



Federal Register

7-30-09

Vol. 74 No. 145

Pages 37927-38090

Thursday

July 30, 2009



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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, September 15, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008



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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA-2007-28503; Amendment No. 33-29]

RIN 2120-AJ04

Airworthiness Standards; Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the airworthiness standards for issuance of original and amended aircraft engine type certificates for fire protection. The new standard will change aircraft engine fire protection certification standards to update and harmonize them with European Aviation Safety Agency (EASA) fire protection requirements, thereby simplifying airworthiness approvals for import and export purposes.

DATES: This amendment becomes effective September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Directorate Standards Staff, ANE-111, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7120; fax (781) 238-7199; e-mail marc.bouthillier@faa.gov. For legal questions concerning this final rule contact Vincent Bennett, Office of the Chief Counsel—Operations, New England Regional Counsel, ANE-7, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7044; e-mail vincent.bennett@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

This rulemaking is promulgated under the authority as described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the Administrator is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for aircraft engine fire protection.

Background

In 1989, the FAA met with the European Joint Aviation Authorities, United States (U.S.) and European aviation industry representatives to harmonize U.S. and European certification standards. Transport Canada subsequently joined this effort. The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) through its Engine Harmonization Working Group to review existing regulations and recommend changes to remove differences in U.S. and European engine certification fire protection standards.

Part 33 of Title 14 of the Code of Federal Regulations (14 CFR Part 33) prescribes airworthiness standards for original and amended type certificates for aircraft engines certificated in the United States. The Certification Specifications for Engines (CS-E) prescribe corresponding airworthiness standards for aircraft engine certification in Europe by the European Aviation Safety Agency (EASA).

While part 33 and the European regulations are similar, they differ in several respects. These differences can result in additional costs and delays. This final rule is based on Aviation Rulemaking Advisory Committee (ARAC) recommendations to the FAA to harmonize the differences.

Summary of the Rulemaking

The FAA published a notice of proposed rulemaking (NPRM) on February 21, 2008 (73 FR 9494) that proposed changes to § 33.17. We proposed to change aircraft engine fire protection certification standards to update and harmonize them with European Aviation Safety Agency (EASA) requirements. The comment period for the NPRM closed on May 21, 2008. The new rule will harmonize fire protection certification standards for engines certificated in the United States under 14 CFR part 33 and in European countries under EASA Certification Specifications for Engines (CS-E) and will simplify international type certification procedures. The rule will also reflect current industry design and FAA certification practices. This final rule adopts the proposed rule with minor changes.

Summary of Comments and Discussion of Final Rule

Two domestic engine manufacturers, General Electric and Pratt & Whitney, and two private individuals responded to the NPRM request for comments. The commenters supported the proposed rule, suggested minor changes to improve clarity, and requested that certain information be included in the companion Advisory Circular (AC).

An individual commenter stated that proposed § 33.17(f) should specify drain line flow capacity equal to the maximum flow rate possible. We believe specifying flow rate would be overly design restrictive and is unnecessary. The rule is clear that no hazardous quantity of flammable fluid may accumulate unintentionally, and any tube or line intended to drain flammable fluids must be sized properly to meet this requirement. Therefore, the rule as proposed already addresses the commenter's concern about flow rate capacity. However, the companion AC will include guidance for § 33.17(f), and will highlight the need for proper drain and vent line flow capacity.

Pratt & Whitney, General Electric and an individual commenter suggested a specific definition for the term "hazardous quantity" in § 33.17(c), (d)(2), and (f) be included in the companion AC. The commenters believe this definition would make FAA's guidance "consistent with EASA AMC E-130(1)." This comment relates to the

companion AC and not the rule. The public will have the opportunity to comment on the companion AC, and the FAA will consider these comments in finalizing the revised AC.

Pratt & Whitney and General Electric commented on the use of the phrase “fire resistant and fireproof” in the revised rule. Pratt & Whitney stated that proposed § 33.17(b) would be more clear if it did not specify that “each external line, fitting, and other component, which contains or conveys flammable fluid during normal engine operation must be fire resistant or fireproof, as applicable.” The commenter prefers the current language that requires a fire resistant standard. The commenter stated that while an advisory circular could provide clarification on when a fire resistant or fireproof standard is applicable, maintaining the current wording would prevent potential confusion.

We believe the text of § 33.17(b) is consistent with FAA, EASA and industry accepted standard certification practice of testing varying component types to fire resistant or fireproof standards. However, we have replaced the term “as applicable” with “as determined by the Administrator” to reflect the existing practice of requiring the applicant to comply with the standard which provides an acceptable level of fire protection based on the product design. Additionally, the existing AC provides guidance on when a fire resistant or fireproof determination is appropriate. The companion AC for this new rule will also provide guidance on making fire resistant or fireproof determinations, and it will be consistent with current industry standard certification practices.

General Electric and an individual commented on the requirement for “fire resistant or fireproof” protection in proposed § 33.17(e); specifically, General Electric stated that the phrase, “engine control system components that are located in a designated fire zone must be fire resistant or fireproof, as applicable” does not state which, if any, of the control system components must be fireproof. Although this is a new requirement within § 33.17, fire protection requirements have been applied to control system components for some time. Historically, engine control components have included flammable potting materials, and in some applications, fluid cooling circuits have been considered. This amendment provides a regulatory standard for a fire resistant or a fireproof demonstration, as appropriate for a given engine control component design and accommodates varying designs as technology evolves

over time. The companion AC for this rule will provide guidance on making fire resistant or fireproof determinations for control systems components and will be consistent with current industry standard certification practice.

One individual suggested that costs would be incurred. We believe the individual is referring to the cost of certification, as this is a certification requirement, and not a manufacturing requirement. In this final rule, as in the NPRM, we have determined there will be a decrease in the overall cost of certification for manufacturers. By codifying standard certification practices in the United States and in Europe, manufacturers will receive cost-savings from eliminating duplicate documentation and the need to comply with two separate testing and certification standards.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

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

U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more yearly (adjusted for inflation with base year of 1995).

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Under current regulations, aircraft engine manufacturers must satisfy both the FAA and EASA engine certification standards to market aircraft in the United States and Europe. Meeting two different sets of certification requirements can raise the cost of developing a new aircraft engine without increasing safety. This final rule harmonizes FAA type certification standards for fire protection with the requirements already in existence in Europe, thus simplifying airworthiness approvals for import and export. A more streamlined and common set of certification standards lowers the cost of airplane engine development and fosters international trade.

The FAA has not attempted to quantify the cost savings that may occur, only noting that harmonized standards will contribute to cost savings for all part 33 engine manufacturers who seek certification in both the United States and in Europe. There is also potential for increased safety by having more clear and explicit regulations.

In the NPRM, we used this same justification to determine that costs were minimal and the benefits justified the costs. Although we received a comment from an individual questioning the cost savings to manufacturers, we received no comments from manufacturers about our determination. As manufacturers worked with aviation authorities to remove differences in fire protection certification standards, we stand by our original determination that the costs are minimal.

This final rule incorporates EASA certification standards, while

maintaining the existing level of safety. The benefits of this rule justify the costs and existing level of safety will be preserved. The Office of Management and Budget has determined that this final rule is a "significant regulatory action" because it harmonizes U.S. aviation standards with those of other civil aviation authorities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a large number of small entities. If the agency determines that it will, the agency must prepare an initial regulatory flexibility analysis as described in the RFA.

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

Our initial determination showed the requirements would not have a significant impact on a substantial number of small entities, and we received no comments about this determination. We conclude that this final rule will not have a significant impact on a substantial number of small entities for two reasons. First, as noted earlier, the net effect of the rule will provide regulatory cost relief in the certification process. Second, all United States turbine aircraft engine manufacturers but one, exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft engine manufacturers. United States turbine aircraft engine manufacturers include: General Electric, CFM International, Pratt & Whitney, International Aero Engines, Rolls-Royce

Corporation, Honeywell, and Williams International. Williams International is the only one of these manufacturers that is a U.S. small business.

Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

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

Unfunded Mandates Assessment

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

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

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

levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because while it is a "significant regulatory action" it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

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

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

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of

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

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 33 of the Federal Aviation Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Section 33.17 is revised to read as follows:

§ 33.17 Fire Protection.

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire during normal operation and failure conditions, and must minimize the effect of such a fire. In addition, the design and construction of turbine engines must minimize the probability of the occurrence of an internal fire that could result in structural failure or other hazardous effects.

(b) Except as provided in paragraph (c) of this section, each external line, fitting, and other component, which contains or conveys flammable fluid during normal engine operation, must be fire resistant or fireproof, as determined by the Administrator. Components must be shielded or located to safeguard against the ignition of leaking flammable fluid.

(c) A tank, which contains flammable fluids and any associated shut-off means and supports, which are part of and attached to the engine, must be fireproof either by construction or by protection unless damage by fire will not cause leakage or spillage of a hazardous quantity of flammable fluid. For a reciprocating engine having an integral oil sump of less than 23.7 liters capacity, the oil sump need not be

fireproof or enclosed by a fireproof shield.

(d) An engine component designed, constructed, and installed to act as a firewall must be:

(1) Fireproof;

(2) Constructed so that no hazardous quantity of air, fluid or flame can pass around or through the firewall; and,

(3) Protected against corrosion;

(e) In addition to the requirements of paragraphs (a) and (b) of this section, engine control system components that are located in a designated fire zone must be fire resistant or fireproof, as determined by the Administrator.

(f) Unintentional accumulation of hazardous quantities of flammable fluid within the engine must be prevented by draining and venting.

(g) Any components, modules, or equipment, which are susceptible to or are potential sources of static discharges or electrical fault currents must be designed and constructed to be properly grounded to the engine reference, to minimize the risk of ignition in external areas where flammable fluids or vapors could be present.

Issued in Washington, DC, on July 17, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9–18192 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0052; Airspace Docket No. 09–AGL–1]

Amendment of Class E Airspace; Ironwood, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Ironwood, MI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Gogebic Iron County Airport, Ironwood, MI. This action also makes a minor change to the airspace description, removing the reference to the Ironwood ILS. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Gogebic Iron County Airport.

DATES: *Effective Date:* 0901 UTC, October 22, 2009. The Director of the

Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:

Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 12, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Ironwood, MI, adding additional controlled airspace at Gogebic Iron County Airport, Ironwood, MI. (74 FR 7011, Docket No. FAA–2009–0052). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the National Aeronautical Charting Office notified the FAA that the extension defined by the Ironwood ILS was not needed. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Ironwood, MI, adding additional controlled airspace extending upward from 700 feet above the surface at Gogebic Iron County Airport, Ironwood, MI, and removes reference to the Ironwood ILS in the airspace description. This action is necessary for the safety and management of IFR aircraft operations at the airport.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Gogebic Iron County Airport, Ironwood, MI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MI E5 Ironwood, MI [Amended]

Gogebic Iron County Airport, MI
(Lat. 46°31'39" N., long. 90°07'53" W.)
Ironwood VORTAC
(Lat. 46°31'56" N., long. 90°07'33" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile

radius of Gogebic Iron County Airport and within 3.2 miles each side of the Ironwood VORTAC 104° radial extending from the 6.6-mile radius to 11.7 miles southeast of the VORTAC, and within 2.4 miles each side of the Ironwood VORTAC 260° radial extending from the 6.6-mile radius to 7 miles west of the VORTAC and within 4 miles each side of the 090° bearing from the airport extending from the 6.6-mile radius to 11.4 miles east of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of the Ironwood VORTAC.

* * * * *

Issued in Fort Worth, TX, on July 23, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–18139 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1314; Airspace Docket No. 08–AGL–21]

Amendment of Class E Airspace; Monee, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Monee, IL. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Bult Field Airport, Monee, IL. This action also reflects the name change of the airport from Sanger Airport and updates the geographic coordinates to coincide with the FAA's National Aerospace Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Bult Field Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 19, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Monee, IL, adding additional controlled airspace at Bult Field Airport, Monee, IL (74 FR 23370, Docket No. FAA–2008–1314). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Monee, IL, adding additional controlled airspace at Bult Field Airport, Monee, IL, for the safety and management of IFR operations. It also reflects the name change of the airport from Sanger Airport and updates the geographic coordinates to coincide with the FAA's National Aerospace Charting Office.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with

prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Bult Field Airport, Monee, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IL E5 Monee, IL [Amended]

Monee, Bult Field Airport, IL

(Lat. 41°22'39" N., long. 87°40'47" W.)

Peotone VORTAC

(Lat. 41°16'11" N., long. 87°47'28" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Bult Field Airport and within 1.3 miles each side of the 037° radial of the Peotone VORTAC extending from the 6.4-mile radius to the VORTAC, excluding that airspace within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Fort Worth, Texas, on July 23, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–18136 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM09–17–000]

Annual Update of Filing Fees

July 23, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2008.

DATES: *Effective Date:* August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hensley, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–65, Washington, DC 20426, 202–502–6240.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Annual Update of Filing Fees in Part 381

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2008 costs. The adjusted fees announced in this notice are effective August 31, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

Please Note: Beginning in Fiscal Year 2010, the Commission will update filing fees in the fall rather than in the spring or summer. As a result, revised filing fees, based on Fiscal Year 2009 costs, will be published in the fall of 2009. The annual update will occur in the fall of every year thereafter.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)—\$11,220.

Fees Applicable to General Activities

1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))—\$22,550.

2. Review of a Department of Energy remedial order:

Amount in Controversy

\$0–9,999. (18 CFR 381.303(b))—\$100.

\$10,000–29,999. (18 CFR 381.303(b))—\$600.

\$30,000 or more. (18 CFR 381.303(a))—\$32,920.

3. Review of a Department of Energy denial of adjustment:

Amount in Controversy

\$0–9,999. (18 CFR 381.304(b))—\$100.

\$10,000–29,999. (18 CFR 381.304(b))—\$600.

\$30,000 or more. (18 CFR 381.304(a))—\$17,260.

4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))—\$6,470.

Fees Applicable to Natural Gas Pipelines

1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))—\$1,000.*

Fees Applicable to Cogenerators and Small Power Producers

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))—\$19,390.

2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))—\$21,950.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director.

■ In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing “\$20,970” and adding “\$22,550” in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing “\$30,620” and adding “\$32,920” in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing “\$16,050” and adding “\$17,260” in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing “\$6,010” and adding “\$6,470” in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing “\$10,440” and adding “\$11,220” in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing “\$18,030” and adding “\$19,390” in its place and by

removing “\$20,410” and adding “\$21,950” in its place.

[FR Doc. E9–18077 Filed 7–29–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2009–0616]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from August 1, 2009, through August 29, 2009, for the Navy Pier Wednesday Fireworks and the Navy Pier Saturday Fireworks. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter, move within, or exit the safety zone without permission of the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.931 will be enforced for the events as follows:

1. *Navy Pier Wednesday Fireworks:* On August 5, 2009, from 9:15 p.m. through 9:45 p.m.; on August 12, 2009, from 9:15 p.m. through 9:45 p.m.; on August 19, 2009, from 9:15 p.m. through 9:45 p.m.; on August 26, 2009, from 9:15 p.m. through 9:45 p.m.

2. *Navy Pier Saturday Fireworks:* On August 1, 2009, from 10 p.m. through 10:40 p.m.; on August 8, 2009, from 10 p.m. through 10:40 p.m.; on August 15, 2009, from 10 p.m. through 10:40 p.m.; on August 22, 2009, from 10 p.m. through 10:40 p.m.; on August 29, 2009, from 10 p.m. through 10:40 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM2 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone 414–747–7154, e-mail Adam.D.Kraft@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931, for the Navy Pier Wednesday Fireworks and

Navy Pier Saturday Fireworks on the dates listed in the **DATES** section.

Under the provisions of 3 CFR 165.931, all persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

All vessels must obtain permission from the Captain of the Port or their on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port or their on-scene representative may be contacted via VHF–FM Channel 16.

Dated: July 16, 2009.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–18124 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1180]

RIN 1625–AA00

Safety Zone; BWRC ‘300’ Enduro, Lake Moolvalya, Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is creating a temporary safety zone upon the navigable waters of the Lake Moolvalya region on the lower Colorado River in support of the Bluewater Resort and Casino ‘300’ Enduro boat race. This

* This fee has not been changed.

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 October 23, 2009 to October 25, 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-2008-1180 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-2008-1180 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. 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 27, 2009 we published a notice of proposed rulemaking (NPRM) entitled "Safety zone; BWRC '300' Enduro; Lake Moolvalya, Parker, AZ" in the **Federal Register** (74 FR 19031). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

RPM Racing Enterprises is sponsoring the Bluewater Resort and Casino '300' Enduro. The event is a closed boat endurance race consisting of 30 to 50 powerboats ranging from 16 to 26 feet in length. The sponsor will provide four water rescue boats and eight patrol boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users 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 the Lake Moolvalya region of the Lower Colorado River from 6 a.m. to 6 p.m. on October 23, 2009 through October 25, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for 12 hours a day for a period of three days. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. 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 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because the rule establishes 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–145 to read as follows:

§ 165.T11–145 Safety zone; BWRC 300 Enduro, Lake Moolvalya, Parker, AZ.

(a) *Location.* The following area is a safety zone: All waters of the Colorado River, from surface to bottom and shore to shore, extending from the Headgate Dam at 34°10.15 N, 114°16.40 W following the river northeast to 34°11.76 N, 114°13.50 W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m., each day, beginning October 23, 2009 through October 25, 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, or petty officers of the Coast Guard on board Coast

Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 6, 2009.

T.H. Farris,

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

[FR Doc. E9–18126 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2009–0666]

Safety Zone; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for Milwaukee Harbor for annual fireworks events in the Captain of the Port Lake Michigan zone from 9:30 p.m. on August 8, 2009, through 10 p.m. on September 12, 2009. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.935 will be enforced from 9:30 p.m. through 10 p.m. on August 8, 2009; from 10:15 p.m. through 10:45 p.m. on August 16, 2009; from 9:30 p.m. through

10 p.m. on August 21, 2009; and from 9:30 p.m. through 10 p.m. on September 11–12, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM2 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone 414-747-7154, e-mail Adam.D.Kraft@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Milwaukee Harbor, Milwaukee, WI, as listed in 33 CFR 165.935 for the following events, dates, and times:

(1) *Arab World Fest fireworks display* on August 8, 2009, from 9:30 p.m. through 10 p.m.;

(2) *Irish Fest fireworks display* on August 16, 2009, from 10:15 p.m. through 10:45 p.m.;

(3) *Mexican Fiesta fireworks display* on August 21, 2009, from 9:30 p.m. through 10 p.m.; and

(4) *Indian Summer fireworks display* on September 11–12, 2009, from 9:30 p.m. through 10 p.m.

All vessels must obtain permission from the Captain of the Port or a designated on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port or the designated on-scene representative may be contacted via VHF-FM Channel 16.

Dated: July 16, 2009.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9-18161 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-29 and C2009-39; Order No. 233]

Priority Mail Contract

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 13 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 July 30, 2009 and is applicable beginning July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-7889-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 30647 (June 26, 2009).

- I. Background
- II. Comments
- III. Commission Analysis
- IV. Ordering Paragraphs

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 13 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 15, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 13), which it attempts to classify within the previously proposed Priority Mail Contract Group product.¹ In support, the Postal Service filed the proposed contract and referenced Governors' Decision 09-6 filed in Docket No. MC2009-25. *Id.* at 1. The Notice has been assigned Docket No. CP2009-39.

In response to Order No. 224,² and in accordance with 39 U.S.C. 3642 and 39 CFR part 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 13 to the Competitive Product List as a separate

¹ Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 13), June 15, 2009 (Notice).

² PRC Order No. 224, Notice and Order Concerning Filing of Priority Mail Contract 13 Negotiated Service Agreement, June 17, 2009 (Order No. 224).

product.³ The Postal Service asserts that the Priority Mail Contract 13 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-29.

In support of its Notice and Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;⁴ (2) requested changes in the Mail Classification Schedule product list;⁵ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁶ and (4) certification of compliance with 39 U.S.C. 3633(a).⁷

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

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

In Order No. 224, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.⁸ On June 23, 2009, the Postal Service filed the supplemental information requested.⁹

³ Request of the United States Postal Service to Add Priority Mail Contract 13 to Competitive Product List, June 23, 2009 (Request).

⁴ Attachment A to the Notice.

⁵ Attachment A to the Request.

⁶ Attachment B to the Request.

⁷ Attachment B to the Notice.

⁸ Order No. 224 at 1-4.

⁹ Response of the United States Postal Service to Commission's Request for Supplemental Information in Order No. 224, June 23, 2009.

II. Comments

Comments were filed by the Public Representative.¹⁰ No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 13 agreement comports with the requirements of title 39 and is appropriately classified as competitive. *Id.* at 3.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that the contractual provisions are mutually beneficial to the parties and general public. *Id.* at 4.

III. Commission Analysis

The Commission has reviewed the Notice, the Request, the contract, the financial analysis provided under seal that accompanies it, the Postal Service's responses to Chairman's Information Request No. 1, the Postal Service's response to the Commission's request for supplemental information, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 13 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 13 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant.

The competitive category of products shall consist of all other products.

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

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

No commenter opposes the proposed classification of Priority Mail Contract 13 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 13 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 13 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 13 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 13 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 scheduled 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 Priority Mail Contract 13 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 13 (MC2009–29 and CP2009–39) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

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

3. The Motion of the Public Representative for Late Acceptance of Comments on United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Contract 13), filed on June 29, 2009, is granted.

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Issued: July 1, 2009.

Judith M. Grady,

Acting Secretary.

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

PART 3020—PRODUCT LISTS

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

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

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule 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

¹⁰ Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 13), June 29, 2009 (Public Representative Comments). The Public Representative filed a Motion for Late Acceptance of his comments. That motion is granted.

