Existing/ Proposed Working Groups;
- Closing Plenary (Other Business—Including Proposed Agenda, Date and Place for Next Meeting).

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 27, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9-12989 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Seventy-Ninth Meeting—Special Committee 159—Global Positioning System (GPS)**

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

**ACTION:** Notice of RTCA Special Committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

**DATES:** The meeting will be held June 23–26, 2009, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (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 159 meeting. The agenda will include:

**June 23**

- All Day, Working Group 2C, GPS/ Inertial, Colson Board Room.

**June 24**

- All Day, Working Group 2, GPS/ WAAS, Colson Board Room.

**June 25**

- All Day, Working Group 4, Precision Landing Guidance (GPS/ LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.

**June 26**

- Open Plenary (Chairman's Introductory Remarks, Approval of Summary of the Seventy-Eighth Meeting held February 13, 2009, RTCA Paper No. 122-09/SC159-978).

- Review Working Group (WG) Progress and Identify Issues for Resolution.

- GPS/3rd Civil Frequency (WG-1)
- GPS/WAAS (WG-2)
- GPS/GLONASS (WG-2A)
- GPS/Inertial (WG-2C)
- GPS/Precision Landing Guidance and (WG-4)
- GPS/Airport Surface Surveillance (WG-5)
- GPS/Interference (WG-6)
- GPS/Antennas (WG-7)
- GPS/GRAS (WG-8)
- Review of EUROCAE Activities.
- Closing Plenary Session.

(Assignment/Review of Future Work, Other, Date and Place of Next Meeting.)

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 27, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9-12990 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of request for comments on nonmetallic transport category airplanes.

**SUMMARY:** This notice solicits public comment on the need for, and the possible scope of, rulemaking to address extensive use of nonmetallic materials in the construction of transport category airplanes.

**DATES:** We must receive comments on this notice by September 2, 2009.

**ADDRESSES:** You may mail comments to: Federal Aviation Administration (FAA), Transport Airplane Directorate, Aircraft Certification Service, ANM-100 (Attn: Jeff Gardlin, ANM-115), 1601 Lind Avenue, SW., Renton, Washington 98057-3359.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gardlin, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3359; telephone (206) 227-2136.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in identifying the need for, and defining the scope of, rulemaking and advisory materials to address the extensive use of nonmetallic materials in the construction of transport category airplanes by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the recommendations contained in this notice are invited. Substantive comments should be accompanied by estimates of their economic impact if possible. All comments received on or before the closing date for comments will be considered by the FAA before deciding whether to pursue rulemaking.

**Background**

The certification standards for transport category airplanes are contained in Title 14, Code of Federal Regulations (14 CFR) part 25. These standards have evolved over the years and take into account the practicalities of how airplanes are designed and constructed. While it is in theory possible to develop standards that make no assumptions about the airplane design or materials, *i.e.*, pure performance standards, this is often extremely difficult. The standards themselves would have to anticipate virtually any design innovations, which would tend to make the standards very complex and lengthy or, conversely, so high level as to make it difficult to develop methods for demonstrating compliance. One area where the airworthiness standards of part 25 are based on an assumption is the principal materials of construction. For the most part, the regulations assume that the airplane fuselage, including wings and empennage—the airframe—will be constructed from metallic materials. Despite this assumption, nonmetallic materials have been used over the years for specific components on various airplane types. In those cases, the FAA has evaluated the safety effects of these specific designs, and in some cases has issued special conditions to identify appropriate certification criteria. However, the current regulatory standards do not account for an airframe that is constructed predominantly from nonmetallic materials. While special conditions are a tool to address individual certification projects, they are not a long-term solution to a shift in design philosophy. Airworthiness standards might need to evolve with evolving designs. Therefore, the FAA is

considering whether a more comprehensive change to part 25 is appropriate.