Single-Piece Letters/Postcards	[Reserved for Product Description]	[Reserved for Product Description]
Bulk Letters/Postcards	Not Flat-Machinables (NFM)/Parcels	International Restricted Delivery
Flats	[Reserved for Product Description]	[Reserved for Product Description]
Parcels	Periodicals	Address List Services
Outbound Single-Piece First-Class Mail	[Reserved for Class Description]	[Reserved for Product Description]
International	Within County Periodicals	Caller Service
Inbound Single-Piece First-Class Mail	[Reserved for Product Description]	[Reserved for Product Description]
International	Outside County Periodicals	Change-of-Address Credit Card
Standard Mail (Regular and Nonprofit)	[Reserved for Product Description]	Authentication
High Density and Saturation Letters	Package Services	[Reserved for Product Description]
High Density and Saturation Flats/Parcels	[Reserved for Class Description]	Confirm
Carrier Route	Single-Piece Parcel Post	[Reserved for Product Description]
Letters	[Reserved for Product Description]	International Reply Coupon Service
Flats	Inbound Surface Parcel Post (at UPU rates)]	[Reserved for Product Description]
Not Flat-Machinables (NFM)/Parcels	[Reserved for Product Description]	International Business Reply Mail Service
Periodicals	Bound Printed Matter Flats	[Reserved for Product Description]
Within County Periodicals	[Reserved for Product Description]	Money Orders
Outside County Periodicals	Bound Printed Matter Parcels	[Reserved for Product Description]
Package Services	[Reserved for Product Description]	Post Office Box Service
Single-Piece Parcel Post	Media Mail/Library Mail	[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)	[Reserved for Product Description]	Negotiated Service Agreements
Bound Printed Matter Flats	Special Services	[Reserved for Class Description]
Bound Printed Matter Parcels	[Reserved for Class Description]	HSBC North America Holdings Inc.
Media Mail/Library Mail	Ancillary Services	Negotiated Service Agreement
Special Services	[Reserved for Product Description]	[Reserved for Product Description]
Ancillary Services	Address Correction Service	Bookspan Negotiated Service Agreement
International Ancillary Services	[Reserved for Product Description]	[Reserved for Product Description]
Address List Services	Applications and Mailing Permits	Bank of America Corporation Negotiated
Caller Service	[Reserved for Product Description]	Service Agreement
Change-of-Address Credit Card	Business Reply Mail	The Bradford Group Negotiated Service
Authentication	[Reserved for Product Description]	Agreement
Confirm	Bulk Parcel Return Service	Part B—Competitive Products
International Reply Coupon Service	[Reserved for Product Description]	Competitive Product List
International Business Reply Mail Service	Certified Mail	Express Mail
Money Orders	[Reserved for Product Description]	Express Mail
Post Office Box Service	Certificate of Mailing	Outbound International Expedited Services
Negotiated Service Agreements	[Reserved for Product Description]	Inbound International Expedited Services
HSBC North America Holdings Inc.	Collect on Delivery	Inbound International Expedited Services 1
Negotiated Service Agreement	[Reserved for Product Description]	(CP2008-7)
Bookspan Negotiated Service Agreement	Delivery Confirmation	Inbound International Expedited Services 2
Bank of America Corporation Negotiated	[Reserved for Product Description]	(MC2009-10 and CP2009-12)
Service Agreement	Insurance	Priority Mail
The Bradford Group Negotiated Service	[Reserved for Product Description]	Priority Mail
Agreement	Merchandise Return Service	Outbound Priority Mail International
Inbound International	[Reserved for Product Description]	Inbound Air Parcel Post
Canada Post—United States Postal Service	Parcel Airlift (PAL)	Royal Mail Group Inbound Air Parcel Post
Contractual Bilateral Agreement for	[Reserved for Product Description]	Agreement
Inbound Market Dominant Services	Registered Mail	Parcel Select
Market Dominant Product Descriptions	[Reserved for Product Description]	Parcel Return Service
First-Class Mail	Return Receipt	International
[Reserved for Class Description]	[Reserved for Product Description]	International Priority Airlift (IPA)
Single-Piece Letters/Postcards	Return Receipt for Merchandise	International Surface Airlift (ISAL)
[Reserved for Product Description]	[Reserved for Product Description]	International Direct Sacks—M-Bags
Bulk Letters/Postcards	Restricted Delivery	Global Customized Shipping Services
[Reserved for Product Description]	[Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU
Flats	Shipper-Paid Forwarding	rates)
[Reserved for Product Description]	[Reserved for Product Description]	Canada Post—United States Postal Service
Parcels	Signature Confirmation	Contractual Bilateral Agreement for
[Reserved for Product Description]	[Reserved for Product Description]	Inbound Competitive Services (MC2009-8
Outbound Single-Piece First-Class Mail	Special Handling	and CP2009-9)
International	[Reserved for Product Description]	International Money Transfer Service
[Reserved for Product Description]	Stamped Envelopes	International Ancillary Services
Inbound Single-Piece First-Class Mail	[Reserved for Product Description]	Special Services
International	Stamped Cards	Premium Forwarding Service
[Reserved for Product Description]	[Reserved for Product Description]	Negotiated Service Agreements
Standard Mail (Regular and Nonprofit)	Premium Stamped Stationery	Domestic
[Reserved for Class Description]	[Reserved for Product Description]	Express Mail Contract 1 (MC2008-5)
High Density and Saturation Letters	Premium Stamped Cards	Express Mail Contract 2 (MC2009-3 and
[Reserved for Product Description]	[Reserved for Product Description]	CP2009-4)
High Density and Saturation Flats/Parcels	International Ancillary Services	Express Mail Contract 3 (MC2009-15 and
[Reserved for Product Description]	[Reserved for Product Description]	CP2009-21)
Carrier Route	International Certificate of Mailing	Express Mail & Priority Mail Contract 1
[Reserved for Product Description]	[Reserved for Product Description]	(MC2009-6 and CP2009-7)
Letters	International Registered Mail	Express Mail & Priority Mail Contract 2
[Reserved for Product Description]	[Reserved for Product Description]	(MC2009-12 and CP2009-14)
Flats	International Return Receipt	

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)
 Priority Mail Contract 6 (MC2009–25 and CP2009–30)
 Priority Mail Contract 7 (MC2009–25 and CP2009–31)
 Priority Mail Contract 8 (MC2009–25 and CP2009–32)
 Priority Mail Contract 9 (MC2009–25 and CP2009–33)
 Priority Mail Contract 10 (MC2009–25 and CP2009–34)
 Priority Mail Contract 11 (MC2009–27 and CP2009–37)
 Priority Mail Contract 12 (MC2009–28 and CP2009–38)
 Priority Mail Contract 13 (MC2009–29 and CP2009–39)
 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. E9–18143 Filed 7–29–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–8933–4]

Approval and Promulgation of Air Quality Implementation Plans; Nebraska; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Nebraska that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

DATES: *Effective Date:* This action is effective July 30, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; or at <http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm>; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem at (913) 551–7659, or by e-mail at vangoethem.evelyn@epa.gov.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state revises as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register. The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Nebraska. On December 1, 2003 (68 FR 67045), EPA published an update to the IBR material for Nebraska.

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of July 1, 2009.
2. Correcting the date format in the “State effective date” or “State Submittal date” and “EPA approval date” columns in § 52.1420 paragraphs (c), (d) and (e). Dates are numerical month/day/year without additional zeros.
3. Modifying the **Federal Register** citation in § 52.1420 paragraphs (c), (d)

and (e) to reflect the beginning page of the preamble as opposed to the page number of the regulatory text.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by providing notice of the updated Nebraska SIP compilation.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice and comment. Prior EPA rulemaking actions for each individual component of the Nebraska SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 8, 2009.

William Rice,

Acting Regional Administrator, Region 7.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—Nebraska

■ 2. In § 52.1420 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 2009, was approved for incorporation by reference by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 2009, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 7 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the SIP as of July 1, 2009.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; at the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460; or at the National Archives and Records Administration (NARA). If you wish to obtain material from the EPA Regional Office, please call (913) 551-7659; for material from a docket in EPA Headquarters Library, please call the Office of Air and Radiation Docket

at (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to:

http://www.archives.gov/federal_register/

[code_of_federal_regulations/ibr_locations.html](#)

(c) EPA-approved regulations.

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
129-1	Definitions	11/20/02	9/5/03, 68 FR 52691.	
129-2	Definition of Major Source	7/10/02	7/8/03, 68 FR 40528.	
129-3	Region and Subregions	6/26/94	1/4/95, 60 FR 372.	
129-4	Ambient Air Quality Standards	4/1/02 7/10/02	7/8/03, 68 FR 40528.	
129-5	Operating Permit	11/20/02	9/5/03, 68 FR 52691	Section 001.02 is not SIP approved.
129-6	Emissions Reporting	11/20/02	9/5/03, 68 FR 52691.	
129-7	Operating Permits—Application	8/22/00	5/29/02, 67 FR 37325.	
129-8	Operating Permit Content	8/22/00	5/29/02, 67 FR 37325.	
129-9	General Operating Permits for Class I and II Sources.	6/26/94	1/4/95, 60 FR 372.	
129-10	Operating Permits for Temporary Sources.	9/7/97	1/20/00, 65 FR 3130.	
129-11	Operating Permits—Emergency; Defense.	6/26/94	1/4/95, 60 FR 372.	
129-12	Operating Permit Renewal and Expiration.	5/29/95	2/9/96, 61 FR 4899.	
129-13	Class I Operating Permit—EPA Review; Affected States Review; Class II Permit.	6/26/94	1/4/95, 60 FR 372.	
129-14	Permits—Public Participation	6/26/94	1/4/95, 60 FR 372.	
129-15	Operating Permit Modification; Reopening for Cause.	6/26/94	1/4/95, 60 FR 372.	
129-16	Stack Heights; Good Engineering Practice (GEP).	12/15/98	5/29/02, 67 FR 37325.	
129-17	Construction Permits—When Required	7/10/02	7/8/03, 68 FR 40528	Refer to January 23, 2002, NDEQ letter to EPA regarding change to 129-17-014. Approved by EPA on May 29, 2002.
129-19	Prevention of Significant Deterioration of Air Quality.	12/15/98	5/29/02, 67 FR 37325.	
129-20	Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns or Scheduled Maintenance: See Chapter 35).	2/7/04	3/31/05, 70 FR 16426.	
129-21	Controls for Transferring, Conveying, Railcar and Truck Loading at Rock Processing Operations in Cass County.	7/10/02	7/8/03, 68 FR 40528.	
129-22	Incinerators; Emission Standards	9/7/97	1/20/00, 65 FR 3130.	
129-24	Sulfur Compound Emissions, Existing Sources Emission Standards.	6/26/94	1/4/95, 60 FR 372.	
129-25	Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emissions Standards for Existing Stationary Sources.	9/7/97	1/20/00, 65 FR 3130.	
129-30	Open Fires, Prohibited; Exceptions	11/20/02	9/5/03, 68 FR 52691.	
129-32	Dust; Duty to Prevent Escape of	6/26/94	1/4/95, 60 FR 372.	
129-33	Compliance; Time Schedule for	6/26/94	1/4/95, 60 FR 372.	
129-34	Emission Sources; Testing; Monitoring	5/7/05	7/10/06, 71 FR 38776.	
129-35	Compliance; Exceptions Due to Startup, Shutdown, or Malfunction.	9/7/97	1/20/00, 65 FR 3130.	
129-36	Control Regulations; Circumvention, When Excepted.	6/26/94	1/4/95, 60 FR 372.	
129-37	Compliance; Responsibility	6/26/94	1/4/95, 60 FR 372.	
129-38	Emergency Episodes; Occurrence and Control, Contingency Plans.	6/26/94	1/4/95, 60 FR 372.	
129-39	Visible Emissions from Diesel-powered Motor Vehicles.	6/26/94	1/4/95, 60 FR 372.	
129-40	General Conformity	5/29/95	2/12/96, 61 FR 5297.	
129-41	General Provisions	12/15/98	5/29/02, 67 FR 37325.	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Explanation
129-42	Permits-By-Rule	11/20/02 4/8/03 5/7/05	7/10/06, 71 FR 38776.	
129-43	Consolidated with Chapter 41	5/29/95	2/9/96, 61 FR 4899.	
129-44	Consolidated with Chapter 41	5/29/95	2/9/96, 61 FR 4899.	
Appendix I	Emergency Emission Reductions	6/26/94	1/4/95, 60 FR 372.	
Appendix II	Hazardous Air Pollutants (HAPS)	5/7/05	7/10/06, 71 FR 38776.	

Title 115—Rules of Practice and Procedure

115-1	Definitions of Terms	8/8/93	1/4/95, 60 FR 372.	
115-2	Filing and Correspondence	8/8/93	1/4/95, 60 FR 372.	
115-3	Public Records Availability	8/8/93	1/4/95, 60 FR 372.	
115-4	Public Records Confidentiality	8/8/93	1/4/95, 60 FR 372.	
115-5	Public Hearings	8/8/93	1/4/95, 60 FR 372.	
115-6	Voluntary Compliance	8/8/93	1/4/95, 60 FR 372.	
115-7	Contested Cases	8/8/93	1/4/95, 60 FR 372.	
115-8	Emergency Proceeding Hearings	8/8/93	1/4/95, 60 FR 372.	
115-9	Declaratory Rulings	8/8/93	1/4/95, 60 FR 372.	
115-10	Rulemaking	8/8/93	1/4/95, 60 FR 372.	
115-11	Variances	8/8/93	1/4/95, 60 FR 372.	

Lincoln-Lancaster County Air Pollution Control Program

Article 1—Administration and Enforcement

Section 1	Intent	5/16/95	2/14/96, 61 FR 5699.	
Section 2	Unlawful Acts—Permits Required	5/16/95	2/14/96, 61 FR 5699.	
Section 3	Violations—Hearings—Orders	5/16/95	2/14/96, 61 FR 5699.	
Section 4	Appeal Procedure	5/16/95	2/14/96, 61 FR 5699.	
Section 5	Variance	5/16/95	2/14/96, 61 FR 5699.	
Section 7	Compliance—Actions to Enforce—Penalties for Non-Compliance.	5/16/95	2/14/96, 61 FR 5699.	
Section 8	Procedure for Abatement	5/16/95	2/14/96, 61 FR 5699.	
Section 9	Severability	5/16/95	2/14/96, 61 FR 5699.	

Article 2—Regulations and Standards

Section 1	Definitions	8/11/98	1/20/00, 65 FR 3130.	
Section 2	Major Sources—Defined	8/11/98	1/20/00, 65 FR 3130.	
Section 4	Ambient Air Quality Standards	5/16/95	2/14/96, 61 FR 5699.	
Section 5	Operating Permits—When Required	8/11/98	1/20/00, 65 FR 3130.	
Section 6	Emissions Reporting—When Required	8/11/98	1/20/00, 65 FR 3130.	
Section 7	Operating Permit—Application	8/11/98	1/20/00, 65 FR 3130.	
Section 8	Operating Permit—Content	8/11/98	1/20/00, 65 FR 3130.	
Section 9	General Operating Permits for Class I and II Sources.	5/16/95	2/14/96, 61 FR 5699.	
Section 10	Operating Permits for Temporary Services.	5/16/95	2/14/96, 61 FR 5699.	
Section 11	Emergency Operating Permits—Defense.	5/16/95	2/14/96, 61 FR 5699.	
Section 12	Operating Permit Renewal and Expiration.	5/16/95	2/14/96, 61 FR 5699.	
Section 14	Permits—Public Participation	5/16/95	2/14/96, 61 FR 5699.	
Section 15	Operating Permit Modifications—Reopening for Cause.	8/11/98	1/20/00, 65 FR 3130.	
Section 16	Stack—Heights—Good Engineering Practice (GEP).	5/16/95	2/14/96, 61 FR 5699.	
Section 17	Construction Permits—When Required	8/11/98	1/20/00, 65 FR 3130.	
Section 19	Prevention of Significant Deterioration of Air Quality.	5/16/95	2/14/96, 61 FR 5699.	
Section 20	Particulate Emissions—Limitations and Standards.	3/31/97	1/20/00, 65 FR 3130.	
Section 22	Incinerator Emissions	5/16/95	2/14/96, 61 FR 5699.	
Section 24	Sulfur Compound Emissions—Existing Sources—Emission Standards.	5/16/95	2/14/96, 61 FR 5699.	
Section 25	Nitrogen Oxides (Calculated as Nitrogen Dioxide)—Emissions Standards for Existing Stationary Sources.	5/16/95	2/14/96, 61 FR 5699.	
Section 32	Dust—Duty to Prevent Escape of	3/31/97	1/20/00, 65 FR 3130.	
Section 33	Compliance—Time Schedule for	5/16/95	2/14/96, 61 FR 5699.	
Section 34	Emission Sources—Testing—Monitoring	5/16/95	2/14/96, 61 FR 5699.	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Explanation
Section 35	Compliance—Exceptions Due to Startup Shutdown or Malfunction.	5/16/95	2/14/96, 61 FR 5699.	
Section 36	Control Regulations—Circumvention—When Expected.	5/16/95	2/14/96, 61 FR 5699.	
Section 37	Compliance—Responsibility of Owner/Operator Pending Review by Director.	5/16/95	2/14/96, 61 FR 5699.	
Section 38	Emergency Episodes—Occurrence and Control—Contingency Plans.	5/16/95	2/14/96, 61 FR 5699.	
Appendix I	Emergency Emission Reduction Regulations.	5/16/95	2/14/96, 61 FR 5699.	

**City of Omaha
Chapter 41—Air Quality Control
Article I In General**

41-2	Adoption of State Regulations with Exceptions.	4/1/98	1/20/00, 65 FR 3130.	
41-4	Enforcement—Generally	5/29/95	2/14/96, 61 FR 5699.	
41-5	Same Health Department	5/29/95	2/14/96, 61 FR 5699.	
41-6	Residential Exemptions	5/29/95	2/14/96, 61 FR 5699.	
41-9	Penalties	5/29/95	2/14/96, 61 FR 5699.	
41-10	Civil Enforcement	5/29/95	2/14/96, 61 FR 5699.	

Article II—Permitting of Air Contaminant Sources

41-23	Prerequisite to Approval	5/29/95	2/14/96, 61 FR 5699.	
41-27	Signature Required; Guarantee	5/29/95	2/14/96, 61 FR 5699.	
41-38	Funds	5/29/95	2/14/96, 61 FR 5699.	
41-40	Fees—When Delinquent	5/29/95	2/14/96, 61 FR 5699.	

Article IV—Waste Incinerators Division 1. Generally

41-60	Definitions	5/29/95	2/14/96, 61 FR 5699.	
41-61	Violations	5/29/95	2/14/96, 61 FR 5699.	

Article IV—Waste Incinerators Division 2. Emissions

41-70	New or Modified Facilities	5/29/95	2/14/96, 61 FR 5699.	
41-71	Existing Facilities	5/29/95	2/14/96, 61 FR 5699.	
41-72	Emission Testing	5/29/95	2/14/96, 61 FR 5699.	

Article IV—Waste Incinerators Division 3. Design

41-80	New or Modified Waste Incinerators	5/29/95	2/14/96, 61 FR 5699.	
41-81	Existing Incinerators	5/29/95	2/14/96, 61 FR 5699.	

(d) EPA-approved state source-specific permits.

EPA-APPROVED NEBRASKA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
(1) Gould, Inc	677	11/9/83	1/31/85, 50 FR 4510.	
(2) Asarco, Inc	1520	6/6/96	3/20/97, 62 FR 13329	The EPA did not approve paragraph 19.

(e) EPA-approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(1) Air Quality Implementation Plan ..	Statewide	1/28/72	5/31/72, 37 FR 10842.	
(2) Confirmation That the State Does Not Have Air Quality Control Standards Based on Attorney General's Disapproval.	Statewide	4/25/72	5/31/72, 37 FR 10842.	
(3) Request for Two-Year Extension to Meet the Primary NO _x Standard.	Omaha	1/24/72	7/27/72, 37 FR 15080.	
(4) Clarification of Section 11 of the State's Plan.	Statewide	2/16/72	7/27/72, 37 FR 15080.	
(5) Letters Clarifying the Application of the State's Emergency Episode Rule.	Omaha	10/2/72	5/14/73, 38 FR 12696.	
(6) Analysis of Ambient Air Quality in Standard Metropolitan Statistical Areas and Recommendations for Air Quality Maintenance Areas.	Omaha, Lincoln, Sioux City.	5/9/74	6/2/75, 40 FR 23746.	
(7) Amended State Law (LB1029) Giving the Department of Environmental Quality Authority to Require Monitoring of Emissions, Reporting of Emissions and Release of Emissions Data.	Statewide	2/10/76	6/23/76, 41 FR 25898.	
(8) Air Monitoring Plan	Statewide	6/19/81	10/6/81, 46 FR 49122.	
(9) TSP Nonattainment Plan	Douglas and Cass Counties.	9/25/80	3/28/83, 48 FR 12715.	
(10) Plan for Intergovernmental Consultation and Coordination and for Public Notification.	Statewide	8/9/82	7/5/83, 48 FR 30631.	
(11) Lead Plan	Statewide except Omaha.	1/9/81 8/5/81 1/11/83	11/29/83, 48 FR 53697	The plan was approved except that portion pertaining to Omaha.
(12) Lead Nonattainment Plan	Omaha	7/24/84 11/17/83 8/1/84	1/31/85, 50 FR 4510.	
(13) CO Nonattainment Plan	Omaha	4/3/85	9/15/86, 51 FR 32640.	
(14) CO Nonattainment Plan	Lincoln	4/3/85	9/19/86, 51 FR 33264.	
(15) Revised Lead Nonattainment Plan.	Omaha	2/2/87	8/3/87, 52 FR 28694.	
(16) Letter Pertaining to NO _x Rules and Analysis Which Certifies the Material Became Effective on February 20, 1991.	Statewide	3/8/91	7/2/91, 56 FR 30335	State submittal date is date of the letter.
(17) Small Business Assistance Program.	Statewide	11/12/92	8/30/93, 58 FR 45452.	
(18) Class II Operating Permit Program Including Letter Committing to Submit Information to RACT/BACT/LAER Clearinghouse, Letter Regarding Availability of State Operating Permits to the EPA and Specified Emissions Limits in Permits, and Letter Regarding the Increase in New Source Review Thresholds.	Statewide	2/16/94	1/4/95, 60 FR 372.	
(19) Letter from City of Omaha Regarding Authority to Implement Section 112(l) and Letter from the State Regarding Rule Omissions and PSD Program Implementation.	Omaha, Lincoln	9/13/95 11/9/95	2/14/96, 61 FR 5725	State submittal dates are dates of letters.
(20) Lincoln Municipal Code, Chapter 8.06.140 and 8.06.145.	City of Lincoln	2/5/99	1/20/00, 65 FR 3130.	
(21) Lancaster Co. Resolution 5069, Sections 12 and 13.	Lancaster County	2/5/99	1/20/00, 65 FR 3130.	
(22) Nebraska Lead Maintenance SIP.	Omaha	1/18/01	4/20/01, 66 FR 20196.	
(23) CAA 110(1)(2)(D)(i) SIP—Interstate Transport.	Statewide	5/18/07	12/17/07, 72 FR 71245.	

[FR Doc. E9-18024 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2008-0592(a); FRL-8937-2]

Approval and Promulgation of Air Quality Implementation Plans—Alabama: Birmingham 1997 8-Hour Ozone Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), on February 6, 2008, to adopt contingency measures in the form of permit conditions for two cement kilns. These contingency measures are for the maintenance of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) in Jefferson and Shelby Counties (“Birmingham Area”). On May 12, 2006, EPA approved the 8-hour ozone redesignation of the Birmingham Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS (see, 71 FR 27631). Additional measures may be necessary in the future; however, these revisions qualify as contingency measures as required under Section 175A(d) of the Clean Air Act (CAA).

When the Birmingham Area was redesignated to attainment, Alabama was also required to submit a maintenance plan which included provisions for contingency measures should the Area violate the standard after being redesignated to attainment. The May 12, 2006, maintenance plan was designed to keep the Birmingham Area in attainment through 2017, initially, with a later extension of the maintenance plan to include a time period of no less than 20 years after the Area was redesignated originally. After attaining the 1997 8-hour ozone standard based on 2003–2005 ambient air monitoring data, the Birmingham Area violated the standard with 2004–2006 ambient air monitoring data. The February 6, 2008, SIP revision, provided by Alabama for EPA approval, was submitted to fulfill ADEM’s commitment to adopt within 18 months of a violation of the 1997 8-hour ozone standard, one or more contingency measures to help the Area re-attain the

standard. EPA is approving these revisions pursuant to section 110 of the CAA. On March 27, 2008, EPA issued a revised ozone standard (see, 73 FR 16436). This action, however, is being taken to address requirements under the 1997 8-hour ozone standard. EPA will address the Birmingham compliance with the 2008 8-hour ozone standard in the future.

DATES: This rule is effective on *September 28, 2009* without further notice, unless EPA receives adverse comment by August 31, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2008-0592 by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: benjamin.lynora@epa.gov.

3. *Fax*: (404) 562-9019.

4. *Mail*: “EPA-R04-OAR-2008-0592,” Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2008-0592.” EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Harder may be reached by phone at (404) 562-9042, or by electronic mail at harder.stacy@epa.gov. For information relating to the Alabama SIP, contact Mr. Zuri Farngalo by phone at (404) 562-9152, or by electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Analysis of State's Submission
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

On April 15, 2004, EPA designated the Birmingham Area as nonattainment for the 1997 8-hour ozone standard under title 1, part D, subpart 1 of the CAA. For the 1997 8-hour ozone standard the Birmingham Area is comprised of Jefferson and Shelby Counties in Alabama. EPA's designations for the 1997 8-hour ozone standard were published in the **Federal Register** on April, 30 2004, (69 FR 23858) and became effective on June 15, 2004. As an area designated as nonattainment for the 1997 8-hour ozone standard under Subpart 1 of the CAA, the Birmingham Area had a required attainment date of "as expeditiously as practicable" but no later than June 15, 2009.