There is an obvious trend toward the increased use of composites in the construction of airplanes. Both Boeing and Airbus are in the process of developing large transport category airplanes using composite materials as the primary material in construction of the airframe. The FAA has written, or is in the process of writing, special conditions to incorporate adequate safety standards for these airplanes. Some of the special conditions supplement or replace requirements that either do not address all aspects of composites, or have criteria that are based on experience with metallic structure that is not applicable to composites. In either situation, the use of nonmetallic materials requires additional or modified standards to maintain the level of safety currently required for metallic materials. In other cases, the regulatory language may be sufficiently broad to address nonmetallic materials, but the advisory material may require updating.

The objective of this notice is to solicit public comments on the topics that should be addressed, if the FAA proceeds to rulemaking, and suggestions on the best way to amend part 25 to address the use of nonmetallic materials as the principal materials of construction.

As noted above, certification standards ideally would not assume the use of any particular materials, and would contain the standards necessary to assure the level of safety intended by the regulations regardless of the materials used. While that is a goal, it may not be completely achievable, and it is likely that certain assumptions regarding materials will be necessary for a manageable standard. Still, the FAA is approaching this effort with the objective of eliminating assumptions regarding materials as much as is feasible.

Based on our review of current programs, we believe the following areas would have to be addressed to account for the extensive use of nonmetallic materials in airframe construction:

- Airframe crashworthiness
- Fuel Tank crashworthiness
- Post crash fire safety
  - Fuselage protection
  - Fuel tank protection
- In-flight fire safety
  - Fuselage protection
  - Fuel tank protection
- Lightning protection
- Damage tolerance

The FAA seeks public input to further refine the areas of interest identified above, as well as identify any other relevant areas, in order to establish the scope of any regulatory efforts and advisory materials. Based on this input, the FAA may then proceed to rulemaking activity, or may elect to task the Aviation Rulemaking Advisory Committee with recommending specific changes to the regulations and applicable advisory materials.

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

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-12987 Filed 6-3-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****Proposed Information Collections; Comment Request**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

**DATES:** We must receive your written comments on or before August 3, 2009.

**ADDRESSES:** You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington,

DC 20044-4412; or telephone 202-927-8210.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

*We invite comments on:* (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

**Information Collections Open for Comment**

Currently, we are seeking comments on the following forms and recordkeeping requirements:

*Title:* Authorization to Furnish Financial Information and Certificate of Compliance.

*OMB Number:* 1513-0004.

*TTB Form Number:* 5030.6.

*Abstract:* The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. TTB F 5030.6 serves as both a customer authorization for TTB to receive such information and as the required certification to the financial institution.

*Current Actions:* We are submitting this information collection for extension purposes only. The information collection, estimated number of

respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 2,000.

*Estimated Total Annual Burden Hours:* 500.

*Title:* Application to Establish and Operate Wine Premises and Wine Bond.

*OMB Number:* 1513-0009.

*TTB Form Numbers:* 5120.25 and 5120.36, respectively.

*Abstract:* TTB F 5120.25, Application to Establish and Operate Wine Premises, is the form used to establish the qualifications of a person applying to establish and operate a wine premises. The applicant certifies their intention to produce and/or store a specified amount of wine and to take certain precautions to protect it from unauthorized use. TTB F 5120.36, Wine Bond, is the form used by the proprietor and a surety company as a contract to ensure the payment of the Federal wine excise tax.

*Current Actions:* We are submitting this information collection as a revision. We are making minor changes to both forms. The changes will make the forms clearer and easier for the preparer to complete. These changes will not affect the estimated number of respondents; however, the estimated total annual burden hours will increase as a result of the revision of the number of responses.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,720.

*Estimated Total Annual Burden Hours:* 2,150.

*Title:* Formula and Process for Wine.

*OMB Number:* 1513-0010.

*TTB Form Number:* 5120.29.

*Abstract:* TTB F 5120.29 is used to determine the classification of wines for labeling and consumer protection purposes. The form describes the person filing, the type of product to be made, and any restrictions to labeling and manufacture. The form is also used to audit a product's compliance with the relevant regulations.