On November 16, 2005, after air quality data indicated improvements, ADEM submitted a request for EPA to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone standard. Also, as required, ADEM submitted for EPA approval, the initial maintenance plan to show continued maintenance for the first 11 years of the 20 year maintenance period. ADEM's redesignation request was based on three years, 2003 to 2005, of ambient monitoring data for the Birmingham Area, which indicated the Birmingham Area had a design value of 0.072 parts per million (ppm). The design value for the Birmingham Area based on 2004–2006 was 0.078 ppm. Both the 2003–2005 and the 2004–2006 design values met the requirement of 0.080 ppm for attainment for the 1997 8-hour ozone standard.

In an action published on January 25, 2006, (71 FR 4077), EPA proposed to approve the redesignation of the Birmingham Area to attainment. EPA also proposed approval of the State's plan for maintaining the 1997 8-hour ozone NAAQS through the initial period of 2006–2017 as a SIP revision. ADEM submitted a final, adopted SIP revision and redesignation request to EPA on January 27, 2006. On May 12, 2006, EPA published a final rule in the **Federal Register** (71 FR 27631), effective June 12, 2006, which approved the redesignation request and changed the legal designation of Jefferson and Shelby Counties in Alabama from nonattainment to attainment for the 1997 8-hour ozone standard. This rule also approved ADEM's 8-hour ozone maintenance plan for the 1997 standard

for the Birmingham Area pursuant to section 175A of the CAA.

Section 175A of the CAA, requires a maintenance plan to become part of the SIP for areas redesignated to attainment and provide for maintenance of the air quality in the affected area for at least 20 years after the redesignation. Specifically, the CAA requirement is that an initial maintenance plan that is at least 10 years in length (*i.e.*, after EPA's expected approval) be submitted with the redesignation request. Subsequently, eight years after redesignation and submittal of the initial maintenance plan, the State is required to submit an additional maintenance plan that shows continued maintenance for the remainder for a 20-year period. Alabama chose 2017 as the end year for the initial maintenance plan for the Birmingham Area. Also included in Alabama's initial maintenance plan were contingency provisions as required by section 175(d) of the CAA. The purpose of the contingency provisions is to provide for prompt corrections for any violation of the standard that occurred in an area that was redesignated from nonattainment to attainment.

In its May 12, 2006, maintenance plan, Alabama committed to adopt within 18 months of a violation of the 1997 8-hour ozone standard, one or more control measures to help the area attain the standard. The plan stated that the State of Alabama would use actual ambient monitoring as the indicator or trigger to determine when these contingency measures would be implemented. In accordance with 40 CFR 58, ambient ozone monitoring data that indicates a future violation of the ozone NAAQS will begin the process to implement contingency measures. In the event that an individual monitor in the nonattainment area recorded an annual fourth high reading of 0.085 ppm or higher, or if periodic emissions inventory updates revealed excessive or unanticipated growth greater than 10 percent in emission of either ozone precursor, ADEM agreed in the May 12, 2006, maintenance plan that the State would evaluate existing control measures to determine whether any further emission reduction measures should be implemented. Under Section 175A(d), the minimum requirements for these contingency measures required the implementation of all measures that were contained in the SIP before the redesignation.

The Helena monitor, located in Shelby County and typically the controlling monitor for the Birmingham Area, violated the 1997 8-hour ozone NAAQS during 2004–2006 data with a

reading of 0.085 ppm, although the overall design value for the Birmingham Area for that same period was 0.078 ppm. Under Section 175A(d), the minimum requirements for these contingency measures require the implementation of all measures that were contained in the SIP prior to the redesignation. Alabama has maintained all measures that were contained in the SIP prior to the redesignation. Also, in accordance with requirements of the CAA, Alabama committed to adopt one or more contingency measures within 18 months of a violation of the 1997 8-hour ozone standard, in order to reattain the standard. To help correct the violation, Alabama evaluated and subsequently identified nitrogen oxide (NO_x) controls for installation at two facilities in the Birmingham Area. More information on Alabama's analysis is provided below. Additional measures may be necessary in the future; however, these revisions qualify as contingency measures under the requirements of Section 175A(d) of the CAA.

II. Analysis of State Submission

On February 6, 2008, Alabama submitted a SIP revision to EPA for approval to incorporate into the SIP specific contingency measures to help the Birmingham Area attain the 1997 8-hour ozone standard. Specially, the February 6, 2008, submittal provided for controls at Lehigh Cement in Jefferson County and Lafarge Building Materials in Shelby County. After an extensive study in the early 1990s, for ozone formation in the Birmingham Area, Alabama concluded the best focus was on a reduction on NO_x emissions as opposed to Volatile Organic Compounds.

Both the Lehigh Cement facility in Jefferson County and the Lafarge Building Materials facility in Shelby County operate cement kilns that combust coal and utilize low NO_x burners to minimize emissions. The Lehigh kiln is a preheater type kiln while the Lafarge kiln is a preheater/precalciner kiln. NO_x is generated in the kilns during combustion through the oxidation of fuel-bound nitrogen (fuel NO_x) and by the oxidation of atmospheric nitrogen (thermal NO_x). NO_x control can be achieved by minimizing the creation of NO_x in the combustion device (*i.e.*, low NO_x burners) and by the addition of add-on controls. Selective Noncatalytic Reduction (SNCR) is a post-combustion (add-on) technology that was installed, and is based on the chemical reduction of NO_x into molecular nitrogen (N₂) and water vapor (H₂O). A nitrogen based

reducing agent (reagent), such as ammonia or urea, is injected into the post-combustion flue gas. The reduction reactions that occur due to the operation of the SNCR reduce the amount of NO_x emitted into the atmosphere.

Alabama's February 6, 2008, SIP revision requests to include specific provisions into the SIP related to the permits for the Lafarge and Leigh cement kilns. Specifically, Alabama is including the following for incorporation into the SIP, which can be found in Appendix A of the submittal:

Lafarge: Fuel Processing & Handling Cement Kiln & Clinker Cooler Area 300:

Emissions Standards: 15 & 16.

Compliance and Performance Test Methods and Procedures: 10.

Emissions Monitoring: 8, 9, & 10.

Recordkeeping and Reporting Requirements: 8.

Lehigh: Emissions Unit No. 005 = Rotary Kiln

Permit Conditions: 45–48.

The permit conditions for the cement kiln (Emissions Unit No. 5) at Lehigh Cement and the cement kiln at Lafarge were adopted in early 2008 after a public comment period for these revisions. Specifically, the public comment period for the Lafarge permit revisions was September 19 through October 19, 2007. The public comment period for the Lehigh permit revisions was July 23 through August 21, 2007. The revised permits can be found in Appendix A of Alabama's February 6, 2008, SIP revision.

According to ADEM's February 6, 2009 submittal, it is projected that an overall NO_x reduction of 20–25 percent is expected from the two plants as a result of the installation of the SNCR. Specifically, 2009 ozone season NO_x emissions were projected to be approximately 1,149 and 651 tons from Lehigh and Lafarge, respectively. Therefore, it is expected that the installation of the SNCRs should result in an approximate ozone season NO_x reduction of 360–450 tons.

III. Final Action

EPA is taking direct final action to approve specific permit conditions for two cement kilns in the Birmingham Area as implemented contingency measures. The specific conditions were provided to fulfill ADEM's requirement to address a violation of the 1997 8-hour ozone standard for the Birmingham Area. After careful evaluation, EPA has determined that ADEM's submittal meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency

views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on *September 28, 2009* without further notice unless the Agency receives adverse comment by *August 31, 2009*. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on *September 28, 2009* and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves Alabama law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the

proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting

and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. Section 52.50(d), is amended by adding new entries to the table for “Lafarge Cement Kiln” and “Lehigh Cement Kiln” to read as follows:

§ 52.50 Identification of plan.

* * * * *
(d) * * *

EPA-APPROVED ALABAMA SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State submittal date/effective date	EPA approval date	Explanations
Lafarge Cement Kiln	AB70004_1_01	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.
Lehigh Cement Kiln	4-07-0290-03	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.

* * * * *

[FR Doc. E9-18026 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-0296; FRL-8936-6]

Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Air Pollution Control District portion of the California State Implementation Plan

(SIP). These revisions were proposed in the **Federal Register** on June 8, 2009 and concern volatile organic compound (VOC) emissions from organic solvent cleaning and degreasing operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on August 31, 2009.

ADDRESSES: EPA has established docket number EPA-R09-OAR-0296 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in

either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947-4126, Law.Nicole@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 8, 2009 (74 FR 27084), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD	4662	Organic Solvent Degreasing Operations	09/20/07	03/07/08
SJVAPCD	4663	Organic Solvent Cleaning, Storage, and Disposal	09/20/07	03/07/08

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 10, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(354)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(E) San Joaquin Valley Unified Air Pollution Control District

(1) Rule 4662, “Organic Solvent Degreasing Operations,” Adoption April 11, 1991 and amended September 20, 2007

(2) Rule 4663, “Organic Cleaning Storage, and Disposal,” Adoption December 20, 2001 and amended September 20, 2007

* * * * *

[FR Doc. E9-18001 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST-2003-15245]

RIN 2105-AD89

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment reinstates the requirement for direct observation collections for all return-to-duty and follow-up tests. This provision was stayed by the United States Court of Appeals for the District of Columbia Circuit effective November 1, 2008, but that stay was lifted on July 1, 2009. This amendment, therefore, restores language to the version that became a final rule on June 25, 2008.

DATES: *Effective Date:* August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-3784 (voice), (202) 366-3897 (fax), or jim.swart@dot.gov; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, same address, (202) 366-9310 (voice), (202) 366-9313 (fax), or bob.ashby@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a final rule on June 25, 2008 (73 FR 35961) that, among other changes, modified 49 CFR 40.67(b) and added a new paragraph (i) concerning the use of direct observation collections, a very significant tool the Department employs to combat attempts by employees to cheat on their drug tests. The amendment to 49 CFR 40.67(b) required direct observation collections for all return-to-duty and follow-up tests. Section 40.67(i) required that direct observations be conducted so as to allow the observer to check the individual for prosthetic or other cheating devices.

Several petitioners asked the Department to delay the effective date of these two provisions, seek further comment on them, and reconsider them. In response, the Department issued a notice delaying the effective date of 49 CFR 40.67(b)—the provision for making direct observation collections mandatory for all return-to-duty and

follow-up tests—until November 1, 2008 (73 FR 50222; August 26, 2008). We opened a comment period on 49 CFR 40.67(b), which closed on September 25, 2008. The Department did not delay the effective date of 49 CFR 40.67(i), and that provision went into effect, as scheduled, on August 25, 2008.

The Department fully considered the comments filed in the public docket regarding the amendment to 49 CFR 40.67(b). On October 22, 2008, at 73 FR 62910, the Department issued a notice responding to the comments and stated “the Department remains convinced that conducting all return-to-duty and follow-up tests under direct observation is the most prudent course from the viewpoint of safety.” (73 FR 62918) The Department decided not to change the amendment and announced that the revised 49 CFR 40.67(b) would go into effect, as scheduled, on November 1, 2008.

On October 24, 2008, several of the petitioners again requested that the Department further postpone the revised 49 CFR 40.67(b). On October 30, 2008, the Department denied that petition. Several of the petitioners then filed a motion for stay with the United States Court of Appeals for the District of Columbia Circuit. On October 31, 2008, the Court issued a temporary administrative stay to allow more time for the court to consider the request for stay. On November 12, 2008, the court issued a further order to stay the effectiveness of section 40.67(b) (*BNSF Railway Company v. Department of Transportation*, U.S. Court of Appeals for the D.C. Circuit, September Term 2008, No. 08–1265, November 12, 2008). This stay remained in effect until the court issued a decision on the merits of petitioners’ challenge to the provisions of 40.67(b). On November 20, 2008, at 73 FR 70283, in response to the stay, the Department issued a final rule to return to the language of section 40.67(b) that existed prior to June 25 final rule “pending further order of the Court.”

Therefore, direct observation collections for return-to-duty and follow-up testing remained an employer option, rather than mandatory. All other requirements of the June 25, 2008 final rule that went into effect on August 25, 2008, including the direct observation provision at 40.67(i) [directing observers to check for prosthetic and other devices used to carry “clean” urine and urine substitutes] were not affected and have continued in effect.

On May 15, 2009, the United States Court of Appeals for the District of Columbia Circuit unanimously upheld DOT’s direct observation drug testing rules applicable to return-to-duty,

safety-sensitive transportation industry employees who have already failed or refused to take a prior drug test. (*BNSF Railway Company v. Department of Transportation*, 566 F.3d 200 (DC Cir. 2009)). Because there was an opportunity for the parties to seek rehearing of the Court’s ruling, the Court’s stay of the direct observation rule continued in effect. The Court issued a Mandate on July 1, 2009, which finalized the decision, thereby lifting the stay. This document, therefore, reinstates the language of 49 CFR 40.67(b) that the Department originally issued on June 25, 2008, and that would have gone into effect on November 1, 2008, but for the court’s stay.

The Court’s Decision

In its May 15, 2008 decision on the merits of section 40.67, the Court determined that direct observation drug testing for return-to-duty employees was not arbitrary and capricious because the Department had chosen a reasonable way of responding to the compelling governmental interest in transportation safety. The circumstances the Court took into account included the recent development of a wide array of available cheating devices, and the substantial incentive for these return-to-duty employees to use such devices to cheat on required return-to-duty and follow-up drug tests. The Court’s unanimous decision also held that the rules did not violate the Fourth Amendment constitutional prohibition on unreasonable searches and seizures, taking into account, among other factors, the diminished expectation of privacy of employees who have failed or refused a prior drug test.

Administrative Procedure Act Analysis

The Court determined that the Department’s issuance of the revised regulation was not arbitrary and capricious. In reaching this determination, the court noted that the “Department marshaled and carefully considered voluminous evidence of the increasing availability of a variety of products designed to defeat drug tests.” *BNSF Railway Company v. Department of Transportation*, 566 F.3d at 203. Since any successful use of cheating devices would not show up in statistics, the Court agreed with the Department’s reasoning that it was “illogical” to require statistical evidence of cheating. *Id.* In this regard, the Court cited a recent Supreme Court decision, which said that “It is one thing to set aside agency action under the Administrative Procedure Act because of failure to adduce empirical data that can readily be obtained. It is something else to insist

upon obtaining the unobtainable.” *FCC v. Fox Television Stations, Inc.*, No. 07–582, 2009 WL 1118715, at *11 (U.S. Apr. 28, 2009) (citation omitted) *Id.* at 203–204.

The Court stated “the Department’s approach was sound. Acknowledging the intrusiveness of direct observation testing, the Department sought to limit it to situations posing a high risk of cheating * * * and then concluded—reasonably in our view—that returning employees have a heightened incentive to cheat, and that this incentive, coupled with the increased availability of cheating devices, creates such a high risk, * * *.” *Id.* at 204. In reaching its determination that “[s]ubstantial additional evidence supports the Department’s conclusion that returning employees are particularly likely to cheat.” *Id.*, the court relied heavily upon the expertise of the Substance Abuse Professionals (SAPs) who commented upon 49 CFR 40.67(b). “Given the experience possessed by these substance abuse professionals, such assessments provide substantial evidence supporting the Department’s conclusion that returning employees are particularly likely to cheat on drug tests.” *Id.*

In addition to the SAP comments and other evidence it referenced, the Court noted with interest that return-to-duty employees pose a high risk to transportation safety. Specifically, the Court noted with interest that “the Department supplemented its conclusion about returning employees’ motivations with evidence of their actual behavior. To rebut the argument—offered by several commenters and echoed here by petitioners—that returning employees are lower risk because they have successfully completed drug treatment programs, the Department emphasized data showing that ‘the violation rate for return-to-duty and follow-up testing is two to four times higher than that of random testing.’” *Id.* at 205. The Court stated “[w]e can hardly fault the Department for inferring that the reason for higher failure rates is not that returning employees are more honest, but that they are more likely to use drugs. And given that employees who never use drugs are—to say the least—much less likely to cheat on drug tests than those who do, we think it quite reasonable for the Department to see a higher underlying rate of drug use as evidence of a higher risk of cheating.” *Id.*

The Court considered and rejected alternatives proposed by the petitioners, including maintaining the status quo of continuing to allow employers the

option of conducting direct observation collections on return-to-duty employees. The Court supported the Department's determination that employers, concerned about the effects on "labor management agreements" and fearing "upsetting employees," rarely exercise this option. The Court referred to a statement in the amicus brief from the Association of American Railroads that direct observation tests "generate resentment and ill will towards management," as further supporting the Department's conclusion that the status quo was untenable. *Id.*

The Court concluded "the Department acted neither arbitrarily nor capriciously in concluding that the growth of an industry devoted to circumventing drug tests, coupled with returning employees' higher rate of drug use and heightened motivation to cheat, presented an elevated risk of cheating on return-to-duty and follow-up tests that justified the mandatory use of direct observation." *Id.*

Fourth Amendment Analysis

The Court carefully considered whether the Department's final rule struck the appropriate Fourth Amendment balancing of the needs of transportation safety with the reasonableness of the search. The Court stated that the Department's "interest in transportation safety is 'compelling' to say the least." Citing *Skinner*, 489 U.S. at 628, 109 S.Ct. 1402. *BNSF* at 206. Further, the Court recognized that "[g]iven the proliferation of cheating devices, we have little difficulty concluding that direct observation furthers the government's interest in effective drug testing." *Id.* Since employees returning-to-duty can anticipate that they will be subject to more frequent testing, "[a]rmed with such foreknowledge, returning employees can easily obtain and conceal cheating devices, keeping them handy even for unannounced follow-up tests." *Id.* The Court concluded that the Department "has a strong interest in conducting direct observation testing to ensure transportation safety." *Id.*

The Court then turned to the second prong of the Fourth Amendment analysis—the reasonableness of the actual search. "Individuals ordinarily have extremely strong interests in freedom from searches as intrusive as direct observation urine testing. In this case, however, those interests are diminished because the airline, railroad, and other transportation employees subject to direct observation perform safety-sensitive duties in an industry that is 'regulated pervasively to ensure safety.'" *Id.* However, the Court noted

that the Department's direct observation provisions were not structured to apply to all safety-sensitive employees. Only violators and suspected cheaters are affected. "By choosing to violate the Department's perfectly legitimate—and hardly onerous—drug regulations, returning employees have placed themselves in a very different position from their coworkers." *Id.* at 207. Thus, the court stated, "we have little trouble concluding that employees who have intentionally violated a valid drug regulation * * * [would] have less of a legitimate interest in resisting a search intended to prevent future violations of that regulation than do employees who never violated the rule." *Id.* The Court explained, "we think that the employees' prior misconduct is particularly salient, especially compared to their choice to work in a pervasively regulated industry. It's one thing to ask individuals seeking to avoid intrusive testing to forgo a certain career entirely; it's a rather lesser thing to ask them to comply with regulations forbidding drug use." *Id.* at 208. The Court acknowledged that "direct observation is extremely invasive, but that intrusion is mitigated by the fact that employees can avoid it altogether by simply complying with the drug regulations." *Id.*

The Court also took into account that the provision making direct observation optional in return-to-duty and follow-up situations came into effect well before present threats to the integrity of urine testing became known. "[T]hat was before the Whizzinator and its like. Given the proliferation of such cheating devices, here we have a very different record, one that fully supports the Department's finding that standard monitoring procedures are inadequate. We thus conclude that here * * * direct observation testing will 'significantly improve testing accuracy.'" *Id.*

In finding that circumstances necessitated the Department's increased requirements for the scope and nature of direct observation collections, the Court stated, "we recognize the intrusiveness of the partial disrobing requirement, but find it only somewhat more invasive than direct observation, which already requires employees to expose their genitals to some degree. Because of this, and because the Department has permissibly found the requirement necessary to detect certain widely-available prosthetic devices, we conclude that it represents a reasonable procedure for situations posing such a heightened risk of cheating as to justify direct observation in the first place." *Id.*

"[T]he Department has reasonably concluded that the proliferation of

cheating devices makes direct observation necessary to render these drug tests—needed to protect the traveling public from lethal hazards—effective. Weighing these factors, we strike the balance in favor of permitting direct observation testing in these circumstances." *Id.* The court concluded, "[g]iven the combination of the vital importance of transportation safety, the employees' participation in a pervasively regulated industry, their prior violations of the drug regulations, and the ease of obtaining cheating devices capable of defeating standard testing procedures, we find the challenged regulations facially valid under the Fourth Amendment." *Id.*

Collective Bargaining Agreements

We are aware that some employers and labor organizations may have entered into collective bargaining agreements (CBAs) that prohibit or limit the use of direct observation collections in return-to-duty and follow-up testing situations. Employers and employees, of course, do not have the authority to agree to avoid compliance with the requirements of Federal law. When this final rule goes into effect, conducting all follow-up and return-to-duty testing using direct observation collections will be a requirement of Federal law. Employers *must* use direct observation collections for such tests that take place after the effective date of this rule, and any contrary provisions of CBAs in the present or in the future will not be effective.

Conclusion

The Department wants to ensure that employers, employees, collection sites, collectors, Third-Party Administrators and other service agents know about and are fully prepared for mandatory direct observation for follow-up and return-to-duty testing. We view this to be important in light of the fact that there has been a good deal of conflicting information in the transportation and drug testing industries about the requirements and because of the complexities of the various petitions, court actions, and rule changes on the matter.

Regulatory Analyses and Notices

This document simply reinstates, without change, following the dissolution of a court stay, a provision issued as part of a final rule on June 25, 2009. The regulatory analyses and notices set forth in that document (73 FR 35968–69) apply to today's rule.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 24th day of July 2009, at Washington, DC.

Jim L. Swart,

Director, Office of Drug and Alcohol Policy Compliance.

49 CFR Subtitle A—Authority and Issuance

■ For reasons discussed in the preamble, the Department of Transportation is amending part 40 of Title 49 Code of Federal Regulations as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 40 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. Section 40.67 is amended by revising paragraph (b) to read as follows:

§ 40.67 When and how is a directly observed collection conducted?

* * * * *

(b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

[FR Doc. E9-18156 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 090224231-91118-02]

RIN 0648-AX54

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

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

ACTION: Final rule.

SUMMARY: This final rule allows an exemption from the minimum twine-top mesh size for vessels issued Federal scallop permits and fishing exclusively

in State of Maine (ME) waters. In addition, the state waters exemption provides an exemption from scallop days-at-sea (DAS) for limited access DAS scallop vessels, provided the vessel fishes exclusively in ME state waters. The scallop fishery regulations specify that a state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations further state that the Regional Administrator, Northeast Region, NMFS (RA), shall determine which states meet those criteria and shall authorize the exemption for such states by publishing a rule in the **Federal Register**.

DATES: Effective August 31, 2009.

ADDRESSES: Documents supporting this action, including ME's request for the exemption, Amendment 11 to the FMP, and Framework 19 to the FMP, are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Policy Analyst, 978-281-9288; fax 978-281-9135.

SUPPLEMENTARY INFORMATION:**Background**

Amendment 11 to the FMP (Amendment 11), implemented on June 1, 2008 (73 FR 20090, April 14, 2008), includes a comprehensive new management program for the general category scallop fleet. Amendment 11 created a Northern Gulf of Maine Scallop Management Area (NGOM Area) that includes a total allowable catch (TAC), gear restrictions, and a possession limit for the NGOM Area that are more restrictive than previous regulations for the area. Under Amendment 11, NMFS determined that the state waters exemptions for ME, New Hampshire (NH), and Massachusetts (MA), should be suspended, pending submission of additional information from those states regarding their state waters fisheries and the potential effects of allowing state waters exemptions under the Amendment 11 scallop regulations. In response, ME requested a state waters exemption and provided background information on the State's current scallop fishery management measures, the potential state waters scallop fishery, and information regarding potential new measures that the State was developing at the time.

The scallop fishery regulations at § 648.54(c) specify that a state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The regulations further state that the RA shall determine which states meet those criteria and shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

Based on the information submitted, NMFS determined that ME state waters qualify for the state waters exemption program under the FMP. The majority of ME's scallop fishery restrictions are either equally or more restrictive than Federal scallop fishing regulations. The exception is that ME allows vessels to use a minimum mesh size of 5.5-inch (14-cm) twine tops on scallop dredges, while the Federal regulations require a 10-inch (25.4-cm) minimum twine-top mesh size. The state waters exemption therefore allows an exemption from the 10-inch (25.4-cm) minimum twine-top mesh size. In addition, the state waters exemption provides an exemption from scallop DAS for limited access DAS scallop vessels, but does not exempt such vessels from any other Federal restrictions other than the minimum twine-top mesh size as noted above. To fish under the exemption, owners of scallop vessels are required to declare their intent to fish, and the vessel must fish, exclusively in ME state waters, subject to more restrictive state measures, if applicable. Vessels with Federal Incidental Catch scallop permits are still confined to the 40-lb (18-kg) limit under Federal regulations. The target TAC was set at 50,000 lb (22,680 kg) for these vessels based partly on the very low possession limit. Allowing these vessels to harvest more than 40 lb (18 kg) per trip could therefore compromise the TAC.

As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The exemption from the Federal twine-top restriction and DAS has no impact on the effectiveness of Federal management measures for the scallop fishery overall on the NGOM Area because the remainder of ME's scallop fishery regulations are more restrictive and would limit mortality and effort beyond the Federal management program. The twine top minimum mesh size restrictions are designed to help reduce bycatch in the scallop fishery. In particular, larger

twine top mesh size is effective at reducing the bycatch of flatfish, including yellowtail, winter, and summer flounder, in various areas. Exempting vessels in this program from the 10-inch (25.4-cm) twine top mesh size is not expected to increase bycatch or be inconsistent with the Scallop FMP or Magnuson-Sevens Act. The use of 5.5-inch (14-cm) twine top mesh size in the ME fishery is confined to approximately 2 months. The possession limit of 200 lb (91 kg) of scallops in ME's waters also limits overall fishing time. In addition, vessels with Federal scallop permits may decide not to replace the 10-inch (25.4-cm) twine tops for the limited amount of time they might fish in ME state waters. Yellowtail and summer flounder are not common in most of ME state waters, and winter flounder concentrations are primarily offshore during winter months when ME's scallop fishery is open. Low concentrations of these flounder species would limit exposure of these species to the scallop dredge fishing under the exemption. For these reasons, exempting vessels from the 10-inch (25.4-cm) twine top mesh size is consistent with the FMP's overall objectives and National Standard 9 requirement of minimizing bycatch and bycatch mortality to the extent practicable. Compliance with other National Standards is not affected by the exemption since it is fully consistent with the Scallop FMP, which has been determined to be consistent with the Magnuson-Stevens Act, including the National Standards and required provisions.

ME is the only state that has requested an exemption. MA has not requested an exemption, and NH state agency staff worked with staff at the NMFS Northeast Regional Office to determine that new possession limit restrictions in NH state waters alleviated the need for the exemption program in NH waters.

Comments and Responses

Comment: NMFS received one comment on the proposed rule, from ME's Department of Marine Resources (MEDMR). MEDMR requested that the final rule allow vessels with individual fishing quota (IFQ) scallop permits to fish under the ME state waters exemption program without having landings deducted from the vessels' IFQs. MEDMR suggested that this provision is warranted since vessels with limited access scallop permits (i.e., vessels with DAS) would be exempt from DAS if they enroll in the ME state waters exemption program.

Response: Allowing vessels to fish in the state waters exemption without having landings deducted from their IFQ would be inconsistent with the measures in Amendment 11 for the NGOM Area. Moreover, such an exemption is not allowed under the state waters exemption provisions, and it is therefore excluded from the ME state waters exemption.

The regulations for the state waters exemption program only authorize exemptions from DAS restrictions, gear, and possession limits. Inclusion of this provision would have had to be included in Amendment 11 to be considered in this exemption program. In addition, exemption from the IFQ program under the state waters exemption would not be consistent with conservation goals of the FMP. The measures in the NGOM Area were specifically designed to include a disincentive for some IFQ vessels to fish in the NGOM. The NGOM is subject to a very restrictive TAC, and there was concern that, if landings were not counted against a vessel's IFQ, the IFQ vessels would re-direct effort to the NGOM and harvest the NGOM Area TAC before vessels with dedicated NGOM Area permits could catch much of the TAC. The Council debated this issue at length and determined that the landings should count against the IFQ so that a vessel would not be inclined to fish in the NGOM Area just to avoid having landings count against its IFQ. State waters exemptions must be consistent with Federal management measures for the scallop fishery.

Classification

The RA determined that this regulatory amendment is necessary for the conservation and management of the scallop fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 24, 2009.

James W. Balsiger,

Acting Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.54, paragraphs (a), (b), (c), (d), and (g) are revised to read as follows:

§ 648.54 State waters exemption.

(a) *State eligibility for exemption.* (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption,

subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(b) *Limited access scallop vessel exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *Notification requirements.* Vessels fishing under the exemptions specified

in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

* * * * *

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

[FR Doc. E9-18263 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 145

Thursday, July 30, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0052; Directorate Identifier 2008-NE-01-AD]

RIN 2120-AA64

Airworthiness Directives; Engine Components, Inc. (ECi) Reciprocating Engine Cylinder Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, "Parallel Valve" reciprocating engines, with certain Engine Components, Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series "Titan," installed. That AD currently requires initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies at new, reduced times-in-service. This proposed AD would require the same actions, but for an expanded population of cylinder assemblies. This proposed AD results from reports of 10 additional cylinder head separations since issuing AD 2008-19-05, on cylinder serial numbers not listed in that AD. We are proposing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

DATES: We must receive any comments on this proposed AD by September 28, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **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:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

FOR FURTHER INFORMATION CONTACT:

Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: peter.w.hakala@faa.gov; telephone (817) 222-5145; fax (817) 222-5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0052; Directorate Identifier 2008-NE-01-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the

Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2008-19-05, Amendment 39-15672 (73 FR 53105, September 15, 2008). That AD requires initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies, at new reduced times-in-service. That AD was the result of reports of 45 failures with head separations of ECi cylinder assemblies. That condition, if not corrected, could result in loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

Actions Since AD 2008-19-05 Was Issued

Since AD 2008-19-05 was issued, we received reports of 10 additional cylinder head separations, on cylinder serial numbers not listed in that AD. To date, there have been a total of 55 head separations resulting in engine shutdowns and emergency landings in airplanes and helicopters.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies, at new reduced times-in-service. The proposed AD would require:

- Determining if Group “A” or Group “B” ECi cylinder assemblies, P/N AEL65102 series “Titan,” with cylinder head P/N AEL85099, are installed on your engine.

- For any Group “A” cylinder assembly, performing initial and repetitive visual inspections and compression tests, and replacement not later than 2,000 operating hours time-in-service (TIS) or within 25 operating hours TIS if the cylinder assembly exceeds 2,000 operating hours TIS on the effective date of the proposed AD.

- For any Group “A” cylinder assembly installed in a helicopter, performing the same initial and repetitive visual inspections and compression tests, but replacement not later than 1,500 operating hours TIS or within 25 operating hours TIS if the cylinder assembly exceeds 1,500 operating hours TIS on the effective date of the proposed AD.

- Expanding the serial numbers affected of Group “B” cylinder assemblies, and performing the same initial visual inspection and compression test, and replacement not later than 350 operating hours TIS or within 25 operating hours TIS if the cylinder assembly exceeds 350 operating hours TIS on the effective date of the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 18,000 ECi cylinder assemblies installed in aircraft of U.S. registry. The visual inspection and compression tests would take about 4 work-hours for each engine. An individual cylinder replacement would require \$1,100 for parts and 6 work-hours. Lycoming engines with a set of 4 ECi cylinders would require 12 work-hours for the cylinder replacement. Lycoming engines with a set of 6 ECi cylinders would require 16 work-hours for the cylinder replacement. We estimate 18 percent of the affected population of cylinders would be replaced. We estimate the total cost of the AD to U.S. operators to be \$10,172,000. Our estimate is exclusive of any possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15672 (73 FR 53105, September 15, 2008) and by adding a new airworthiness directive to read as follows:

Engine Components, Inc. (ECi): Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 28, 2009.

Affected ADs

(b) This AD supersedes AD 2008–19–05, Amendment 39–15672.

Applicability

(c) If your engine has not been overhauled, or not had any cylinder assemblies replaced since new, no further action is required.

(d) This AD applies to the Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, “Parallel Valve,” reciprocating engines listed in Table 1 of this AD, with ECi cylinder assembly, part number (P/N) AEL65102 series “Titan,” and with cylinder head, P/N AEL85099, installed.

(1) The applicable cylinder assembly serial numbers (SNs) are SN 1138–02 through SN 35171–22, (referred to in this AD as Group “A” cylinder assemblies); and

(2) SN 35239–01 through SN 42179–30 (referred to in this AD as Group “B” cylinder assemblies).

(3) The cylinder assembly P/N is at the crankcase end of the cylinder assembly, and might be difficult to see. As a guide in determining if your cylinder assemblies are affected, all affected cylinder assemblies have cylinder head P/N AEL85099. The cylinder head P/N is at the top of the cylinder head, near the intake and exhaust valve springs, and is easier to locate than the cylinder assembly P/N.

(4) The set of numbers appearing on the cylinder, above and to the left of the SN, in the form of “123456” is not used for determining applicability.

TABLE 1—ENGINE MODELS

Cylinder assembly part number	Installed on engine models
AEL65102–NST04	O–320–A1B, A2B, A2C, A2D, A3A, A3B, B2B, B2C, B2D, B2E, B3B, B3C, C2B, C2C, C3B, C3C, D1A, D1AD, D1B, D1C, D1D, D1F, D2A, D2B, D2C, D2F, D2G, D2H, D2J, D3G, E1A, E1B, E1C, E1F, E1J, E2A, E2B, E2C, E2D, E2E, E2F, E2G, E2H, E3D, E3H. IO–320–A1A, A2A, B1A, B1B, B1C, B1D, B1E, B2A, D1A, D1AD, D1B, D1C, E1A, E1B, E2A, E2B. AEIO–320–D1B, D2B, E1A, E1B, E2A, E2B.

TABLE 1—ENGINE MODELS—Continued

Cylinder assembly part number	Installed on engine models
AEL65102-NST05	AIO-320-A1A, A1B, A2A, A2B, B1B, C1B. LIO-320-B1A.
AEL65102-NST06	IO-320-C1A, C1B, C1F, F1A. LIO-320-C1A. O-320-A1A, A2A, A2B, A2C, A3A, A3B, A3C, E1A, E1B, E2A, E2C, (also, an O-320 model with no suffix).
AEL65102-NST07	IO-320-A1A, A2A. IO-320-B1A, B1B. LIO-320-B1A.
AEL65102-NST08	O-320-B1A, B1B, B2A, B2B, B3A, B3B, B3C, C1A, C1B, C2A, C2B, C3A, C3B, C3C, D1A, D1B, D2A, D2B, D2C.
AEL65102-NST10	O-360-A1A, A1C, A1D, A2A, A2E, A3A, A3D, A4A, B1A, B1B, B2A, B2B, C1A, C1C, C1G, C2A, C2B, C2C, C2D, D1A, D2A, D2B. IO-360-B1A, B1B, B1C. HO-360-A1A, B1A, B1B. HIO-360-B1A, B1B. AEIO-360-B1B.
AEL65102-NST12	O-540-A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B1A5, B1B5, B1D5, B2A5, B2B5, B2C5, B4A5, B4B5, D1A5, E1A, E4A5, E4B5, E4C5, F1A5, F1B5, G1A5, G2A5. IO-540-C1B5, C1C5, C2C, C4B5, C4B5D, C4C5, D4A5, D4B5, N1A5. O-360-A1A, A1AD, A1D, A1F, A1F6, A1F6D, A1G, A1G6, A1G6D, A1H, A1H6, A1J, A1LD, A1P, A2A, A2D, A2F, A2G, A2H, A3A, A3AD, A3D, A4A, A4AD, A4D, A4G, A4J, A4JD, A4K, A4M, A4N, A4P, A5AD, B1A, B2C, C1A, C1C, C1E, C1F, C1G, C2A, C2B, C2C, C2D, C2E, C4F, C4P, D2A, F1A6, G1A6. HO-360-C1A. LO-360-A1G6D, A1H6. HIO-360-B1A, B1B, G1A. LTO-360-A1A6D. TO-360-A1A6D. IO-360-B1B, B1BD, B1D, B1E, B1F, B1F6, B1G6, B2E, B2F, B2F6, B4A, E1A, L2A, M1A, M1B. AEIO-360-B1B, B1D, B1E, B1F, B1F6, B1G6, B1H, B2F, B2F6, B4A, H1A, H1B. O-540-A4D5, B2B5, B2C5, B2C5D, B4B5, B4B5D, E4A5, E4B5, E4C5, G1A5, G2A5, H1A5, H1A5D, H1B5, H1B5D, H2A5, H2A5D, H2B5D. IO-540-C4B5, C4B5D, C4D5, C4D5D, D4A5, D4B5, D4C5, N1A5, N1A5D, T4A5D, T4B5, T4B5D, T4C5D, V4A5, V4A5D. AEIO-540-D4A5, D4B5, D4C5, D4D5.
AEL65102-NST26	IO-540-J4A5, R1A5. TIO-540-C1A, E1A, G1A, H1A.
AEL65102-NST38	IO-360-F1A. TIO-540-AA1AD, AB1AD, AB1BD, AF1A, AG1A, AK1A, C1A, C1AD, K1AD. LTIO-540-K1AD.
AEL65102-NST43	O-360-J2A. O-540-F1B5, J1A5D, J1B5D, J1C5D, J1D5D, J2A5D, J2B5D, J2C5D, J2D5D, J3A5, J3A5D, J3C5D.
AEL65102-NST44	IO-540-AB1A5, W1A5, W1A5D, W3A5D. O-540-L3C5D.

The Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, “Parallel Valve”, reciprocating engines are installed on, but not limited to, the aircraft listed in the following Table 2:

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO

Engine models	Installed on, but not limited to
O-320-A1A	Piper Aircraft: Tri-Pacer (PA-22 “150”, PA-22S “150”), Apache (PA-23), Pawnee (PA-25). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Mooney Aircraft: Mark (20A). Dinfia: Ranquel (1A-46). Simmering-Graz Pauker: Flamingo (SGP-M-222). Aviamilano: Scricciolo (P-19). Vos Helicopter Co.: Spring Bok.
O-320-A1B	Piper Aircraft: Tri-Pacer (PA-22 “150”, PA-22S “150”), Apache (PA-23). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). S.O.C.A.T.A.: Horizon (Gardan).
O-320-A2A	Piper Aircraft: Tri-Pacer (PA-22 “150”, PA-22S “150”), Agriculture (PA-18A “150”), Super Cub (PA-18 “150”), Caribbean (PA-22 “150”), Pawnee (PA-25). Intermountain Mfg. Co.: Call Air Texas (A-5, A-5T). Lake Aircraft: Colonial (C-1). Rawdon Bros.: Rawdon (T-1, T-15, T-15D). Shinn Engineering: Shinn (2150-A).

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
	Dinfia: Ranquel (1A-46). Neiva: (1PD-5802). Sud: Gardan-Horizon (GY-80). LaVerda: Falco (F8L Series II, America). Malmo: Vipan (MF1-10). Kingsford Smith: Autocrat (SCRM-153). Aero Commander: 100.
O-320-A2B	Piper Aircraft: Tri-Pacer (PA-22 "150", PA-22S "150"), Cherokee (PA-28 "150"), Super Cub (PA-18 "150"). Champion Aircraft: Challenger (7GCA, 7GCB, 7KC), Citabria (7GCAA, 7GCRC), Agriculture (7GCBA). Beagle: Pup (150). Artic: Interstate S1B2. Robinson: R-22. Varga: Kachina 2150A.
O-320-A2C	Robinson: R-22. Cicare: Cicare AG. Bellanca Aircraft: Citabria 150 (7GCAA), Citabria 150S (7GCBC).
O-320-A2D	Piper Aircraft: Apache (PA-23).
O-320-A3A	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Corben-Fettes: Globe Special (Globe GC-1B).
O-320-A3B	Piper Aircraft: Apache (PA-23). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Teal II: TSC (1A2).
O-320-B1A	Piper Aircraft: Apache (PA-23 "160"). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Malmo: Vipan (MF1-10).
O-320-B1B	Piper Aircraft: Apache (PA-23 "160"). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O-320-B2A	Piper Aircraft: Tri-Pacer (PA-22 "160", PA-22S "160").
O-320-B2B	Piper Aircraft: Tri-Pacer (PA-22 "160", PA-22S "160"). Beagle: Airedale (D5-160). Fuji-Heavy Industries: Fuji (F-200). Uirapuru: Aerotec 122.
O-320-B2C	Robinson: R-22.
O-320-B2D	Maule: MX-7-160.
O-320-B2E	Lycon.
O-320-B3A	Piper Aircraft: Apache (PA-23 "160"). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O-320-B3B	Piper Aircraft: Apache (PA-23 "160"). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Sud: Gardan (GY80-160).
O-320-C1A	Piper Aircraft: Apache (PA-23 "160"). Riley Aircraft: Rayjay (Apache).
O-320-C1B	Piper Aircraft: Apache (PA-23 "160").
O-320-C3A	Piper Aircraft: Apache (PA-23 "160").
O-320-C3B	Piper Aircraft: Apache (PA-23 "160").
O-320-D1A	Sud: Gardan (GY-80). Gyroflug: Speed Cancard. Grob: G115.
O-320-D1F	Slingsby: T67 Firefly.
O-320-D2A	Piper Aircraft: Cherokee (PA-28S "160"). Robin: Major (DR400-140B), Chevalier (DR-360), (R-3140). S.O.C.A.T.A.: Tampico TB9. Slingsby: T67C Firefly. Daetwyler: MD-3-160. Nash Aircraft Ltd.: Petrel. Aviolight: P66D Delta. General Avia: Pinguino.
O-320-D2B	Beech Aircraft: Musketeer (M-23). Piper Aircraft: Cherokee (PA-28 "160").
O-320-D2J	Cessna Aircraft: Skyhawk 172.
O-320-D3G	Piper Aircraft: Warrior II, Cadet (PA-28-161).
O-320-E1A	Grob: G115.
O-320-E1C	M.B.B. (Messerschmitt-Boelkow-Blohm): Monsun (BO-209-B).
O-320-E1F	M.B.B.: Monsun (BO-209-B).
O-320-E2A	Piper Aircraft: Cherokee (PA-28 "140", PA-28 "150"). Robin: Major (DR-340), Sitar, Bagheera (GY-100-135). S.O.C.A.T.A.: Super Rallye (MS-886), Rallye Commodore (MS-892). Siai-Marchetti: (S-202). F.F.A.: Bravo (AS-202/15). Partenavia: Oscar (P66B), Bucker (131 APM). Aeromot: Paulistina P-56.

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
O-320-E2C	Pezetel: Koliber 150. Beech Aircraft: Musketeer III (M-23III). M.B.B.: Monsun (BO-209-B).
O-320-E2D	Cessna Aircraft: Cardinal (172-I, 177).
O-320-E2F	M.B.B.: Monsun (BO-209-B), Wassmer Pacific (WA-51).
O-320-E2G	American Aviation Corp.: Traveler.
O-320-E3D	Piper Aircraft: Cherokee (140). Beech Aircraft: Sport.
IO-320-B2A	Piper Aircraft: Twin Comanche (PA-30).
IO-320-B1C	Hi. Shear: Wing.
IO-320-B1D	Ted Smith Aircraft: Aerostar.
IO-320-C1A	Piper Aircraft: Twin Comanche (PA-30 Turbo).
IO-320-D1A	M.B.B.: Monsun (BO-209-C).
IO-320-D1B	M.B.B.: Monsun (BO-209-C).
IO-320-E1A	M.B.B.: Monsun (BO-209-C).
IO-320-E1B	Bellanca Aircraft.
IO-320-E2A	Champion Aircraft: Citabria.
IO-320-E2B	Bellanca Aircraft.
IO-320-F1A	CAAR Engineering: Carr Midget.
LIO-320-B1A	Piper Aircraft: Twin Comanche (PA-39).
LIO-320-C1A	Piper Aircraft: Twin Comanche (PA-39).
AIO-320-B1B	M.B.B.: Monsun (BO-209-C).
AEIO-320-D1B	Slingsby: T67M Firefly.
AEIO-320-D2B	Hindustan Aeronautics Ltd.: HT-2.
AEIO-320-E1A	Bellanca Aircraft. Champion Aircraft.
AEIO-320-E1B	Bellanca Aircraft.
AEIO-320-E2B	Champion Aircraft: Decathlon (8KCAB-CS). Bellanca Aircraft.
O-320-A1A	Champion Aircraft: Decathlon (8KCAB). Riley Aircraft: Riley Twin.
O-360-A1A	Beech Aircraft: Travel Air (95, B-95). Piper Aircraft: Comanche (PA-24). Intermountain Mfg. Co.: Call Air (A-6). Lake Aircraft: Colonial (C-2, LA-4, 4A or 4P). Doyn Aircraft: Doyn-Cessna (170B, 172, 172A, 172B). Mooney Aircraft: Mark "20B" (M-20B). Earl Horton: Pawnee (Piper PA-25). Dinfia: Ranquel (1A-51). Neiva: (1PD-5901). Regente: (N-591). Wassmer: Super 4 (WA-50A), Sancy (WA-40), Baladou (WA-40), Pariou (WA-40). Sud: Gardan (GY-180). Boelkow: (207). Partenavia: Oscar (P-66). Siai-Marchetti: (S-205). Procaer: Picchio (F-15-A). S.A.A.B.: Safir (91-D). Malmo: Vipar (MF-10B). Aero Boero: AB-180. Beagle: Airedale (A-109). DeHavilland: Drover (DHA-3MK3). Kingsford-Smith: Bushmaster (J5-6). Aero Engine Service Ltd.: Victa (R-2). S.O.C.A.T.A.: Tabago TB-10.
O-360-A1AD	Piper Aircraft: Comanche (PA-24).
O-360-A1D	Lake Aircraft: Colonial (LA-4, 4A or 4P). Doyn Aircraft: Doyn-Beech (Beech 95). Mooney Aircraft: Master "21" (M-20E), Mark "20B", "20D", (M20B, M20C), Mooney Statesman (M-20G). Dinfia: Querandi (1A-45). Wassmer: (WA-50). Malmo: Vipar (MF1-10). Cessna Aircraft: Skyhawk. Doyn Aircraft: Doyn-Piper (PA-23 "160"). Cessna Aircraft: Cardinal. Cessna Aircraft: Cardinal 177.
O-360-A1F6	Teal III: TSC (1A3).
O-360-A1F6D	Aero Commander.
O-360-A1G6	Beech Aircraft: Duchess 76.
O-360-A1H6	Piper Aircraft: Seminole (PA-44).
O-360-A1LD	Wassmer: Europa WA-52.
O-360-A1P	Aviat: Husky.