*Current Actions:* We are submitting this information collection as a revision. We are making minor corrections to this information collection, but the estimated number of respondents and estimated total annual burden hours remain unchanged.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 600.

*Estimated Total Annual Burden Hours:* 1,200.

*Title:* Application for an Industrial Alcohol User Permit.

*OMB Number:* 1513-0028.

*TTB Form Number:* 5150.22.

*Abstract:* TTB F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations.

*Current Actions:* We are submitting this information collection as a revision. We are making minor changes to this information collection, but the estimated number of respondents and estimated total annual burden hours remain unchanged.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, local, or tribal Government.

*Estimated Number of Respondents:* 1,476.

*Estimated Total Annual Burden Hours:* 1,476.

*Title:* Distilled Spirits Records and Monthly Report of Production Operations.

*OMB Number:* 1513-0047.

*TTB Form Number:* 5110.40.

*TTB Recordkeeping Number:* 5110/01.

*Abstract:* This information collected is used to account for a proprietor's excise tax liability, adequacy of bond coverage, and protection of the revenue. The information also provides data to analyze trends in the industry, plan efficient allocation of field resources, audit plant operations, and compile statistics for government economic analysis.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and other for-profit.

*Estimated Number of Respondents:* 1,800.

*Estimated Total Annual Burden Hours:* 3,600.

*Title:* Registration of Distilled Spirits Plants and Miscellaneous Requests and Notices for Distilled Spirits Plants.

*OMB Number:* 1513-0048.

*TTB Form Number:* 5110.41.

*Abstract:* The information provided by the applicants assists TTB in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant operations. However, both statutes and regulations allow variances from regulations, and this information provides data to permit a variance.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and other for-profit.

*Estimated Number of Respondents:* 1,109.

*Estimated Total Annual Burden Hours:* 1,888.

*Title:* Letterhead Applications and Notices Relating to Wine.

*OMB Number:* 1513-0057.

*TTB Recordkeeping Number:* 5120/2.

*Abstract:* Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and other for-profit.

*Estimated Number of Respondents:* 1,650.

*Estimated Total Annual Burden Hours:* 825.

*Title:* Letterhead Applications and Notices Relating to Tax-Free Alcohol.

*OMB Number:* 1513-0060.

*TTB Record Number:* 5150/4.

*Abstract:* Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, and the like in scientific research and for medicinal purposes. Permits/Applications control the authorized uses and flow of tax-free alcohol. TTB Letterhead Applications and Notices are designed to protect tax revenue and public safety.

*Current Actions:* We are submitting this information collection for extension purposes only. This information

collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions; Federal Government; State, local, or tribal Government.

*Estimated Number of Respondents:* 4,444.

*Estimated Total Annual Burden Hours:* 2,222.

*Title:* Stills—Notices, Registration, and Records.

*OMB Number:* 1513-0063.

*TTB Record Number:* 5150/8.

*Abstract:* This information collection is used to account for and regulate the distillation of distilled spirits, to protect the revenue, and to provide for the identification of distillers. We also use it to establish whether a person who intends to use a still or other distilling apparatus has qualified to conduct distilling operations and complied with other pertinent provisions of law and regulations.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Total Annual Burden Hours:* 21.

*Title:* Stills—Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

*OMB Number:* 1513-0066.

*TTB Recordkeeping Number:* 5170/3.

*Abstract:* The primary objective of this recordkeeping requirement is revenue protection, by making accountability data available for audit purposes. Another objective is consumer protection, by affording the subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. The record retention requirement for this information collection is 3 years.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; State, local, or tribal Government.

*Estimated Number of Respondents:* 455,000.

*Estimated Total Annual Burden Hours:* 455,000.

*Title:* Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations. (Variations in Format or Preparation of Records).

*OMB Number:* 1513-0067.