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
O-360-A2A	Center Est Aeronautique: Regente (DR-253). S.O.C.A.T.A.: Rallye Commodore (MS-893). Societe Aeronautique Normande: Mousquetaire (D-140). Boelkow: Klemm (K1-107C). Partenavia: Oscar (P-66). Beagle: Husky (D5-180) (J1-U).
O-360-A2D	Piper Aircraft: Comanche (PA-24), Cherokee "C" (PA-28 "180"). Mooney Aircraft: Master "21" (M-20D), Mark "21" (M-20E).
O-360-A2E	Std. Helicopter.
O-360-A2F	Aero Commander: Lark (100). Cessna Aircraft: Cardinal.
O-360-A2G	Beech Aircraft: Sport.
O-360-A3A	C.A.A.R.P.S.A.N.: (M-23III). Societe Aeronautique Normande: Jodel (D-140C). Robin: Regent (DR400/180), Remorqueur (DR400/180R), R-3170. S.O.C.A.T.A.: Rallye 180GT, Sportavia Sportsman (RS-180). Norman Aeroplance Co.: NAC-1 Freelance. Nash Aircraft Ltd.: Petrel.
O-360-A3AD	S.O.C.A.T.A.: TB-10. Robin: Aiglon (R-1180T).
O-360-A4A	Piper Aircraft: Cherokee "D" (PA-28 "180").
O-360-A4D	Varga: Kachina.
O-360-A4G	Beech Aircraft: Musketeer Custom III.
O-360-A4K	Grumman American: Tiger. Beech Aircraft: Sundowner 180.
O-360-A4M	Piper Aircraft: Archer II (PA-28 "18"). Valmet: PIK-23.
O-360-A4N	Cessna Aircraft: 172 (Optional).
O-360-A4P	Penn Yan: Super Cub Conversion.
O-360-A5AD	C. Itoh and Co.: Fuji FA-200.
O-360-B2C	Seabird Aviation: SB7L.
O-360-C1A	Intermountain Mfg. Co.: Call Air (A-6).
O-360-C1E	Bellanca Aircraft: Scout (8GCBC-CS).
O-360-C1F	Maule: Star Rocket MX-7-180.
O-360-C1G	Christen: Husky (A-1).
O-360-C2B	Hughes Tool Co.: (269A).
O-360-C2D	Hughes Tool Co.: (269A).
O-360-C2E	Hughes Tool Co.: (YHO-2HU) Military. Bellanca Aircraft: Scout (8GCBC FP).
O-360-C4F	Maule: MX-7-180A.
O-360-C4P	Penn Yan: Super Cub Conversion.
O-360-F1A6	Cessna Aircraft: Cutlass RG.
O-360-J2A	Robinson: R22.
IO-360-B1A	Beech Aircraft: Travel-Air (B-95A). Doyn Aircraft: Doyn-Piper (PA-23 "200").
IO-360-B1B	Beech Aircraft: Travel-Air (B-95B). Doyn Aircraft: Doyn-Piper (PA-23 "200"). Fuji: (FA-200).
IO-360-B1D	United Consultants: See-Bee.
IO-360-B1E	Piper Aircraft: Arrow (PA-28 "180R").
IO-360-B1F	Utva: 75.
IO-360-B2E	C.A.A.R.P. C.A.P. (10).
IO-360-B1F6	Great Lakes: Trainer.
IO-360-B1G6	American Blimp: Spector 42.
IO-360-B2F6	Great Lakes: Trainer.
LO-360-A1G6D	Beech Aircraft: Duchess.
LO-360-A1H6	Piper Aircraft: Seminole (PA-44).
IO-360-E1A	T.R. Smith Aircraft: Aerostar.
IO-360-L2A	Cessna Aircraft: Skyhawk C-172.
IO-360-M1A	Diamond Aircraft: DA-40.
IO-360-M1B	Vans Aircraft: RV6, RV7, RV8. Lancair: 360.
AEIO-360-B1F	F.F.A.: Bravo (200). Grob: G115/Sport-Acro.
AEIO-360-B1G6	Great Lakes.
AEIO-360-B2F	Mundry: CAP-10.
AEIO-360-B4A	Pitts: S-1S.
AEIO-360-H1A	Bellanca Aircraft: Super Decathalon (8KCAB-180).
AEIO-360-H1B	American Champion: Super Decathalon.
VO-360-A1A	Brantly Hynes Helicopter: (B-2).
VO-360-A1B	Brantly Hynes Helicopter: (B-2, B2-A). Military (YHO-3BR).
VO-360-B1A	Brantly Hynes Helicopter: (B-2, B2-A).

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
IVO-360-A1A	Brantly Hynes Helicopter: (B2-B).
HO-360-B1A	Hughes Tool Co.: (269A).
HO-360-B1B	Hughes Tool Co.: (269A).
HO-360-C1A	Schweizer: (300C).
HIO-360-B1A	Hughes Tool Co.: Military (269-A-1), (TH-55A).
HIO-360-B1B	Hughes Tool Co.: (269A).
HIO-360-G1A	Schweizer: (CB).
O-540-A1A	Rhein-Flugzeugbau: (RF-1).
O-540-A1A5	Piper Aircraft: Comanche (PA-24 "180"). Helio: Military (H-250).
	Yoeman Aviation: (YA-1).
O-540-A1B5	Piper Aircraft: Aztec (PA-23 "250"), Comanche (PA-24 "250").
O-540-A1C5	Piper Aircraft: Comanche (PA-24 "250").
O-540-A1D	Found Bros.: (FBA-2C).
	Dornier: (DO-28-B1).
O-540-A1D5	Piper Aircraft: Aztec (PA-23 "250"), Comanche (PA-24 "250"), Military Aztec (U-11A).
	Dornier: (DO-28).
O-540-A2B	Aero Commander: (500).
	Mid-States Mfg. Co.: Twin Courier (H-500), (U-5).
O-540-A3D5	Piper Aircraft: Navy Aztec (PA-23 "250").
O-540-B1A5	Piper Aircraft: Apache (PA-23 "235").
O-540-B1B5	Piper Aircraft: Comanche (PA-24 "250").
	Doyn Aircraft: Doyn-Piper (PA-24 "250").
O-540-B1D5	Wassmer: (WA-421).
O-540-B2B5	Piper Aircraft: Pawnee (PA-25 "235"), Cherokee (PA-28 "235"), Aztec (PA-23 "235").
	Intermountain Mfg. Co.: Call Air (A-9).
	Rawdon Bros.: Rawdon (T-1).
	S.O.C.A.T.A.: Rallye 235CA.
O-540-B2C5	Piper Aircraft: Pawnee (PA-25 "235").
O-540-B4B5	Piper Aircraft: Cherokee (PA-28 "235").
	Embraer: Corioca (EMB-710).
	S.O.C.A.T.A.: Rallye 235GT, Rallye 235C.
	Maule: Star Rocket (MX-7-235), Super Rocket (M-6-235), Super Std. Rocket (M-7-235).
O-540-E4A5	Piper Aircraft: Comanche (PA-24 "260").
	Aviamilano: Flamingo (F-250).
	Siai-Marchetti: (SF-260), (SF-208).
O-540-E4B5	Britten-Norman: (BN-2).
	Piper Aircraft: Cherokee Six (PA-32 "260").
O-540-E4C5	Pilatus Britten-Norman: Islander (BN-2A-26), Islander (BN-2A-27), Islander II (BN-2B-26), Islander (BN-2A-21), Trislander (BN-2A-Mark III-2).
O-540-F1B5	Omega Aircraft: (BS-12D1).
	Robinson: (R-44).
O-540-G1A5	Piper Aircraft: Pawnee (PA-25 "260").
O-540-H1B5D	Aero Boero: 260.
O-540-H2A5	Embraer: Impanema "AG".
	Gippsland: GA-200.
O-540-H2B5D	Aero Boero: 260.
O-540-J1A5D	Maule: Star Rocket (MX-7-235), Super Rocket (M-6-235), Super Std. Rocket (M-7-235).
O-540-J3A5	Robin: R-3000/235.
O-540-J3A5D	Piper Aircraft: Dakota (PA-28-236).
O-540-J3C5D	Cessna Aircraft: Skylane RG.
O-540-L3C5D	Cessna Aircraft: TR-182, Turbo Skylane RG.
IO-540-C1B5	Piper Aircraft: Aztec B (PA-23 "250"), Comanche (PA-24 "250").
IO-540-C1C5	Riley Aircraft: Turbo-Rocket.
IO-540-C4B5	Piper Aircraft: Aztec C (PA-23 "250"), Aztec F.
	Wassmer: (WA4-21).
	Avions Pierre Robin: (HR100/250).
	Bellanca Aircraft: Aries T-250.
	Aerofab: Renegade 250.
IO-540-C4D5	S.O.C.A.T.A.: TB-20.
IO-540-C4D5D	S.O.C.A.T.A.: Trinidad TB-20.
IO-540-D4A5	Piper Aircraft: Comanche (PA-24 "260").
	Siai-Marchetti: (SF-260).
IO-540-D4B5	Cerva: (CE-43 Guepard).
IO-540-J4A5	Piper Aircraft: Aztec (PA-23 "250").
IO-540-R1A5	Piper Aircraft: Comanche (PA-24).
IO-540-T4A5D	General Aviation: Model 114.
IO-540-T4B5	Commander: 114B.
IO-540-T4B5D	Rockwell: 114.
IO-540-T4C5D	Lake Aircraft: Seawolf.
IO-540-V4A5	Maule: MT-7-260, M-7-260.
	Aircraft Manufacturing Factory.

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
IO-540-V4A5D	Brooklands: Scoutmaster.
IO-540-W1A5	Maule: MX-7-235, MT-7-235, M7-235.
IO-540-W1A5D	Maule: Star Rocket (MX-7-235), Super Rocket (M-6-235), Super Std. Rocket (M-7-235).
IO-540-W3A5D	Schweizer: Power Glider.
AEIO-540-D4A5	Christen: Pitts (S-2S), (S-2B).
	Siai-Marchetti: SF-260.
	H.A.L.: HPT-32.
	Slingsby: Firefly T3A.
AEIO-540-D4B5	Moravan: Zlin-50L.
	H.A.L.: HPT-32.
	Burkhart Grob: Grob G, 115T Aero.
AEIO-540-D4D5	Piper Aircraft: Turbo Aztec (PA-23-250).
TIO-540-C1A	Piper Aircraft.
TIO-540-K1AD	Aerofab Inc.: Turbo Renegade (270).
TIO-540-AA1AD	S.O.C.A.T.A.: Trinidad TC TB-21.
TIO-540-AB1AD	Schweizer.
TIO-540-AB1BD	Mooney Aircraft: "TLS" M20M.
TIO-540-AF1A	Commander Aircraft: 114TC.
TIO-540-AG1A	Cessna Aircraft: Turbo Skylane T182T.
TIO-540-AK1A	Piper Aircraft.
LTIO-540-K1AD	

Unsafe Condition

(e) This AD results from reports of 10 additional cylinder head separations since issuing AD 2008-19-05, on cylinder serial numbers not listed in that AD. We are issuing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

Compliance

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

Engines Overhauled or Cylinder Assemblies Replaced Since New

(g) If your engine was overhauled or had a cylinder assembly replaced since new, do the following:

(1) Before further flight, inspect the maintenance records and engine logbook to determine if the overhaul or repair facility used ECI cylinder assemblies, P/N AEL65102, with cylinder head, PN AEL85099, with a SN 1138-02 through SN 35171-22, or a SN 35239-01 through SN 42179-30, installed.

(2) If the cylinder assemblies are not ECI, P/N AEL65102, no further action is required.

(3) If the cylinder assemblies are ECI, P/N AEL65102, and if the SN is not listed in this AD, no further action is required.

(4) If the cylinder assemblies are ECI, P/N AEL65102, and if the SN is listed in this AD, do the following:

Group "A" Cylinder Assemblies

(i) For Group "A" cylinder assemblies:
 (A) Perform an initial visual inspection as specified in paragraphs (h) through (i) of this AD, and an initial compression test as specified in paragraphs (j) through (n) of this AD, within the next 10 operating hours time-in-service (TIS), if the cylinder assembly has 350 or more operating hours TIS on the

effective date of this AD, but fewer than 2,000 operating hours TIS.

(B) Perform an initial visual inspection as specified in paragraphs (h) through (i) of this AD, and an initial compression test as specified in paragraphs (j) through (n) of this AD, within the next 10 operating hours TIS, or before exceeding 350 operating hours TIS, whichever occurs later, if the cylinder assembly has fewer than 350 operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies installed in helicopter engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 1,500 operating hours TIS or more on the effective date of this AD.

(D) Replace cylinder assemblies installed in airplane engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 2,000 operating hours TIS or more on the effective date of this AD.

(E) Perform repetitive visual inspections as specified in paragraphs (h) through (i) of this AD, and repetitive compression tests as specified in paragraphs (j) through (n) of this AD, within every 50 operating hours TIS.

(F) Replace cylinder assemblies installed in helicopter engines that pass the visual inspections and compression tests, no later than 1,500 operating hours TIS after the effective date of this AD.

(G) Replace cylinder assemblies installed in airplane engines that pass the visual inspections and compression tests, no later than 2,000 operating hours TIS after the effective date of this AD.

Group "B" Cylinder Assemblies

(ii) For Group "B" cylinder assemblies:
 (A) Perform an initial visual inspection as specified in paragraphs (h) through (i) of this AD, and initial compression test as specified in paragraphs (j) through (n) of this AD, within the next 10 operating hours TIS.

(B) Replace the cylinder assembly within the next 25 operating hours TIS after the effective date of this AD if the cylinder

assembly has 350 or more operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies that pass the initial visual inspections and compression tests, before exceeding 350 operating hours TIS after the effective date of this AD.

Visual Inspection

(h) Visually inspect each cylinder head around the exhaust valve side for cracks or any signs of black or white residue of combustion leakage from cracks.

(i) Replace cracked cylinder assemblies before further flight.

Cylinder Assembly Compression Test

(j) Perform a standard cylinder differential compression test.

(k) During the compression test, if the cylinder pressure gauge reads below 70 pounds-per-square-inch, apply a water and soap solution to the side of the leaking cylinder, near the head-to-barrel interface.

(l) Replace the cylinder assembly before further flight if air leakage and bubbles are observed on the side of the cylinder assembly, near the head-to-barrel interface.

(m) Repair or replace the engine cylinder assembly before further flight if the cause of the low gauge reading in paragraph (l) of this AD is from leaking intake or exhaust valves, or from leaking piston rings.

Prohibition of ECI Cylinder Assemblies Affected by This AD

(n) After the effective date of this AD, do not install any ECI cylinder assembly, P/N AEL65102, with cylinder head, P/N AEL85099, and with SN 1138-02 through SN 35171-22, or SN 35239-01 through SN 42179-30, onto any engine, and do not attempt to repair or reuse these ECI cylinder assemblies.

Alternative Methods of Compliance

(o) The Manager, Special Certification Office, has the authority to approve alternative methods of compliance for this

AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(p) Under 14 CFR part 39.23, we will not approve special flight permits for this AD for engines that have failed the visual inspection or the cylinder assembly compression test required by this AD.

Related Information

(q) Contact Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: peter.w.hakala@faa.gov; telephone (817) 222-5145; fax (817) 222-5785, for more information about this AD.

Issued in Burlington, Massachusetts, on July 21, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9-18118 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0658; Directorate Identifier 2009-NM-058-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F Airplanes; and McDonnell Douglas Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F airplanes; and McDonnell Douglas Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes. The existing AD currently requires repetitive inspections for cracks of the main landing gear (MLG) shock strut cylinder, and related investigative and corrective actions if necessary. This proposed AD would add more work on airplanes that have main landing gear shock struts with certain identified part numbers. This proposed AD results from two reports of a collapsed MLG and a report of cracks in two MLG cylinders. We are proposing this AD to detect and correct fatigue cracks in the shock strut cylinder of the MLG, which

could result in a collapsed MLG during takeoff or landing, and possible reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by September 14, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail dse.boecom@boeing.com; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5324; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0658; Directorate Identifier 2009-NM-058-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On September 7, 2005, we issued AD 2005-19-08, amendment 39-14273 (70 FR 54616, September 16, 2005), for all McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F airplanes; and McDonnell Douglas Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes. That AD requires repetitive inspections for cracks of the main landing gear (MLG) shock strut cylinder, and related investigative and corrective actions if necessary. That AD resulted from two reports of a collapsed MLG and a report of cracks in two MLG cylinders. We issued that AD to detect and correct fatigue cracks in the shock strut cylinder of the MLG, which could result in a collapsed MLG during takeoff or landing, and possible reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005-19-08, the manufacturer revised the service information referenced in that AD, *i.e.*, Boeing Alert Service Bulletin DC9-32A350, Revision 1, dated August 3, 2005, to add more work on airplanes that have shock struts with part numbers 5924400-505 and 5924400-506.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC9-32A350, Revision 2, dated March 20, 2009, which specifies that shock struts having part numbers 5924400-505 and 5924400-506 must be included with those struts that require repetitive non-destructive testing inspections. The remaining actions are otherwise unchanged.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe

condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2005-19-08 and would retain its requirements. This proposed AD would

also require accomplishing the actions specified for the additional shock struts.

Costs of Compliance

There are about 644 airplanes of the affected design in the worldwide fleet.

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	4 to 6	\$80	None	\$320 to \$480 per inspection cycle.	426	\$136,320 to \$204,480 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39-14273 (70 FR 54616, September 16, 2005) and adding the following new AD:

McDonnell Douglas: Docket No. FAA-2009-0658; Directorate Identifier 2009-NM-058-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 14, 2009.

Affected ADs

(b) This AD supersedes AD 2005-19-08.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F airplanes; Model DC-9-21 airplanes; Model DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-33F, DC-9-34, DC-9-34F, and DC-9-32F (C-9A, C-9B) airplanes; Model DC-9-41 airplanes; and Model DC-9-51 airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Unsafe Condition

(e) This AD results from two reports of a collapsed main landing gear (MLG) and a

report of cracks in two MLG cylinders. We are issuing this AD to detect and correct fatigue cracks in the shock strut cylinder of the MLG, which could result in a collapsed MLG during takeoff or landing, and possible reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2005-19-08 with Revised Service Information:

Records Review

(g) Except as required by paragraph (m) of this AD, before the applicable compliance time specified in paragraph (h) or Table 1 of this AD, as applicable, do the applicable actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) For all airplane groups: Review the airplane maintenance records of the MLG to determine its service history and the number of landings on the MLG shock strut cylinder.

(2) For Group 3 airplanes identified in the service bulletin: Review the maintenance records to determine if the MLG cylinder on each Group 3 airplane has always been on a Group 3 airplane, and do the actions in paragraph (k) of this AD.

Inspection

(h) Inspect the MLG shock strut cylinders for cracks using the Option 1 or Option 2 non-destructive testing inspection described in Boeing Alert Service Bulletin DC9-32A350, Revision 1, dated August 3, 2005; or Revision 2, dated March 20, 2009, except as required by paragraph (m) of this AD. Inspect in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC9-32A350, Revision 1, dated August 3, 2005; or Revision 2, dated March 20, 2009; except as required by paragraph (m) of this AD. After the effective date of this AD, use only Boeing Alert Service Bulletin DC9-32A350, Revision 2, dated March 20, 2009. Do the detailed inspection before the accumulation of 60,000 total landings on the MLG, or at the applicable grace period specified in Table 1 of this AD, whichever occurs later, except as required by paragraph (m) of this AD, and except as provided by paragraph (k) of this AD. If the review of maintenance records is not sufficient to conclusively determine the service history

and number of landings on the MLG shock strut cylinder, perform the initial inspection at the applicable grace period specified in Table 1 of this AD.

TABLE 1—THRESHOLD AND REPETITIVE INTERVAL

Airplanes identified in the service bulletin as group	Threshold	Repetitive interval
1	Within 18 months or 650 landings after October 21, 2005 (the effective date of AD 2005–19–08), whichever occurs first.	Intervals not to exceed 650 landings.
2	Within 18 months or 500 landings after October 21, 2005, whichever occurs first.	Intervals not to exceed 500 landings.
3, except as provided by paragraph (k) of this AD.	Within 18 months or 2,500 landings after October 21, 2005, whichever occurs first.	Intervals not to exceed 2,500 landings.
4	Within 18 months or 2,100 landings after October 21, 2005, whichever occurs first.	Intervals not to exceed 2,100 landings.

No Indication of Cracking Is Found

(i) If no indication of cracking is found during the inspection required by paragraph (h) of this AD, repeat the inspection in accordance with Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005; or Boeing Alert Service Bulletin DC9–32A350, Revision 2, dated March 20, 2009; at the applicable interval specified in Table 1 of this AD, except as required by paragraph (m) of this AD. After the effective date of this AD, use only Boeing Alert Service Bulletin DC9–32A350, Revision 2, dated March 20, 2009, of the service bulletin.

Related Investigative and Corrective Actions

(j) If any indication of cracking is found during any inspection required by paragraph (h) or (i) of this AD: Before further flight, confirm the indication of cracking by doing all applicable related investigative actions and doing the applicable corrective actions in accordance with Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005; or Revision 2, dated March 20, 2009; except as required by paragraph (m) of this AD. After the effective date of this AD, use only Boeing Alert Service Bulletin DC9–32A350, Revision 2, dated March 20, 2009, of the service bulletin. Repeat the inspection at the applicable threshold and interval specified in paragraph (h) of this AD.

MLG Cylinder Previously Installed on Group 4 Airplanes

(k) For MLG cylinders on Group 3 airplanes as identified in Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005; or Revision 2, dated March 20, 2009: If the MLG cylinder was previously installed on a Group 4 airplane, as identified in Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005; or Revision 2, dated March 20, 2009; or if the service history and number of landings cannot be determined, the MLG cylinder must be inspected at the grace period and repetitive interval that applies to Group 4 airplanes, as specified in Table 1 of this AD, except as required by paragraph (m) of this AD.

Actions Accomplished in Accordance With Original Issue of Service Bulletin

(l) For airplanes with shock struts that have part numbers other than 5924400–505 and

5924400–506: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC9–32A350, dated December 3, 2004, are acceptable for compliance with the corresponding actions required paragraphs (h), (i), (j), and (k) of this by this AD.

New Requirements of This AD

(m) For airplanes with shock struts that have part numbers 5924400–505 and 5924400–506: Do the actions required by paragraphs (g), (h), (i), (j), and (k), as applicable, in accordance with Boeing Alert Service Bulletin DC9–32A350, Revision 2, dated March 20, 2009. Do the actions at the time specified in those paragraphs, except where Table 1 of this AD specifies a compliance time after October 21, 2005, the compliance time for these airplanes is within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wahib Mina, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on July 22, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–18157 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0659; Directorate Identifier 2009–NM–060–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR Airplanes; and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found occurrences of main landing gear (MLG) trailing arm pins broken due to a fatigue mechanism induced by an excessive torque applied during the assemblage of auxiliary door support attachment and consequent deformation of the MLG trailing arm axle. A broken pin can lead to loss of the MLG trailing arm axle, disconnecting the trailing arm from the main

strut, which affects the airplane controllability on ground.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 31, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A.

(EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927-5852 or +55 12 3309-0732; fax: +55 12 3927-7546; e-mail: distrib@embraer.com.br; Internet: <http://www.flyembraer.com>.

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

ADDRESSES section. Include “Docket No. FAA-2009-0659; Directorate Identifier 2009-NM-060-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2009-02-01, dated February 12, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

It has been found occurrences of main landing gear (MLG) trailing arm pins broken due to a fatigue mechanism induced by an excessive torque applied during the assemblage of auxiliary door support attachment and consequent deformation of the MLG trailing arm axle. A broken pin can lead to loss of the MLG trailing arm axle, disconnecting the trailing arm from the main strut, which affects the airplane controllability on ground.

* * * * *

Required actions include inspecting for cracks, and, if necessary, replacing the MLG trailing arm pin with a serviceable pin; and modifying the MLG auxiliary door mounting support. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletins 145-32-0122, dated November 27, 2008; 145-52-0047, Revision 01, dated March 31, 2008; 145LEG-32-0033, dated November 27, 2008; and 145LEG-52-0014, dated October 28, 2008. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 711 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$240 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$284,400, or \$400 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER); Docket No. FAA-2009-0659; Directorate Identifier 2009-NM-060-AD.

Comments Due Date

(a) We must receive comments by August 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB-135BJ, as identified in Embraer Service Bulletin 145LEG-32-0033, dated November 27, 2008, except serial number 145363; and Model EMB-135ER, -135KE, -135KL, and -135LR airplanes, and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes, as identified in Embraer Service Bulletin 145-32-0122, dated November 27, 2008; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

It has been found occurrences of main landing gear (MLG) trailing arm pins broken due to a fatigue mechanism induced by an excessive torque applied during the assemblage of auxiliary door support attachment and consequent deformation of the MLG trailing arm axle. A broken pin can lead to loss of the MLG trailing arm axle, disconnecting the trailing arm from the main strut, which affects the airplane controllability on ground.