*TTB Recordkeeping Number:* 5170/6.

*Abstract:* This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type, or place of retention of records of receipt or disposition of alcoholic beverages.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,029.

*Estimated Total Annual Burden Hours:* 515.

*Title:* Airlines Withdrawing Stock from Customs Custody.

*OMB Number:* 1513-0074.

*TTB Recordkeeping Number:* 5620/2.

*Abstract:* Airlines may withdraw tax-exempt distilled spirits, wine, and beer from Customs custody for foreign flights. The required record shows the amount of spirits and wine withdrawn, flight identification, and Customs certification. The records enable TTB to verify that tax is not due, allows spirits and wines to be traced, maintains accountability, and protects tax revenue. This collection of information is contained in 27 CFR 28.280 and 28.281.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and other for-profit.

*Estimated Number of Respondents:* 25.

*Estimated Total Annual Burden Hours:* 2,500.

*Title:* Alcohol, Tobacco, and Firearms Tax Returns, Claims, and Related Documents.

*OMB Number:* 1513-0088.

*TTB Record Number:* 5000/24.

*Abstract:* TTB is responsible for the collection of the Federal excise taxes on firearms, ammunition, distilled spirits, wine, beer, various tobacco products, and cigarette papers and tubes. Alcohol, tobacco, firearms, and ammunition excise taxes, and tobacco special (occupational) taxes are required to be collected on the basis of a return. 26 U.S.C. 5555 authorizes the Secretary of the Treasury to prescribe regulations requiring all persons liable for these taxes to prepare records, statements, or returns as necessary to protect the revenue.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Individuals or households.

*Estimated Number of Respondents:* 503,921.

*Estimated Total Annual Burden Hours:* 503,921.

*Title:* Liquors and Articles from Puerto Rico or the Virgin Islands.

*OMB Number:* 1513-0089.

*TTB Recordkeeping Number:* 5530/3.

*Abstract:* This information collection applies to persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands. These recordkeeping requirements are for the verification of claims for drawback of distilled spirits excise tax paid on nonbeverage products.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Total Annual Burden Hours:* 120.

*Title:* Notices Relating to Payment of Firearms and Ammunition Excise Tax.

*OMB Number:* 1513-0097.

*TTB Form Number:* None.

*TTB Record/Recordkeeping Number:* None.

*Abstract:* Federal excise taxes are collected on the sale or use of firearms

and ammunition by firearms or ammunition manufacturers, importers, or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. This notice protects the tax revenue.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Total Annual Burden Hours:* 1.

*Title:* Applications, Notices, and Permits Relating to Importation and Exportation of Distilled Spirits, Wine and Beer, Including Puerto Rico and Virgin Islands.

*OMB Number:* 1513-0100.

*TTB Form Number:* None.

*TTB Record/Recordkeeping Number:* None.

*Abstract:* Distilled spirits, beer, wine, and industrial alcohol are subject to Federal alcohol excise tax when imported into the United States. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to the two insular governments. Exports of these products from the United States are largely tax free. These documents ensure that the proper taxes are collected or returned according to law.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Total Annual Burden Hours:* 180.

*Title:* Information Collected in Support of Small Producer's Wine Tax Credit.

*OMB Number:* 1513-0104.

*TTB Record Number:* 5120/11.

*Abstract:* TTB is responsible for the collection of the Federal excise tax on wines. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines

removed from their own premises. In addition, small producers can authorize bonded warehouses, which store their wine and ship it on their instructions, to take the credit on their behalf. The transferee will use the information provided by the small producer under the regulations to take the appropriate credit on behalf of the small producer, and the producer will use this information to monitor its own tax payments to ensure it does not exceed the authorized annual credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation.

*Current Actions:* We are submitting this information collection for extension purposes only. This information collection, the estimated number of respondents, and the estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 280.

*Estimated Total Annual Burden Hours:* 2,800.

*Title:* Tobacco Products and Cigarette Papers and Tubes, 2009 Tax Increase and Floor Stocks Tax.

*OMB Number:* 1513-0129.

*TTB Form Number:* 5000.28T09.

*Abstract:* The Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111-3), enacted February 4, 2009, imposed a floor stocks tax on tobacco products (except large cigars) and cigarette papers and tubes held for sale on April 1, 2009. Persons holding taxable articles on that date must take an inventory and file a return and pay any tax due. To incorporate these changes in the regulations, TTB published a temporary rule (74 FR 14479) in the **Federal Register** on March 31, 2009. In that same issue, TTB published a notice of proposed rulemaking (74 FR 14506) to request comments on the temporary rule.

*Current Actions:* We are submitting this information collection as an extension of the original 6-month approval. The form, estimated number of respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and other for-profit; State, local or tribal Government.

*Estimated Number of Respondents:* 200,000.

*Estimated Total Annual Burden Hours:* 960,000.

Dated: May 28, 2009.

**Francis W. Foote,**

*Director, Regulations and Rulings Division.*  
[FR Doc. E9-13074 Filed 6-3-09; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### Financial Management Service; Privacy Act of 1974: Systems of Records

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of systems of records; corrections.

**SUMMARY:** The Department of the Treasury is publishing a correction to the Privacy Act systems of records inventory maintained by the Financial Management Service (FMS) as published on May 15, 2009.

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Dungan, Senior Policy Analyst, Financial Management Service at 202-874-7349.

**SUPPLEMENTARY INFORMATION:** On May 12, 2009, the Department of the Treasury published FMS' Privacy Act systems of records notices making any minor changes to those notices as appropriate. The notices appeared in the **Federal Register** on pages 23006-23021. The system of records entitled "FMS.014—Debt Collection Operations System—Treasury/Financial Management Services" beginning on page 23016 in the second column and ending on page 23018 is incorrect as published. The publication inadvertently failed to include the amendments made to FMS.014—Debt Collection Operations System as published on March 2, 2007 at 72 FR 9612.

The corrected notice entitled "FMS.014—Debt Collection Operations System—Treasury/Financial Management Services" is reprinted in its entirety below.

Dated: May 29, 2009.

**Elizabeth Cuffe,**

*Deputy Assistant Secretary for Privacy and Treasury Records.*

#### TREASURY/FMS.014

##### SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

##### SYSTEM LOCATION:

Records are located in the offices of and with the Debt Management Services

staff of the Financial Management Service, U.S. Department of the Treasury at the following locations: Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227; Prince George's Plaza, 3700 East-West Highway, Hyattsville, MD, 20782; and the Birmingham Debt Management Operations Center, 190 Vulcan Road, Homewood, Alabama, 35209.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe debts to: (a) The United States, through one or more of its departments and agencies; and/or (b) States, territories and commonwealths of the United States, and the District of Columbia (hereinafter collectively referred to as "States").

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (*i.e.*, Social Security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; information concerning the financial status of the debtor and his/her household, including income, assets, liabilities or other financial burdens, and any other resources from which the debt may be recovered; and name of employer and employer address. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to, or collected by, the Federal Government or a State, including past due support which is being enforced by a State. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account; (b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and (c) The referring or governmental agency that is collecting or owed the debt, such

as name, telephone number, and address of the agency contact.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub. L. 89-508), as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, as amended); Deficit Reduction Act of 1984 (Pub. L. 98-369, as amended); Debt Collection Improvement Act of 1996 (Pub. L. 104-134, sec. 31001); Taxpayer Relief Act of 1997 (Pub. L. 105-34); Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government).

##### PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to States, including past due support enforced by States. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, referral to collection agencies or for litigation, and other collection or resolution methods authorized or required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

- (1) Appropriate Federal, State, local or foreign agencies responsible for investigating or implementing, a statute, rule, regulation, order, or license;
- (2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Any Federal agency, State or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to;

(i) Request for repayment by telephone or in writing;

(ii) Negotiation of voluntary repayment or compromise agreements;

(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;

(v) Administrative and court-ordered wage garnishment;

(vi) Debt sales;

(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and

(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the United States through the offset of payments made by States, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(5) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments including, but not limited to, salaries, wages, and benefits, which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(6) The Department of Justice or other Federal agency:

a. when requested in connection with a legal proceeding, or

b. to obtain concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(7) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(8) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Administrative and court-ordered wage garnishment;

(ii) Report information to commercial credit bureaus;

(iii) Conduct asset searches;

(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or

(v) Debt sales;

b. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset; or

c. For any other appropriate debt collection purpose. Disclosure to consumer reporting agencies including for the provision of routine debt collection services by an FMS contractor subject to the same limitations applicable to FMS officers and employees under the Privacy Act; and

(9) Appropriate agencies, entities, and persons when (A) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (B) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or

integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (C) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Hardcopy/Electronic.

**RETRIEVABILITY:**

Records are retrieved by various combinations of name, taxpayer identifying number (*i.e.*, social security number or employer identification number), or debt account number.

**SAFEGUARDS:**

All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized communications security. Access to computerized records is limited, through use of access codes, entry logs, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in steel cabinets, with access limited by visual controls and/or lock systems. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours. The building is patrolled by uniformed security guards.

**RETENTION AND DISPOSAL:**

Retention periods vary by record type, up to a maximum of seven years after the end of the fiscal year in which a debt is resolved or returned to the agency as uncollectible.

**SYSTEM MANAGER(S) AND ADDRESS:**

System Manager, Debt Management Services, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

**NOTIFICATION PROCEDURE:**

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

**RECORD ACCESS PROCEDURES:**

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for

gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

**CONTESTING RECORD PROCEDURES:**

See "Record access procedures" above.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided by the individual on whom the record is maintained; Federal and State

agencies to which the debt is owed; Federal agencies and other entities that employ the individual or have information concerning the individual's employment or financial resources; Federal and State agencies issuing payments; collection agencies, locator and asset search companies; credit bureaus; Federal, State or local agencies furnishing identifying information and/or address of debtor information; or from public documents.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-13073 Filed 6-3-09; 8:45 am]

**BILLING CODE 4810-35-P**



# Federal Register

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**Thursday,  
June 4, 2009**

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## **Part II**

## **The President**

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**Proclamation 8387—Lesbian, Gay,  
Bisexual, and Transgender Pride Month,  
2009**

**Proclamation 8388—Great Outdoors  
Month, 2009**



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**Presidential Documents**

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Title 3—

**Proclamation 8387 of June 1, 2009****The President****Lesbian, Gay, Bisexual, and Transgender Pride Month, 2009****By the President of the United States of America****A Proclamation**

Forty years ago, patrons and supporters of the Stonewall Inn in New York City resisted police harassment that had become all too common for members of the lesbian, gay, bisexual, and transgender (LGBT) community. Out of this resistance, the LGBT rights movement in America was born. During LGBT Pride Month, we commemorate the events of June 1969 and commit to achieving equal justice under law for LGBT Americans.

LGBT Americans have made, and continue to make, great and lasting contributions that continue to strengthen the fabric of American society. There are many well-respected LGBT leaders in both the arts and business communities, and in all industries. LGBT Americans also mobilized the Nation to respond to the domestic HIV/AIDS epidemic and have played a vital role in broadening this country's response to the global HIV pandemic.

Due in no small part to the determination and dedication of the LGBT rights movement, more LGBT Americans are living their lives openly today than ever before. I am proud to be the first President to appoint openly LGBT candidates to Senate-confirmed positions in the first 100 days of an Administration. These individuals embody the best qualities we seek in public servants, and across my Administration—in both the White House and the Federal agencies—openly LGBT employees are doing their jobs with distinction and professionalism.