* * * * *

Required actions include inspecting for cracks, and, if necessary, replacing the MLG trailing arm pin with a serviceable pin; and modifying the MLG auxiliary door mounting support.

Actions and Compliance

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

(1) Within 2,500 flight hours or 24 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Perform a visual inspection for cracks on the MLG trailing arm pins, in accordance with Embraer Service Bulletin 145-32-0122, dated November 27, 2008; or 145LEG-32-0033, dated November 27, 2008; as applicable. If any crack is found, before further flight, replace the MLG trailing arm pin with a serviceable pin, in accordance with Embraer Service Bulletin 145-32-0122, dated November 27, 2008; or 145LEG-32-0033, dated November 27, 2008; as applicable.

(ii) Prior to or concurrently with accomplishing the inspection required by paragraph (f)(1)(i) of this AD, modify the MLG auxiliary door mounting support, in accordance with Embraer Service Bulletin 145-52-0047, Revision 01, dated March 31, 2008; or 145LEG-52-0014, dated October 28, 2008; as applicable.

Note 1: For the purposes of this AD, a visual inspection is: An intensive examination of a specific item, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate access procedures may be required.

Note 2: For the purposes of this AD, a serviceable pin is a pin that has no cracking.

(2) Modifications accomplished before the effective date of this AD according to Embraer Service Bulletin 145-52-0047, dated July 18, 2005, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: Agência Nacional de Aviação Civil (ANAC) Brazilian Airworthiness Directive 2009-02-01, dated February 12, 2009, is applicable to "all EMB-145 and EMB-135 aircraft models in operation." However, this does not agree with Embraer Service Bulletin 145-32-0122, dated November 27, 2008; 145-52-0047, Revision 01, dated March 31, 2008; 145LEG-32-0033, dated November 27, 2008; or 145LEG-52-0014, dated October 28, 2008; which specifies that only certain Model EMB-145 and EMB-135 airplanes are affected and identifies them by serial number. This AD is applicable only to the airplanes listed in the applicable service bulletins. This difference has been coordinated with the ANAC.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil Airworthiness Directive 2009-02-01, dated February 12, 2009; Embraer Service Bulletin 145-32-0122, dated November 27, 2008; Embraer Service Bulletin

145-52-0047, Revision 01, dated March 31, 2008; Embraer Service Bulletin 145LEG-32-0033, dated November 27, 2008; and Embraer Service Bulletin 145LEG-52-0014, dated October 28, 2008; for related information.

Issued in Renton, WA, on July 22, 2009.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E9-18158 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0404; Airspace
Docket No. 09-ACE-5]

Proposed Amendment of Class D and Class E Airspace; Topeka Forbes Field Airport, KS

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace for Forbes Field Airport, Topeka, KS. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Forbes Field Airport, Topeka, KS. This action also incorporates the Class E as extensions to Class D at Forbes Field Airport into the Class D surface area. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Forbes Field Airport.

DATES: 0901 UTC. Comments must be received on or before September 14, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2009-0404/Airspace Docket No. 09-ACE-5, at the beginning of your comments. You may also submit comments on the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321-7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2009-0404/Airspace Docket No. 09-ACE-5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional

controlled Class D and Class E airspace for SIAPs operations at Forbes Field Airport, Topeka, KS, and incorporating the Class E extensions into the Class D surface area.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as surface areas is published in Paragraph 6002 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as extensions to a Class D surface area is published in Paragraph 6004 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. Class E airspace extending upward from 700 feet or more above the surface of the earth is published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the

scope of that authority as it would add additional controlled airspace at Forbes Field Airport, Topeka, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Topeka, Forbes Field Airport, KS [Amended]

Topeka, Forbes Field Airport, KS

(Lat. 38°57'03" N., long. 95°39'49" W.)

Topeka, Forbes Field Airport ILS

(Lat. 38°58'04" N., long. 95°40'50" W.)

RIPLY LOM

(Lat. 38°53'06" N., long. 95°34'53" W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.9-mile radius of Forbes Field Airport, and within 2.2 miles each side of the RIPLY LOM 317° bearing extending from the 4.9-mile radius to 5.3 miles northwest of the airport and within 1.8 miles each side of the Forbes Field Airport ILS Localizer southeast course extending from the 4.9-mile radius to 0.9 miles southeast of the RIPLY LOM. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Topeka, Forbes Field Airport, KS [Amended]

Topeka, Forbes Field Airport, KS

(Lat. 38°57'03" N., long. 95°39'49" W.)

Topeka, Forbes Field Airport ILS

(Lat. 38°58'04" N., long. 95°40'50" W.)

RIPLY LOM

(Lat. 38°53'06" N., long. 95°34'53" W.)

Within a 4.9-mile radius of Forbes Field Airport, and within 2.2 miles each side of the RIPLY LOM 317° bearing extending from the 4.9-mile radius to 5.3 miles northwest of the airport and within 1.8 miles each side of the Forbes Field Airport ILS Localizer southeast course extending from the 4.9-mile radius to 0.9 miles southeast of the RIPLY LOM.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ACE KS E4 Topeka, Forbes Field Airport, KS [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Topeka, Forbes Field Airport, KS [Amended]

Topeka, Forbes Field Airport, KS

(Lat. 38°57'03" N., long. 95°39'49" W.)

Topeka, Forbes Field Airport ILS

(Lat. 38°58'04" N., long. 95°40'50" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Forbes Field Airport and within 3.1 miles each side of the Forbes Field Airport ILS localizer course extending from the 7.4-mile radius to 13 miles southeast of the airport, and within 3.5 miles each side of the Forbes Field Airport ILS localizer course extending from the 7.4-mile radius to 13 miles northwest of the airport.

Issued in Fort Worth, TX, on July 23, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–18160 Filed 7–29–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0511; Airspace Docket No. 09–AGL–8]

Proposed Amendment of Class E Airspace; Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace for the Peoria, IL area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Mount Hawley Auxiliary Airport, Peoria, IL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Mount Hawley Auxiliary Airport.

DATES: 0901 UTC. Comments must be received on or before September 14, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0511/Airspace Docket No. 09–AGL–8, at the beginning of your comments. You may also submit comments on the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2009–0511/Airspace Docket No. 09–AGL–8.” The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at http://www.faa.gov/airports_airtraffic/

*air traffic/publications/
airspace amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional controlled Class E airspace in the Peoria, IL airspace area. Specifically, that airspace extending upward from 700 feet above the surface for SIAPs operations at Mount Hawley Auxiliary Airport, Peoria, IL.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace to the Peoria, IL airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Peoria, IL [Amended]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°54'00" N., long. 89°59'00" W.; to lat. 40°53'31" N., long. 89°41'35" W.; to lat. 40°54'41" N., long. 89°35'28" W.; to lat. 40°52'16" N., long. 89°29'22" W.; to lat. 40°46'40" N., long. 89°27'38" W.; to lat. 40°44'01" N., long. 89°29'35" W.; to lat. 40°22'00" N., long. 89°32'00" W.; to lat. 40°26'00" N., long. 90°07'00" W.; to lat. 40°34'00" N., long. 90°12'00" W.; to lat. 40°47'00" N., long. 90°08'00" W.; to the point of beginning.

* * * * *

Issued in Fort Worth, TX, on July 23, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-18140 Filed 7-29-09; 8:45 am]

BILLING CODE 4901-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2009-0617; Airspace Docket No. 09-AWP-5]

Proposed Establishment of Class E Airspace; Little River, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Little River, CA. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Little River Airport, Little River, CA. The FAA is proposing this action to enhance the safety and management of aircraft operations at Little River Airport, Little River, CA.

DATES: Comments must be received on or before September 14, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, 20590. Telephone (202) 366-9826. You must identify FAA Docket No. FAA-2009-0617; Airspace Docket No. 09-AWP-5, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2009-0617 and Airspace Docket No. 09-AWP-5) and be submitted in triplicate to the Docket Management System (see

ADDRESSES section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2009-0617 and Airspace Docket No. 09-AWP-5". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward 700 feet or more above the surface at Little River Airport, Little River, CA. Controlled

airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Little River Airport, Little River, CA. This action would enhance the safety and management of aircraft operations at Little River Airport, Little River, CA.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Little River Airport, Little River, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Little River, CA [New]

Little River Airport, CA
(Lat. 39°15'43" N., long. 123°45'13" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Little River Airport.

* * * * *

Issued in Seattle, Washington, on July 24, 2009.

Matt Csicsery,

*Acting Manager, Operations Support Group,
Western Service Center.*

[FR Doc. E9-18137 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. FAA-2009-0023; Notice No. 09-02A]

RIN 2120-AJ32

Crew Resource Management Training for Crewmembers in Part 135 Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This action extends the comment period for a proposed rule that was published on May 1, 2009. The proposed rule would require all certificate holders conducting operations under part 135 to include in their training programs crew resource management for crewmembers, including pilots and flight attendants. This proposal is needed to ensure that crewmembers in part 135 operations receive training and practice in the use

of crew resource management principles, as appropriate for their operation. This proposed rule would respond to National Transportation Safety Board recommendations, address a recommendation from the Part 125/135 Aviation Rulemaking Committee, and would codify current FAA guidance. The intended effect of this proposal is to reduce the frequency and severity of errors that are crew based, which will reduce the frequency of accidents and incidents within the scope of part 135 operations. The FAA is seeking further comment on this proposed rule because all of the rulemaking documents were not available in the official docket.

DATES: Comments, identified by docket number FAA-2009-0023, must be received on or before September 28, 2009.

ADDRESSES: You may send comments identified by docket number FAA-2009-0023 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring comments to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to the Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for

accessing the docket, or to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Nancy Lauck Claussen, Federal Aviation Administration, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591; Telephone: 202-267-8166; E-mail:

nancy.l.claussen@faa.gov. For legal questions concerning this proposed rule, contact Anne Bechdolt, Federal Aviation Administration, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: 202-267-3073; E-mail: anne.bechdolt@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

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

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

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

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

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

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

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph 1.

Background

On May 1, 2009 (74 FR 20263) the FAA published a proposed rule that would require all certificate holders conducting operations under part 135 to include in their training programs crew resource management for crewmembers, including pilots and flight attendants. The comment period for the proposed rule closes on July 30, 2009. Because the regulatory evaluation for the proposed rule was not available for review in the docket until July 24, 2009, the FAA is extending the comment period from July 30, 2009 to September 28, 2009.

Extension of Comment Period

The FAA wants to ensure that the proposed rulemaking and all its associated documents have been

adequately available for public viewing and comment. Because the regulatory evaluation contains information regarding the expected benefits and costs of this rulemaking, the FAA has determined that a 60-day extension of the comment period is necessary to give the public adequate time to review this document. Such action is, in the public interest, and good cause exists for taking this action. Accordingly, the comment period for Notice No. 09–02 is extended until September 28, 2009.

Issued in Washington, DC, on July 27, 2009.

Julie A. Lynch,

Acting Director, Office of Rulemaking.

[FR Doc. E9–18322 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 254

Private Vocational and Distance Education Schools

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Request for public comments.

SUMMARY: As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s guides for “Private Vocational and Distance Education Schools” (“Vocational School Guides” or “Guides”).

DATES: Written comments must be received by October 16, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Vocational School Guides Review, Matter No. P097701” to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical

records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . .” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-VocationalSchoolGuides>), and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://secure.commentworks.com/ftc-VocationalSchoolGuides>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (<http://www.ftc.gov>) to read the Notice and the news release describing it.

A comment filed in paper form should include the “Vocational School Guides Review, Matter No. P097701” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex V), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to

¹The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtml>).

FOR FURTHER INFORMATION CONTACT: Julie A. Lady, (216) 263-3409, Staff Attorney, East Central Region, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114.

SUPPLEMENTARY INFORMATION:

I. Background

The Vocational School Guides are intended to advise proprietary businesses offering vocational training courses, either on the school’s premises or through distance education, how to avoid unfair or deceptive practices in connection with the advertising, promotion, marketing, or sale of their courses or programs. The Commission promulgated the Guides (then titled the “Guides for Private Vocational and Home Study Schools”) in May 1972. The guides became effective on August 14, 1972. (37 FR 9665 (May 16, 1972)). The Commission amended the Guides effective October 9, 1998. These amendments added a provision addressing misrepresentations related to post-graduation employment. In order to streamline the Guides, certain provisions not specific to vocational schools and a section suggesting affirmative disclosures were deleted.² (62 FR 19703 (Aug. 10, 1998) as amended at 63 FR 72350 (Dec. 31, 1998)).

The Vocational School Guides address misrepresentations in the description of a school including misrepresentations that the school is affiliated with the government or is an employment agency. The Guides also address misleading representations related to the accreditation and approval

²The deleted affirmative disclosures included the school’s make-up work policy, costs of purchasing the textbooks and equipment needed for the courses, a description of the school’s physical facilities and a description of the school’s placement service.

of the school, the transferability of credit received at the school to other institutions, and the use of testimonials and endorsements. Schools are cautioned against misrepresenting the qualifications of teachers, the nature of the courses, the availability of employment after graduation, the availability of financial assistance, and enrollment qualifications. Also addressed is the use of deceptive diplomas or certificates. Finally, the Guides warn against using deceptive sales practices such as using classified ads that appear to be "help-wanted" ads.

These Guides, like other industry guides issued by the Commission, are "administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

II. Regulatory Review Program

The Commission reviews all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of, and the continuing need for the Vocational School Guides; the benefits of the Guides to purchasers of vocational education; and the burdens the Guides place on businesses.

III. Request for Comment

The Commission solicits comments on the following specific questions related to the Vocational School Guides:

(1) Is there a continuing need for the Guides as currently promulgated? Why or why not?

(2) What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Guides to increase their benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Guides for consumers?

(c) How would these modifications affect the costs and benefits of the Guides for businesses, particularly small businesses?

(4) Should the Guides define "clearly and conspicuously," given the guidance that industry members should make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?

(5) What impact have the Guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? What evidence supports the asserted impact?

(6) What significant costs have the Guides imposed on consumers? What evidence supports the asserted costs?

(7) What modifications, if any, should be made to the Guides to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Guides for consumers?

(c) How would these modifications affect the costs and benefits of the Guides for businesses, particularly small businesses?

(8) Please provide any evidence that has become available since 1998 concerning consumer perception of or experience with private vocational and distance education schools. Does this new information indicate that the Guides should be modified? If so, why, and how? If not, why not?

(9) What benefits, if any, have the Guides provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(10) What modifications, if any, should be made to the Guides to increase their benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Guides for consumers?

(c) How would these modifications affect the costs and benefits of the Guides for businesses, particularly small businesses?

(11) What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(12) What modifications, if any, should be made to the Guides to reduce the costs imposed on businesses, and particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Guides for consumers?

(c) How would these modifications affect the costs and benefits of the Guides for businesses, particularly small businesses?

(13) What evidence is available concerning the degree of industry compliance with the Guides? Does this evidence indicate that the Guides should be modified? If so, why, and how? If not, why not?

(14) Is any of the guidance provided in the Guides no longer needed? If so, explain. Please provide supporting evidence.

(15) What potentially unfair or deceptive practices involving the advertising and promotional claims used by vocational and distance education schools in the advertising, promotion, marketing, and sale of courses or programs of instruction offered by private vocational or distance education schools, if any, are not covered or are not adequately covered by the Guides?

(a) What evidence demonstrates the existence of such practices? Please provide specific examples and indicate how and where such potentially unfair or deceptive practices occur.

(b) With reference to such practices, should the Guides be modified? If so, why, and how? If not, why not?

(16) What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?

(17) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Guides be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Guides have assisted in promoting national consistency with respect to the advertising and promotional claims used by vocational and distance education schools to recruit students? If so, please provide that evidence.

(18) Are there foreign or international laws, regulations, or standards with respect to the advertising and promotional claims used by vocational and distance education schools to recruit students that the Commission should consider as it reviews the Guides? If so, what are they?

(a) Should the Guides be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. E9-18194 Filed 7-29-09; 9:56 am]

BILLING CODE: 6750-01-S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08-2-000]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Order Requesting Supplemental Comments

Issued July 16, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Requesting Supplemental Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks supplemental comments regarding potential revisions to the posting requirements adopted in Order No. 720 of the Commission's regulations.

DATES: Comments are due August 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Christopher Ellsworth (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8228.

Gabriel Sterling (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8891.

SUPPLEMENTARY INFORMATION:

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

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Order Requesting Supplemental Comments

1. The Federal Energy Regulatory Commission (Commission) is seeking supplemental comments in regard to the posting requirements adopted in Order

No. 720 and codified in § 284.14(a) of the Commission's regulations,¹ in response to limited issues raised in requests for rehearing of Order No. 720² and at the staff technical conference held in this docket on March 18, 2009.³ In particular, we seek comment on specific regulatory text relevant to arguments received on rehearing of Order No. 720. Comments should be submitted within 30 days of publication of this order in the **Federal Register**.

I. Background

2. In Order No. 720, the Commission adopted new regulations requiring major non-interstate pipelines to post certain data on publicly-accessible Internet Web sites.⁴ Order No. 720 implemented the Commission's authority under section 23 of the Natural Gas Act (NGA),⁵ as added by the Energy Policy Act of 2005 (EPA 2005).⁶ The order required major non-interstate pipelines, defined as those natural gas pipelines that are not natural gas companies under the NGA and deliver more than 50 million MMBtu per year, to post scheduled flow information and to post information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.⁷

3. While Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of the rule's publication,⁸ a subsequent order in this docket extended the compliance deadline for major non-interstate pipelines until 150 days following the issuance of an order on rehearing.⁹ A staff technical conference was held on March 18, 2009, to gather additional information on certain issues raised on rehearing.¹⁰

¹ 18 CFR 284.14(a).

² *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, FERC Stats. & Regs. ¶ 31,283 (2008). The Commission is not requesting additional comments regarding 18 CFR 284.14(b) which was also added by Order No. 720.

³ See Notice of Technical Conference, Docket No. RM08-2-000 (issued Feb. 24, 2009).

⁴ Additionally, the Commission adopted regulations requiring interstate pipelines to post information regarding no-notice service. Order No. 720 at P 1. These regulations are in effect and interstate pipelines must be in compliance with this requirement.

⁵ Section 23 of the Natural Gas Act; 15 U.S.C. 71712 (2000 & Supp. V 2005).

⁶ Energy Policy Act of 2005, Public Law No. 109-58, sections 1261 *et seq.*, 119 Stat. 594 (2005).

⁷ Order No. 720 at P 1.

⁸ *Id.* P 168.

⁹ *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, 126 FERC ¶ 61,047, at P 4 (2009).

¹⁰ See Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009); Notice of Agenda for Technical Conference, Docket No. RM08-2-001 (issued March 11, 2009).

4. Among other changes to the Commission's regulations, Order No. 720 adopted new § 284.14(a) identifying the data that major non-interstate pipelines must post. This section provides that information must be posted by major non-interstate pipelines for each receipt or delivery point with a design capacity greater than or equal to 15,000 MMBtu/day. The Commission stated in Order No. 720, that, "In the circumstance where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods."¹¹ Section 284.14(a) provides that the following information be posted regarding each applicable receipt or delivery point: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, or Bilateral), Design Capacity, Scheduled Volume, Available Capacity, and Measurement Unit (Dth, MMBtu, or MCF).

II. Requests for Rehearing and Technical Conference Comments

5. The Commission received 24 requests for rehearing, clarification, or both of Order No. 720. Additionally, the Commission publicly noticed and held a staff technical conference on March 18, 2009, to gather additional information with respect to: (1) The definition of major non-interstate pipelines; (2) what constitutes "scheduling" for a receipt or delivery point; and, (3) how the 15,000 MMBtu per day design capacity threshold should be applied.¹²

6. Certain rehearing requests questioned how § 284.14(a) of the Commission's regulations applies to major non-interstate pipelines that operate with virtual or pooling points instead of, or in addition to, physical metered points.¹³ Texas Pipeline Association (TPA) proposed modifications to § 284.14(a) requiring

¹¹ Order No. 720 at P 92.

¹² Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009).

¹³ Requests for rehearing, clarification, or both filed by the following participants raise this question: American Gas Association, Atmos Pipeline, Nicor Gas Company, ONEOK Gas Transportation, LLC, and ONEOK WesTex Transmission, LLC

posting only at points where scheduling occurs.¹⁴

III. Discussion

7. The Commission is seeking supplemental comments to better inform its decision making in this rulemaking. In particular, the Commission seeks comment regarding various proposals to post information for virtual or pooling receipt and delivery points. In addition, the Commission requests comment on whether and how to adopt a proxy for design capacity for physical points for which the design capacity is unknown. To this end, the Commission attaches hereto proposed revisions to § 284.14(a) of our regulations addressing these matters.

8. The Commission recognizes that a number of major non-interstate pipelines use virtual or pooling receipt or delivery points. Major non-interstate pipelines that schedule gas to virtual or pooling receipt or delivery points play a vital role in markets for the sale or transportation of natural gas in interstate commerce. While the Commission understands that major non-interstate pipelines operate in a variety of ways, the Commission is developing regulations of general applicability that pertain to all such pipelines. To this end, the Commission contemplates that, on rehearing, the posting obligation may apply to metered, virtual, or pooling receipt and delivery points on major non-interstate pipelines.

9. The regulatory text included as an attachment provides that design capacity is the method to determine whether a receipt or delivery point should be posted. However, where design capacity is unknown (for example, where the pipeline does not have access to design specifications or where the applicable point is not a physical meter, but rather a virtual or pooling receipt or delivery point), the regulation would allow major non-interstate pipelines to utilize the maximum flow experienced during any day within the previous three years as a proxy for design capacity. In addition, the attachment makes clear that major non-interstate pipelines would be required to post information for receipt or delivery points within 45 days of the point becoming eligible for posting. The Commission seeks comment on these matters.

10. Further, the Commission seeks comment on whether and how to

provide an exemption for receipt points with *de minimis* natural gas flows, even if such points have a design capacity above the posting threshold. The attached draft regulatory text provides an exemption from the posting requirement for *receipt points* which have experienced actual flows less than 5,000 MMBtu every day for the previous three years. The Commission understands that many major non-interstate pipelines have receipt points with design capacities greater than 15,000 MMBtu/day and yet consistently flow far less than this design capacity. The proposed revision responds to commenters' concerns regarding the posting of *de minimis* volumes and recognizes that such receipt points, individually, may have a *de minimis* effect on downstream natural gas availability.

IV. Conclusion

Persons wishing to comment on the matters discussed in this order should submit such comments to the Commission no later than 30 days following publication of this order in the **Federal Register**.

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. In § 284.1, revise paragraph (a) to read as follows:

§ 284.14. Posting requirements of major non-interstate pipelines.

(a) *Daily posting requirement.* A major non-interstate pipeline must provide on a daily basis on a publicly-accessible Internet Web site and in downloadable file format equal and timely access to information regarding receipt or delivery points, including non-physical scheduling points.

(1) A major non-interstate pipeline must post data for each receipt or

delivery point, or for any point that operates as both a delivery and receipt point for the major non-interstate pipeline, to which natural gas transportation is scheduled:

(i) With a physically metered design capacity equal to or greater than 15,000 MMBtu/day; or

(ii) If a physically metered design capacity is not known or does not exist for such a point, with a maximum flow equal to or greater than 15,000 MMBtu on any day within the prior three years.

(2) Notwithstanding the requirements of 284.14(a)(1), a receipt point is not subject to the posting requirements of this section if the maximum flow at the receipt point was less than 5,000 MMBtu on every day within the prior three years. If a point has operated as both a receipt and delivery point any time within the last three years, then this subsection 284.14(a)(2) shall not apply to that point.

(3) A major non-interstate pipeline that must post data for a receipt or delivery point shall do so within 45 days of the date on which the point becomes eligible for posting.