The LGBT rights movement has achieved great progress, but there is more work to be done. LGBT youth should feel safe to learn without the fear of harassment, and LGBT families and seniors should be allowed to live their lives with dignity and respect.

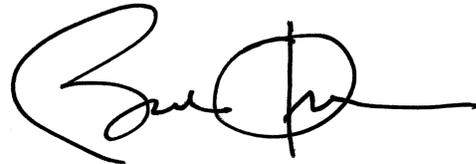
My Administration has partnered with the LGBT community to advance a wide range of initiatives. At the international level, I have joined efforts at the United Nations to decriminalize homosexuality around the world. Here at home, I continue to support measures to bring the full spectrum of equal rights to LGBT Americans. These measures include enhancing hate crimes laws, supporting civil unions and Federal rights for LGBT couples, outlawing discrimination in the workplace, ensuring adoption rights, and ending the existing “Don’t Ask Don’t Tell” policy in a way that strengthens our Armed Forces and our national security. We must also commit ourselves to fighting the HIV/AIDS epidemic by both reducing the number of HIV infections and providing care and support services to people living with HIV/AIDS across the United States.

These issues affect not only the LGBT community, but also our entire Nation. As long as the promise of equality for all remains unfulfilled, all Americans are affected. If we can work together to advance the principles upon which our Nation was founded, every American will benefit. During LGBT Pride Month, I call upon the LGBT community, the Congress, and the American people to work together to promote equal rights for all, regardless of sexual orientation or gender identity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim June 2009 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to turn back discrimination and prejudice everywhere it exists.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, 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, written in a cursive style.

[FR Doc. E9-13281

Filed 6-3-09; 11:15 am]

Billing code 3195-W9-P

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## Presidential Documents

**Proclamation 8388 of June 1, 2009**

**Great Outdoors Month, 2009**

**By the President of the United States of America**

### **A Proclamation**

The United States is blessed with unparalleled natural beauty. From remote forests to urban parks, these spaces have inspired visitors for generations. Today, these areas continue to raise the human spirit in those who experience them. During the month of June, I encourage Americans to pay tribute to and preserve the great outdoors.

Americans of all ages can find calm and enjoyment in our Nation's vast outdoors. Those desiring quiet or solitude can explore one of our many National Parks, which offer tranquil and pristine surroundings. Those seeking recreation can also explore public lands, or they can simply run, bicycle, or fish in areas close to their homes. Whether near or far, the outdoors offers unique experiences.

Exploring the great outdoors can also help improve one's health. These spaces provide countless venues for walking, hiking, running, swimming, and boating, among other activities. Americans can combine the enjoyment of being outside with the exercise we all need to stay healthy.

My Administration is working to connect America's youth with our treasured landscapes, which should be viewed as classrooms for environmental education and gateways to careers in natural resources. These efforts will include outreach to those who typically lack representation in, and exposure to, these fields. The Department of the Interior is launching a summer mentoring initiative as part of this effort. This program invites families and friends to teach children about the joys and wonders of the outdoors. My Administration is also increasing the number of youth involved in national service on public lands. Through AmeriCorps and other programs and partnerships, we can continue our Nation's proud tradition of service and respect for the environment.

Americans are fortunate to have so many beautiful natural wonders and open spaces. I encourage all in our Nation to enjoy these resources and to help protect them for future generations. Together, we can carry forward our Nation's proud tradition of admiration and preservation of the great outdoors.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2009 as Great Outdoors Month. I encourage all Americans to spend more time outside and to participate in the nationwide events marking this occasion.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, 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. E9-13283

Filed 6-3-09; 11:15 am]

Billing code 3195-W9-P

# Reader Aids

Federal Register

Vol. 74, No. 106

Thursday, June 4, 2009

## CUSTOMER SERVICE AND INFORMATION

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TTY for the deaf-and-hard-of-hearing	<b>741-6086</b>

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**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

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## CFR PARTS AFFECTED DURING JUNE

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