(4) For each delivery or receipt point that must be posted, a major non-interstate pipeline must provide the following information: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, Bilateral, or Non-physical Scheduling Point), Posted Capacity (physically metered design capacity or maximum flow within the last three years), Method of Determining Posted Capacity (Capacity or Maximum Average Volume), Scheduled Volume, Available Capacity (Calculated as Posted Capacity minus Scheduled Capacity), and Measurement Unit (Dth, MMBtu, or MCF). The information in this subsection must remain posted for a period of one year.

* * * * *

[FR Doc. E9–17335 Filed 7–29–09; 8:45 am]

BILLING CODE 6717–01–P

¹⁴ See Post-Technical Conference Comments of the Texas Pipeline Association (submitted March 30, 2009).

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2008-0592(b); FRL-8937-1]

Approval and Promulgation of Air Quality Implementation Plans; Alabama: Birmingham 1997 8-Hour Ozone Contingency Measures**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), on February 6, 2008, to adopt specific contingency measures in the form of permit conditions for two cement kilns. These contingency measures are being adopted for the continued maintenance of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) in Jefferson and Shelby Counties ("Birmingham Area"). On May 12, 2006, EPA approved the 8-hour ozone redesignation of the Birmingham Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS (see, 71 FR 27631). Additional measures may be necessary in the future; however, these revisions qualify as contingency measures as required under Section 175A(d) of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 31, 2009.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2008-0592 by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: benjamin.lynora@epa.gov.

3. *Fax*: (404) 562-9019.

4. *Mail*: "EPA-R04-OAR-2008-0592," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Harder may be reached by phone at (404) 562-9042, or by electronic mail at harder.stacy@epa.gov. For information relating to the Alabama State SIP, please contact Mr. Zuri Farngalo. Mr. Farngalo may be reached at (404) 562-9152, or by electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION: When the Birmingham Area was redesignated to attainment, Alabama was also required to submit a maintenance plan which provided for contingency measures should the Area violate the standard after being redesignated to attainment. The May 12, 2006, maintenance plan was designed to keep the Birmingham Area in attainment through 2017, initially, with a later extension of the maintenance plan to include a time period of no less than 20 years after the Area was redesignated originally. After attaining the 1997 8-hour ozone standard based on 2003-2005 ambient air monitoring data, the Birmingham Area violated the standard with 2004-2006 ambient air monitoring data. The February 6, 2008, SIP revision, provided by Alabama for EPA approval, was submitted to fulfill ADEM's commitment to adopt, within 18 months of a violation of the 1997 8-hour ozone standard, one or more contingency measures to help the Area re-attain the standard. EPA is proposing to approve the revisions pursuant to section 110 of the CAA. On March 27, 2008, EPA issued a revised ozone standard (see, 73 FR 16436). Today's action however, is being taken to address requirements under the 1997 8-hour ozone standard.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: July 16, 2009.

J. Scott Gordon,*Acting Regional Administrator, Region 4.*

[FR Doc. E9-18028 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 0907201154-91155-01]

RIN 0648-AX99

Fisheries of the Northeastern United States; Northeast (NE) Skate Complex Fishery; Notice of a Control Date for the Purpose of Limiting Entry to the Skate Bait Fishery; NE Skate Complex Fishery Management Plan (Skate FMP)**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the skate bait fishery in the NE skate complex if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to limit the number of participants in this component of the skate fishery. This component of the fishery includes vessels with open access skate permits that fish for skates to be sold as bait. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage new or speculative entry into the fishery while the New England Fishery Management Council (Council) considers whether and how access to the skate bait fishery should be controlled.

DATES: The date of publication of this document, July 30, 2009, shall be known as the "control date" and may be

used for establishing eligibility criteria for determining levels of future access to the subject fishery, subject to Federal authority. Written comments must be received on or before 5 p.m., local time, August 31, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX99, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: (978) 281-9135, Attn: Tobey Curtis.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate Bait Fishery Control Date."

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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, phone 978-281-9273, fax 978-281-9135.

SUPPLEMENTARY INFORMATION: In 2003, NMFS implemented the Skate FMP to manage a complex of seven skate species in the Northeast Region: Winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*). The FMP established biological reference points and overfishing definitions for each species, and other management measures designed to rebuild species that were considered overfished (barndoor and thorny). Regulations for

the skate fishery are found at 50 CFR part 648 subpart O.

There are two distinct skate fisheries managed under the FMP: A skate wing fishery, which harvests the pectoral fins of large skates (primarily winter skate) for foreign and domestic food markets; and a skate bait fishery, which targets whole little skates to be sold primarily for bait in the American lobster fishery. The skate fishery currently operates under possession limits of 20,000 lb (9,072 kg) of wings for trips greater than 24 hr in duration, or 10,000 lb (4,536 kg) of wings for trips less than 24 hr in duration. Vessels participating in the skate bait fishery, however, can request a Letter of Authorization from the Regional Administrator to be exempt from these trip limits, and often land in excess of 20,000 lb (9,072 kg) of whole skates per trip to fill bait orders for lobster vessels.

In 2007, the Council began development of Amendment 3 to the Skate FMP. The amendment is intended to establish a rebuilding plan for smooth skate, which is currently considered overfished, and bolster the rebuilding plan for thorny skate, which remains overfished. Amendment 3, if approved by the Secretary of Commerce, will also implement annual catch limits (ACLs) and accountability measures (AMs), consistent with the new requirements of the reauthorized Magnuson-Stevens Act. The Council has also proposed new management measures for the skate bait fishery, including seasonal quotas, and reduced possession limits, under Amendment 3. Amendment 3 measures will be proposed through a separate rulemaking in the near future.

In light of these new proposed restrictions and their impacts, members of the skate bait industry and the Council's Skate Oversight Committee recommended that the Council consider restricting new entrants to the skate bait fishery. This Advance Notice of Proposed Rulemaking is intended to discourage new or speculative entry into the bait fishery while controlled access restrictions are considered by the Council. The date upon which this notice is published shall be known as the "control date," which is intended to

distinguish established participants from new or speculative entrants to the fishery. Entering the fishery before the control date does not necessarily ensure fishing vessels of future access to the skate resource on the grounds of previous participation, because additional and/or other qualifying criteria may be applied. The Council may choose different and variably weighted measures to qualify participants based on the type and length of participation in the skate bait fishery or any other criteria.

This notification establishes July 30, 2009 as the control date for potential use in determining historical or traditional participation in the skate bait fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in this fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date.

Fishing vessels are not guaranteed future participation in the fishery, regardless of their entry dates or level of participation in this fishery before or after the control date. The Council may choose to give variably weighted consideration to vessels active in the fishery before and after the control date. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council will be taken pursuant to the requirements for the development of FMP amendments established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the skate bait fishery in Federal waters.

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

Dated: July 24, 2009.

James W. Balsiger,

Acting Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9-18264 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 74, No. 145

Thursday, July 30, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a meeting of the Tennessee Advisory Committee to the Commission (Committee) will convene at 1:30 p.m. and adjourn at about 3 p.m. on Monday, August 24, 2009, at the Disabled Student Services Center, Keathley University Center, Middle Tennessee State University, Tennessee, 37132. The purpose of the meeting is for the Committee to plan future projects for fiscal year 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 24, 2009. The mailing address is: Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail their written comments may do so to pminari@usccr.gov. Persons who desire additional information should contact the Southern Regional Office, at (404) 562-7000, or by e-mail at pminarik@usccr.gov.

Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from these meetings may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the

Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 27, 2009.

Peter Minarik,

*Acting Chief, Regional Programs
Coordination Unit.*

[FR Doc. E9-18207 Filed 7-29-09; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 19, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09-019. Applicant: University of Oklahoma, Mewbourne School of Petroleum and Geological Engineering, 100 E Boyd St., Suite T-301, Norman, OK 73019. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study the three dimensional nano-pore structure of geologic material. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: July 1, 2009.

Docket Number: 09-027. Applicant: National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, GO 80401. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech

Republic. Intended Use: The instrument will be used to characterize the crystallography and structural morphology of materials used in the development of photovoltaic (solar cell) semiconductor devices. It will also be used in the analysis of a variety of nano-structured materials. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: May 18, 2009.

Docket Number: 09-042. Applicant: Temple University Hospital, 3401 N. Broad St., 2nd Floor, Zone A, Philadelphia, PA 19140. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used to perform ultrastructural analysis of the components in the diagnosis of renal diseases. Specifically it will be used to identify certain genetic diseases that alter cellular structural proteins. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: July 2, 2009.

Docket Number: 09-043. Applicant: University of Central Florida, 4000 Central Florida Blvd. MAP 310, Orlando, FL 32816. Instrument: Electron Microscope. Manufacturer: Tescan, s.r.o., Czech Republic. Intended Use: The instrument will be used to study the properties of sp²-bonded nanostructures with unusual mechanical, electrical and thermal properties, such as those composed of boron, carbon and nitrogen. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: July 16, 2009.

Docket Number: 09-044. Applicant: Missouri State University, 901 S. National Ave., Springfield Missouri 65897. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study the correlations between morphology, structures and compositions of various materials as well as their electrical, optical, magnetic and biological properties. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application

accepted by Commissioner of Customs: July 16, 2009.

Dated: July 24, 2009.

Gregory Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9-18236 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate and Notice of Availability of Final Findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Maine Coastal Management Program, the Washington Coastal Management Program, and the Padilla Bay (Washington) National Estuarine Research Reserve.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR Part 921, Subpart E and Part 923, Subpart L. Evaluation of National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments,

and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or Kate.Barba@noaa.gov.

Dates and Times: The Maine Coastal Management Program evaluation site visit will be held September 14–18, 2009. One public meeting will be held during the week. The public meeting will be held on Tuesday, September 15, 2009, at 7 p.m., at the Ellsworth City Hall Auditorium, 1 City Hall Plaza, Ellsworth, Maine.

The Washington Coastal Management Program evaluation site visit will be held September 21–25, 2009. One public meeting will be held during the week. The public meeting will be held on Monday, September 21, 2009, at 6 p.m. at the Washington Department of Ecology Auditorium, 300 Desmond Drive, SE., Lacey, Washington.

The Padilla Bay (Washington) National Estuarine Research Reserve evaluation site visit will be held September 22–24, 2009. One public meeting will be held during the week. The public meeting will be held on Wednesday, September 23, 2009, at 7 p.m. at the Padilla Bay National Estuarine Research Reserve, Interpretive Center Meeting Room, 10441 Bayview-Edison Road, Mt. Vernon, Washington.

ADDRESSES: Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for a Program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the Wisconsin Coastal Management Program (CMP) and the Sapelo Island (Georgia) and Wells (Maine) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The State of Wisconsin was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Sapelo Island and Wells NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or Kate.Barba@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563-1182.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 23, 2009.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9-18082 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ63

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of public scoping meetings; requests for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NFS, and EIS in accordance with the national Environmental Policy Act to assess potential effects on the human environment of alternative measures to address several issues regarding the Spiny Dogfish Fishery Management Plan.

This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to amendment the plan. This notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation in that process.

DATES: Written comments must be received on or before 5 p.m., EST, on September 4, 2009. Four public scoping meetings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

E-mail to the following address: dogfish3@noaa.gov. Please note on your correspondence and in the subject line of e-mail comments the following identifier: "Spiny Dogfish Amendment 3 Scoping Comments.";

Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790. Mark the outside of the envelope "Spiny Dogfish Amendment 3 Scoping Comments.";

Fax to: (302) 674-5399.

The scoping document may also be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331, or via the Internet at <http://www.mafmc.org/mid-atlantic/comments/comments.htm>.

Comments may also be provided verbally at any of the three public scoping meetings. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331, extension 19.

SUPPLEMENTARY INFORMATION:

Meetings

Four scoping meetings to facilitate public comment will be held on the following dates and locations:

1. August 10, 2009, 7 p.m., Virginia Marine Fisheries Commission, 2600 Building Meeting Room, 2600 Washington Ave., Newport News, VA 23607;

2. August 11, 2009, 7 p.m., Ocean County Administration Building, Public Hearing Room 119, 101 Hooper Ave, Toms River, NJ 08754;

3. August 12, 2009, 6:30 p.m., New Hampshire Urban Forestry Center, 45 Elwyn Rd, Portsmouth, NH 03801;

4. August 13, 2009, 7 p.m., Radisson Plymouth, 180 Water Street, Plymouth, MA 02360.

Issues Identified for Discussion under this Amendment

(1) Research-Set-Aside (RSA) provision

Currently there is no option for allocating a portion of the spiny dogfish quota for research. The Council is considering adding an RSA provision to the FMP.

(2) Commercial Quota Allocation Alternatives

Currently, the commercial quota for spiny dogfish is allocated seasonally into two periods in the fishing year. Period 1 (May 1 - Oct 31) is allocated 57.9% of the quota and Period 2 (Nov 1 - Apr 30) is allocated 42.1% of the quota. The Council is considering alternative allocation (i.e., geographic) schemes for the Federal quota.

(3) Specifying the spiny dogfish quota and/or trip limits by sex

The Council is considering modifications to the FMP that would allow for sex-specific annual specification of spiny dogfish quota and/or trip limits.

(4) Limited Access Spiny Dogfish Permit

Federal spiny dogfish permits are currently available to all vessels. The Council is considering modifying the Federal permit to make it a limited access permit. It is possible that an incidental catch permit would also be established that would be open access.

(5) Recreational Spiny Dogfish Fishery

To the extent that recreationally-caught spiny dogfish are retained, that component of the overall fishery is not acknowledged in the FMP. The Council is considering adding the recreational fishery to the FMP.

The Council may deviate from these examples and develop additional approaches, consistent with their description in the Magnuson-Stevens Act, NS1, and the NS 1 Guidelines. The above issues under consideration are described in greater detail in the

scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.mafmc.org/mid-atlantic/comments/comments.htm>.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674-2331, ext. 18, at least 5 days prior to the meeting date.

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

Dated: July 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9-18189 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ53

Caribbean Fishery Management Council; Scoping Meetings

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

ACTION: Notice of Scoping Meetings.

SUMMARY: The Caribbean Fishery Management Council will hold scoping meetings to obtain input from fishers, the general public, and the local agencies representatives on the Document for Amendment 2 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands and Amendment X to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands (Including the Final Environmental Impact Statement, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis).

DATES AND ADDRESSES: The scoping meetings will be held on the following dates and locations:

For Puerto Rico,

August 18, 2009, Mayaguez Resort and Casino, Rd. 104, Km. 0.3, Mayaguez, Puerto Rico

August 19, 2009, DoubleTree by Hilton San Juan, De Diego Avenue, San Juan, Puerto Rico

For the U.S. Virgin Islands,

August 18, 2009, Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands

August 19, 2009, The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

All meetings will be held from 7:00 p.m. to 10:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will hold Scoping meetings to receive public input on the following management alternatives:

4.0 MANAGEMENT ALTERNATIVES

The Management Alternatives Section contains actions for setting ACLs for 4 species and species groups. One species not discussed in the actions is Nassau grouper, which is undergoing overfishing and therefore, would require an ACL by 2010. No action is discussed for Nassau grouper because current regulations exist which prohibit the take of Nassau grouper in the U.S. Caribbean

(both from the EEZ and state waters). Because of this prohibition on take, no further action is required to end or prevent overfishing. Similar to Nassau grouper, queen conch management alternatives are only discussed for the fishery in St. Croix. This is a result of current regulations in the U.S Caribbean which prohibit the take of queen conch in the EEZ off Puerto Rico and St Thomas/St John.

Other actions in the Management Alternatives Section include methods for modifying the reef fish FMU, setting recreational ACLs, methods for accounting for uncertainty, alternative methods for setting ACLs based on proxies for reducing fishing mortality, accountability measures, monitoring and enforcement, permits, and allowable fishing gear.

4.1 Action 1: Amending the Stock Complexes in the Reef Fish Fishery Management Unit

Alternative 1. No Action. Do not change the stock complexes in the Reef Fish FMU

Alternative 2. Modify the FMU by:

Sub alternative A. Separating the Parrotfish Unit into 2 complexes. Parrotfish Unit 1 would include princess, queen, redfin, redtail, stoplight, redband, and striped parrotfishes and Parrotfish Unit 2 would include blue, midnight, and rainbow parrotfishes.

Sub alternative B. Separate Grouper Unit 4 into Grouper Unit 4 (yellowfin, red, tiger, and black grouper) and Grouper Unit 5 (yellowedge and misty grouper). Add black grouper to Grouper Unit 4.

Sub alternative C. Add cardinal snapper (*Pristipomoides macrophthalmus*) to Snapper Unit 2 and move wenchman (*Pristopomoides aquilonaris*) into Snapper Unit 1.

Alternative 3. Examine reef fish FMU and reassign species not targeted, retained, sold, or used for personal consumption as ecosystem component species.

Complex	Current	Proposed
Snapper Unit 1	Silk (<i>chillo</i>) Black (<i>pargo prieto</i>) Blackfin (<i>alinegra</i>) Vermilion (<i>besugo</i>)	Silk (<i>chillo</i>) Black (<i>pargo prieto</i>) Blackfin (<i>alinegra</i>) Vermilion (<i>besugo</i>) Wenchman (<i>Pristopomoides aquilonaris</i>) (<i>limosnera</i>)
Snapper Unit 2 Queen (<i>cartucho</i>) Wenchman (<i>Pristopomoides aquilonaris</i>) (<i>limosnera</i>) Snapper Unit 3	Queen (<i>cartucho</i>) Cardinal (<i>Pristopomoides macrophthalmus</i>) (<i>muniam de afuera</i>)	
Snapper Unit 4 Grouper Unit 3	Gray (<i>pargo gris</i>) Lane (<i>arrayao</i>) Mutton (<i>sama</i>) Dog (<i>pargo colorao</i>) Schoolmaster (<i>pargo amarillo</i>) Mahogany (<i>rayao de yerba</i>) Yellowtail Snapper (<i>colirubia</i>)	Gray (<i>pargo gris</i>) Lane (<i>arrayao</i>) Mutton (<i>sama</i>) Dog (<i>pargo colorao</i>) Schoolmaster (<i>pargo amarillo</i>) Mahogany (<i>rayao de yerba</i>) Yellowtail Snapper (<i>colirubia</i>)
Snapper Unit 4 Grouper Unit 3	Red hind Coney Rock hind Graysby Creole-fish	Red hind Coney Rock hind Graysby
Grouper Unit 4 Yellowfin Red Tiger Yellowedge Misty Grouper Unit 5	Yellowfin Red Tiger Black	Yellowedge Misty
Parrotfish	Blue Midnight Princess Queen Rainbow Redfin Redtail Stoplight Redband Striped	Princess Queen Redfin Redtail Stoplight Redband Striped

Complex	Current	Proposed
Parrotfish Unit 2		Blue Midnight Rainbow

Discussion

The original stock complexes were developed in the SFA and are in need of change due to fishermen's input, reexamination of the biological characteristics of species within the complexes, exploitation levels, and omissions from the SFA. See Appendix 3 for the Reef Fish FMU.

If the Council chooses to separate Grouper Unit 4 into Grouper Unit 4 and Grouper Unit 5, a memo on the status of Grouper Unit 5 will be required indicating an unknown status so an ACL would not be required until 2011.

4.2 Action 2: Annual Catch Limits for queen conch (*Strombus gigas*) off St. Croix

Alternative 1. Do not set an ACL for queen conch off St. Croix

Alternative 2. Set the ACL for queen conch off St. Croix equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters.

Sub alternative B. Establish ACL of 90,000 pounds, based on the average landings from 1994–2006. The ACL would include both state and federal water landings.

Sub alternative C. Establish ACL of 50,000 pounds which is the current allowable catch level established by the U.S.V.I. government for St. Croix. The ACL would include both state and federal water landings. Under this alternative, the season for queen conch would run from November 1 - June 30, or until such time the ACL is met; additionally, there would be a 200 conch per boat limit.

Sub alternative D. Establish an ACL of Zero in the EEZ. The ACL for state waters would be set at 50,000 pounds which is the current allowable catch level established by the U.S.V.I. government for St. Croix.

Discussion

4.3 Action 3: Annual Catch Limits for Parrotfish Unit 1 and Parrotfish Unit 2

Alternative 1. No Action.

Sub Alternative A. Do not set an ACL for Parrotfish Unit 1 or Parrotfish Unit 2.

Sub Alternative B. Do not establish an ACL for Parrotfish Unit 2, but include Parrotfish Unit 2 in the ACL for Parrotfish Unit 1.

Alternative 2. For Parrotfish Unit 2:

Sub alternative A. Set the ACL equal to zero in the EEZ and do not establish

an ACL for state waters but rely on the data collection program (as described in Action 10) and revisit ACL for parrotfish 5 years after implementation of data collection program.

Sub alternative B. Set the ACL equal to zero in the EEZ and recommend to Puerto Rico and the U.S.V.I. that the ACL be set equal to zero in state waters.

Alternative 3. Set the ACL for Parrotfish Unit 1 off Puerto Rico equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters, but rely on the data collection program (as described in Action 10) and revisit ACL for parrotfish five years after implementation of data collection program.

Sub alternative B. Establish an ACL of 80,000 pounds based on the average landings during 1999–2006. (ACLG February 2009 recommendation)

Sub alternative C. Establish an ACL based on the average landings from 1994–2006, multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative D. Create equal ACLs for the commercial and recreational sectors based on commercial landings data.

Alternative 4. Set the ACL for Parrotfish Unit 1 off St. Thomas/St. John equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for parrotfish five years after implementation of data collection program.

Sub alternative B. 50,000 pounds based on the average landings during 1999–2006 (ACLG February 2009 recommendation)

Sub alternative C. The average landings during 1994–2006 multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Alternative 5. Set the ACL for Parrotfish Unit 1 off St. Croix equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL in state waters, but rely on the data collection program (described in Action 10) and revisit ACL for parrotfish five years after implementation of data collection program.

Sub alternative B. 250,000 pounds, based on the average landings during

1999–2006 = (ACLG February 2009 recommendation)

Sub alternative C. The average landings during 1994–2006 multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative D. 82,000 pounds based on the average landings during 1976–1990 = (discussed at the ACLG and SSC February 2009 meeting).

Sub alternative E. 82,000 pounds based on the average landings during 1983–1990 (SEFSC recommended time frame for pre-gillnet fishery).

Sub alternative F: Set ACL for Parrotfish Unit 1 off St. Croix equal to 250,000 pounds for the EEZ and do not establish a state water ACL, but rely on the data collection program (as described in Action 10) and revisit ACL for parrotfish five years after implementation of data collection program.

Alternative 6. Set the ACL for Parrotfish Unit 1 in the U.S. Caribbean equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for parrotfish five years after implementation of data collection program.

Sub alternative B. 380,000 pounds based on the average landings during 1999–2006.

Sub alternative C. The average landings during 1994–2006 multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Discussion

Parrotfish landings for Puerto Rico may be underestimated if they are reported as first class, second class, or third class species. Daniel Matos may be able to provide input about how frequently parrotfish are reported in one of those categories.

4.4 Action 4: Annual Catch Limits for Grouper Unit 4

Alternative 1. No Action. Do not set an ACL for Grouper Unit 4

Alternative 2. Set the ACL for Grouper Unit 4 off Puerto Rico equal to:

Sub alternative A. Zero in the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Grouper Unit 4 five years after implementation of the data collection program.

Sub alternative B. 10,000 pounds, based on the average corrected landings for identified Grouper Unit 4 species during 1994–2006. The ACL would include both state and federal water landings.

Sub alternative C. 15,000 pounds, based on the average corrected landings for identified Grouper Unit 4 species during 1994–2006 plus the average proportional corrected landings estimate for Grouper Unit 4 species landed in the generic “Sea Basses” category during 1994–2006.

Sub alternative D. A sufficient level of catch for collecting data on the fishery. This catch level would be established by SEFSC, in cooperation with Puerto Rico, for purposes of scientific data collection.

Alternative 3. Set the ACL for Grouper off St. Thomas/St. John at:

Sub alternative A. Zero for the EEZ off St. Thomas/St. John and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Grouper Unit 4 five years after implementation of the data collection program.

Sub alternative B. The average landings during 1994 - 2006 for all Grouper species = 61,000 pounds as part of a Grouper ACL

Sub alternative C. The average landings during 1994 - 2006 for all Grouper species multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Alternative 4. Set the ACL for Grouper off St. Croix at:

Sub alternative A. Zero for the EEZ off St. Croix and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Grouper Unit 4 five years after implementation of data collection program.

Sub alternative B. The average landings during 1994 - 2006 for all Grouper species = 32,000 pounds as part of a Grouper ACL

Sub alternative C. The average landings during 1994 - 2006 for all Grouper species multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Alternative 5. Set the ACL for Grouper in the U.S. Caribbean equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit the ACL for grouper five years after implementation of the data collection program.

Sub alternative B. 203,000 pounds, based on the average landings during 1999–2006.

Sub alternative C. The average landings during 1994–2006 multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Discussion

Note Alternative 2 sub alternative C does not include proportional readjustments in “First class”, “Second class”, and “Third class” landings estimates. Alternatives 3–5 examine an ACL for all grouper species due to the lack of species specific information in the USVI. Alternative 5 uses the “grouper” category landings in the USVI and a summation of identified and redistributed grouper species in Puerto Rico that are in the reef fish FMU.

4.5 Action 5: Annual Catch Limits for Snapper Unit 1

Alternative 1. No Action. Do not set an ACL for Snapper Unit 1

Alternative 2. Set the ACL for Snapper Unit 1 off Puerto Rico equal to:

Sub alternative A. Zero for the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Snapper Unit 1 five years after implementation of the data collection program.

Sub alternative B. The average corrected landings for identified Snapper Unit 1 species during 1999–2006 = 300,000 pounds multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative C. The average corrected landings for identified silk snapper during 1999–2006 = 200,000 pounds for silk snapper multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar). Silk snapper would be the indicator species for Snapper Unit 1.

Sub alternative D. Level in pounds to be determined (SEFSC), based on the average landings for 1994–2006 for the current Snapper Unit 1 multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative E. 316,000 pounds, based on the average landings from 1999–2006 identified for Snapper Unit 1 species, plus the average proportional corrected landings estimate for Snapper Unit 1 species landed in the generic “Snapper” category during 1999–2006, multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative G. 374,000 pounds, based on the average 1994–2006 landings for identified Snapper Unit 1 species, plus the average proportional

corrected landings estimate for Snapper Unit 1 species landed in the generic “Snapper” category during 1994–2006, multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Sub alternative H. 500,000 pounds ACL in the EEZ and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Snapper Unit 1 five years after implementation of the data collection program.

Sub alternative J. 374,000 pounds each for both the commercial and recreational sectors.

Alternative 3. Set the ACL for Snapper off St. Thomas/St. John at:
Sub alternative A. Zero for the EEZ off St. Thomas/St. John and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Snapper Unit 1 five years after implementation of the data collection program.

Sub alternative B. The average landings during 1994 - 2006 for all Snapper species = 160,000 pounds as part of a Snapper ACL.

Sub alternative C. The average landings during 1994 - 2006 for all Snapper species multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Alternative 4. Set the ACL for Snapper off St. Croix at:

Sub alternative A. Zero for the EEZ off St. Croix and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Snapper Unit 1 five years after implementation of data collection program.

Sub alternative B. 112,000 pounds based on average landings during 1994 - 2006 for all Snapper species.

Sub alternative C. The average landings during 1994 - 2006 for all Snapper species multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Alternative 5. Set the ACL for Snapper in the U.S. Caribbean equal to:
Sub alternative A. Zero for the EEZ off the U.S. Caribbean and do not establish an ACL for state waters, but rely on the data collection program (described in Action 10) and revisit ACL for Snapper Unit 1 five years after implementation of the data collection program.

Sub alternative B. 1,529,000 pounds, based on the average landings during 1994 - 2006 for all Snapper species.

Sub alternative C. The average landings during 1994 - 2006 for all Snapper species multiplied by an uncertainty scalar (see Action 7 for uncertainty scalar).

Discussion

Note Alternative 2 sub alternative C does not include proportional readjustments in “First class”, “Second class”, and “Third class” landings estimates. Alternatives 3–5 examine an ACL for all snapper species due to the lack of species specific information in the USVI. Alternative 5 uses the “snapper” category landings in the USVI and a summation of identified and redistributed snapper species in Puerto Rico that are in the reef fish FMU.

Alternative 2 for Puerto Rico: Need to eliminate wenchman (*P. macrophthalmus*) from the alternatives in which it is included for SU1 — therefore need to correct the poundage also. This affects sub-alternatives D, E, F, and G of Alternative 2 from Action 5.

4.6 Action 6: Annual Catch Limits for the Recreational Sector

Alternative 1. No Action. Do not set ACLs for the recreational sector.

Alternative 2. Use Puerto Rico recreational average landings data from MRFSS during 2000–2007 to set recreational ACLs in the EEZ and state waters of Puerto Rico for Snapper Unit 1, Grouper Unit 4, and Parrotfishes. Use the proportion of Puerto Rican recreational landings relative to the total of recreational and commercial Puerto Rican landings to set an ACL proxy in the EEZ and state waters for the USVI Recreational Fishery. For the USVI, proportions would be assigned to fish family (e.g., groupers, snappers, parrotfishes), until sufficient landings data are available to specify ACLs by unit. ACLs would equal zero for queen conch in the EEZ off St. Thomas/St. John and Puerto Rico; the recreational ACL for queen conch in the EEZ off St. Croix will be determined by the Council’s recommendation on Action 2. All island based recreational ACLs for Nassau grouper would equal zero.

Alternative 3. Use Puerto Rico recreational average landings data from MRFSS during 2000–2007 to set recreational ACLs in the EEZ and state waters for Snapper Unit 1, Grouper Unit 4, and Parrotfishes. Use the proportion of Puerto Rican recreational landings relative to the total of recreational and commercial Puerto Rican landings to set an ACL proxy in the EEZ.

Alternative 4. Do not establish a recreational ACL in the USVI EEZ and state waters, but use the Commercial ACL for each unit or family as a proxy for the ACL for all sectors in the fishery.

Alternative 5. Set the recreational ACL in the USVI equal to 10% of each islands commercial ACL.

Alternative 6. Establish a separate charter boat sector ACL based on MRFSS data for Puerto Rico.

Alternative 7. Establish recreational ACL equal to half of the commercial ACL in Puerto Rico

Sub alternative A. Allow recreational fishers to harvest all species managed by the Council in the EEZ and state waters.

Sub alternative B. Allow recreational fishers to harvest only fish species managed by the Council that are not listed as overfished or under going overfishing in the EEZ and state waters.

Discussion

Need to calculate proportions for setting ACLs on a unit by unit basis.

4.7 Action 7: Accounting for Uncertainty

Alternative 1. No Action. Set the ACL at the level specified in the previous actions.

Alternative 2. In setting ACLs based on average catch, use:

Sub alternative A. 75% of the specified level in the previous actions to adjust for uncertainty

Sub alternative B. 50% of the specified level in the previous actions to adjust for uncertainty

Sub alternative C. 25% of the specified level in the previous actions to adjust for uncertainty.

Discussion

A major aspect of the revised NS1 guidelines is the concept of incorporating management and scientific uncertainty in using ACLs and AMs. Management uncertainty occurs because of the lack of sufficient information about catch (e.g., late reporting, underreporting, and misreporting of landings or bycatch). Management uncertainty also exists because of the lack of management precision in many fisheries due to lack of inseason fisheries landings data, lack of inseason closure authority, or the lack of sufficient inseason management in some FMPs when inseason fisheries data are available. Scientific uncertainty includes uncertainty around the estimate of a stock’s biomass and its Maximum fishing mortality threshold (MFMT); therefore, any estimate of OFL has uncertainty (74 FR 3181). For these reasons, the Council may choose to take a more precautionary approach to prevent overfishing by reducing the ACL to account for such uncertainty.

4.8 Action 8: Alternative Methods for Reducing Fishing Mortality and Establishing ACL Proxies

Alternative 1. No Action. Do not implement alternative methods for

reducing fishing mortality by establishing proxies for ACLs.

Alternative 2. Work with fishermen to develop measures to reduce fishing effort (i.e., permits, data collection).

Alternative 3. Establish ACL by sector for St. Thomas/St. John

Sub-alternative A. Establish ACL by net sector

Sub-alternative B. Establish ACL by trap/pot sector

Sub-alternative C. Establish ACL by hook-and-line sector

Alternative 4. Establish ACL by sector for St. Croix

Sub-alternative A. Establish ACL by net sector

Sub-alternative B. Establish ACL by trap/pot sector

Sub-alternative C. Establish ACL by hook-and-line sector

Alternative 5. Establish ACL by sector for Puerto Rico

Sub-alternative A. Establish ACL by net sector

Sub-alternative B. Establish ACL by trap/pot sector

Sub-alternative C. Establish ACL by hook-and-line sector

Discussion

There are limited circumstances that may not fit the standard approaches to specification of referenced points and management measures set forth in these guidelines. “These include, among other things, conservation and management of ESA listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics.” In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act (prevent overfishing) than those set forth in these guidelines.” Councils must document their rationale for any alternative approaches to these limited circumstances in an FMP or an FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act (50 CFR 600.310 (h)(3)).

4.9 Action 9: Permits

Alternative 1. No Action. Do not establish a permit system for fishing in the EEZ

Alternative 2. Require a federal permit for fishing in the EEZ.

Sub Alternative A. Require a federal permit for recreational fishing in the EEZ.

Sub Alternative B. Require a federal permit for commercial fishing in the EEZ.

Sub Alternative C. Require the use of trap tags for all (lobster and fish) trap fisheries in the EEZ.

Sub Alternative D. Require a federal permit for charter boats fishing in the EEZ.

Alternative 3. Require a federal permit to sell Council managed species.

Alternative 4. Require a federal permit to purchase Council managed species.

Discussion

The Council moved to establish an Ad Hoc Advisory Panel to consist of fishermen and local and federal managers and scientists to develop a permitting and potentially a limited access system; these recommendations will be incorporated into this Action.

4.10 Action 10: Monitoring and Enforcement of Annual Catch Limits
Alternative 1. No Action. Set the ACL at the level specified in the previous actions.

Alternative 2. Require any person landing Council managed species to submit an appropriate data collection form, as developed by the SEFSC or the Council's SSC, after every trip with enough detail such that CPUE per species can be calculated for each gear.

Alternative 3. Require any federal permit holder to submit an appropriate data collection form, as developed by the SEFSC or the Council's SSC, after every trip with enough detail such that CPUE per species can be calculated for each gear.

Alternative 4. Develop an updated catch report form in coordination with the SEFSC, local and territorial governments, fishermen, and the Council's SSC with enough detail such that CPUE per species can be calculated for each gear.

Discussion

In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks in the fishery, and ecosystem component (EC) species, including: (1) Sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries; (2) Description of the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and (3) Description of the

methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery (50 CFR 600.310 (i)).

The SSC and ACLG continuously recommended implementing better data collection methodologies throughout their respective discussions. Currently, information of this type is limited or non-existent; therefore, better data collection methods are necessary.

4.11 Action 11: Accountability Measures

Alternative 1. No Action. Do not establish Accountability Measures.

Alternative 2. Implement accountability measures for exceeding an ACL based on:

Sub alternative A. A single year of landings/catch.

Sub alternative B. A 2-year average of landings/catch.

Sub alternative C. A 3-year average of landings/catch.

Alternative 3. Reduce the fishing season in the following year by a length determined to be appropriate to account for exceeding the ACL.

Alternative 4. For queen conch exceedences in St Croix, close the EEZ to queen conch harvest.

Alternative 5. Reduce the ACL in the subsequent fishing year by an amount equal to an overage in the previous year.

Discussion

The Council may choose to use different sub alternatives from alternative 2 for different species or species groups depending on the reliability and timeliness for the different fisheries. If this is the case, additional alternatives would be developed so the Council can indicate that desire. There may be some difficulty in implementing Alternative 6 in the year directly following the overage due to the timeliness of the availability of the data; therefore, the reduction may take place up to two years after the overage of the ACL.

4.12 Action 12: Allowable Gear for Reef Fish

Alternative 1. No Action. Do not alter allowable gear in the U.S. Caribbean

Alternative 2. Review the list of allowable gear under 50 CFR 600.725

Discussion

The Council voted to request the Secretary of Commerce to list spear as an allowable gear in the reef fish fishery. A request to remove powerheads as an allowable gear was made by the CFMC (need to send a letter) with the rationale

including the definition (powerheads use explosives so look at definition in Section 600). This is a simple process of rule making. A letter had been sent to the RA requesting that spear be allowed for the commercial fisheries. Trawls should not be allowed in the US Caribbean. Need to revise all the allowable gears.

4.13 Action 13: Establish Framework Measures for ACLs and AMs in the Reef Fish FMP.

Alternative 1. No Action. Do not establish a framework for ACLs and AMs

Alternative 2. Establish a framework procedure for setting and adjusting ACLs and AMs

Discussion

Action 13 will require modification of the existing framework procedure so that ACLs and AMs may be quickly altered as necessary through a regulatory action.

SPECIAL ACCOMMODATIONS

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918-1920, telephone (787) 766-5926, at least five days prior to the meeting date.

Dated: July 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9-18162 Filed 7-29-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

External Advisory Panel for NOAA's Oceans and Human Health Initiative

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Solicitation of Members for an External Advisory Panel for the NOAA Oceans and Human Health Initiative.

SUMMARY: This notice responds to the Oceans and Human Health Act of 2005, Public Law 108-447, which authorizes the Secretary of Commerce to establish an Oceans and Human Health Advisory Panel (the Panel). This Panel assists in

the development and implementation of the NOAA Oceans and Human Health Initiative, as set forth in section 903(b) of the Oceans and Human Health Act. Nominations to the Panel are being solicited for a balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The Panel is not subject to the Federal Advisory Committee Act (5 U.S.C. App.).

DATES: Resumes should be sent to the address, e-mail, or fax specified and must be received by Monday, August 31, 2009.

ADDRESSES: Senior Science and Policy Analyst, Oceans and Human Health Initiative, National Ocean Service, NOAA, 331 Fort Johnson Road, Charleston, SC 29412-9110, fax: 843-762-8737, e-mail: Carolyn.Sotka@noaa.gov; cc: Juli.Trtnanj@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Carolyn Sotka, NOAA, Senior Science and Policy Analyst, National Ocean Service (NOS), NOAA, 331 Fort Johnson Road, Charleston, South Carolina 29412-9110; Telephone: 843-762-8944, Fax: 843-762-8737; e-mail: Carolyn.Sotka@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Panel is to advise NOAA with regard to:

1. Development of overall vision, mission and goals for NOAA's Oceans and Human Health Initiative;
2. Preparation and periodic updating of a NOAA's Oceans and Human Health Initiative Research Plan;
3. Communication, coordination and integration of Oceans and Human Health Initiative activities with other programs and partners, including but not limited to the National Science Foundation/National Institute of Environmental Health Sciences Centers of Oceans and Human Health, the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia, human health academic and medical communities, and state environmental, health and natural resource agencies;
4. Oceans and Human Health Initiative performance and progress;
5. Effectiveness of NOAA's education and outreach efforts; and
6. Such other matters as may be identified.

The Panel members shall not be employed by NOAA. Nominations should provide the nominee's contact information and describe their qualifications relative to the criteria given below, or include a resume. Anyone is eligible to nominate a panel member, and nominations from

organizations and self-nominations are encouraged. The Panel is expected to have up to a maximum of 15 members, with a variety of backgrounds (recognizing that it will not be practical to have all backgrounds represented), with respect to:

1. Particularly relevant areas of marine and biomedical sciences, such as:
 - a. Conservation medicine, diseases of humans, diseases of marine organisms;
 - b. Epidemiology and human health sciences;
 - c. Harmful algal bloom impacts on public health;
 - d. Source tracking and environmental microbiology;
 - e. Marine pharmaceuticals and other natural products;
 - f. Marine organisms and habitats as models for biomedical research and/or indicators of environmental condition;
 - g. Pollutants, contaminants, and ecological chemistry;
 - h. Seafood safety;
 - i. Remote sensing, observing systems; and predictive models;
 - j. Ecosystem science and services;
 - k. Climate change and variability;
 - l. Genomics and proteomics;
 - m. Biomaterials, bioengineering, and other techniques for producing marine products, including chemical, aquaculture, and recombinant DNA;
 - n. Outreach and education; and
 - o. Social sciences relevant to human health.
2. Experience in academia, within mission-oriented government agencies, non governmental organizations, and the private sector;
3. Familiarity with NOAA's mandates; and
4. Being a science provider to key generic groups of stakeholders, science interpreter to groups of stakeholders, or stakeholder with a history of interaction with science providers.

The qualifications of individuals are expected to be outstanding with respect to one or more, but not necessarily all, of the criteria. Because of the limited size of the advisory panel, management organization expertise must include expertise directly related to ecosystem condition or human health or the very special features of science applied to government decision-making. The advisory panel members should have the following qualifications:

1. National and international recognition within their profession;
2. Knowledge of the scientific, technical, and biomedical information needed to support NOAA's Oceans and Human Health Initiative, coupled with broad familiarity with NOAA's mission;
3. Knowledge of, and experience with, the organization and management of

complex, mission-oriented scientific and/or public health programs; and

4. Ability to represent views of academia, government agencies, nongovernmental organizations, or the private business sector.

This solicitation is to obtain candidate applications for 3 current vacancies on the Panel. Appointments to the advisory panel will be for two or three-year terms, renewable once and the panel is expected to meet twice yearly.

Dated: July 23, 2009.

William Corso,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. E9-18184 Filed 7-29-09; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: 2 p.m., Wednesday, August 19, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9-18342 Filed 7-28-09; 4:15 pm]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: 11 a.m., Friday, August 21, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9-18344 Filed 7-28-09; 4:15 pm]

BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 14, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18347 Filed 7-28-09; 4:15 pm]
BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 28, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18346 Filed 7-28-09; 4:15 pm]
BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 7, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18340 Filed 7-28-09; 4:15 pm]
BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Order Finding That the ICE Henry
Financial LD1 Fixed Price Contract
Traded on the
IntercontinentalExchange, Inc.,
Performs a Significant Price Discovery
Function**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On June 12, 2009, the Commodity Futures Trading Commission (“CFTC” or “Commission”) published for comment in the **Federal Register**¹ a notice of its intent to undertake a determination whether the Henry Financial LD1 Fixed Price contract, traded on the IntercontinentalExchange, Inc. (“ICE”), an exempt commercial market (“ECM”) under sections 2(h)(3)–(5) of the Commodity Exchange Act (“CEA” or the “Act”), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as a Commission report on ECMs. The Commission has reviewed public comments and the entire record in this matter and has determined to issue an order finding that the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* [date of underlying order].

FOR FURTHER INFORMATION CONTACT:
Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5515. E-mail: gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418-5133. E-mail: snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The CFTC Reauthorization Act of 2008 (“Reauthorization Act”)² significantly broadened the CFTC’s regulatory authority with respect to

ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts (“SPDCs”) are traded—and treating ECMs in that category as registered entities under the CEA. The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.³ As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake a determination whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. The Commission will, within a reasonable period of time after the close of the comment period, consider all relevant information and

¹ 74 FR 28028 (June 12, 2009).

² Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110-246, 122 Stat. 1624 (June 18, 2008).

³ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

issue an order announcing and explaining its determination. The issuance of an affirmative order triggers the effectiveness of the Commission's regulatory authorities with respect to an ECM with a SPDC; at that time, such an ECM becomes subject to all provisions of the CEA applicable to registered entities.⁴ The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁵

II. Notice of Intent To Undertake SPDC Determination

On June 12, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function, and requested comment from interested parties.⁶ Comments were received from the American Public Gas Association ("APGA"); the Steel Manufacturer's Association and East Texas Electric Cooperative (collectively, "SMA/ETEC"); and the CME Group.⁷ The comments are more extensively discussed below in the Findings and Conclusion Section.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following factors in determining whether a contract performs a significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject

to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all factors must be present to support a determination that a particular contract performs a significant price discovery function. Moreover, the statutory language neither prioritizes the factors nor specifies the degree to which a SPDC must conform to the various factors. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these factors do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular factor, or combination of factors, would be sufficient to support a SPDC determination.⁸ For example, for contracts that are linked to other contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two

markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function.

IV. Findings and Conclusions

The ICE Henry Financial LD1 Fixed Price contract is cash settled based on the final settlement price of the New York Mercantile Exchange's ("NYMEX") physically-delivered Henry Hub-based Natural Gas futures contract for the corresponding contract month. The trading unit of the ICE Henry Financial LD1 Fixed Price contract is 2,500 mmBtu multiplied by the number of calendar days in the contract month. For example, if a contract month has 30 days, the trading unit is 75,000 mmBtu, which is referred to as 30 lots.

Based on data provided in connection with the quarterly notification required by Commission rule 36.3(c)(2), this contract realized more than an average of five trades per day during the first quarter of 2009. In addition, the average volume of natural gas traded each business day during that period was 449,010 contracts; the open interest in the contract as of March 31, 2009 was 2,932,798 contracts.

Based on these contract features and trading data, the ICE Henry Financial LD1 Fixed Price contract satisfies the material liquidity, price linkage and arbitrage criteria for a SPDC. The very high average daily trading volume indicates that the contract is relatively liquid. With regard to the price linkage and arbitrage tests, the ICE Henry Financial LD1 Fixed Price contract and NYMEX's physically-delivered Natural Gas futures contract have the same final settlement prices, and ICE uses NYMEX's forward settlement curve when conducting its mark-to-market accounting procedures to settle the contract on a daily basis.

In evaluating the ICE Henry Financial LD1 Fixed Price contract, the Commission also has the benefit of a recent study focused on price discovery contracts on ECMs. The Commission's October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") stated that traders and voice brokers view the instant ICE contract as economically equivalent to the NYMEX physically-delivered Natural Gas futures contract. The ICE and NYMEX contracts essentially comprise a single market for natural gas derivatives trading, and traders look to both the ICE and the NYMEX when determining where to

⁴ Public Law 110-246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110-627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁵ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

⁶ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

⁷ The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-007.html>.

⁸ 17 CFR 36, Appendix A.

execute a trade at the best price. The ECM Study also reported that the ICE natural gas contract acts as a price discovery market.

The statements provided by APGA and CME provide additional support for the Commission's findings. APGA, the national association for publicly-owned natural gas distribution systems, states that its members report that the prices on the ICE and NYMEX contracts have an ongoing, linked relationship that extends not only to the linked settlement price but to prices between the two contracts throughout the trading day. Its members report that the prices of both markets are substantially the same and move in tandem, and that counterparties use either market interchangeably as a basis for quoting prices. This linkage, in APGA's view, makes possible arbitrage trading between the two markets. With respect to material price reference, APGA observes that the ICE contract is routinely used as a means by which cash market prices are referenced.⁹ Finally, APGA states that whether or not its members trade the ICE contract, they are of the opinion that they would be able to execute substantial orders without having an impact on the market price through the transaction.

CME Group opines that the Henry Financial LD1 Fixed Price contract readily satisfies all four of section 2(h)(7)'s criteria as explained in the Appendix A Guidance. It notes that when trading in the Henry Financial LD1 Fixed Price contract is viewed in the context of the relevant competing contracts at NYMEX, including both financially-settled and physically-settled contracts, ICE's contract had a 40 percent market share of that trading activity—easily satisfying the standards for material liquidity. As to price linkage, CME Group observes that the ICE Henry Financial LD1 Fixed Price contract continues to have the same settlement price as the NYMEX natural gas contract; with regard to final settlement, the product specifications for the ICE contract explicitly provide for final settlement to be equal to the final settlement price of the NYMEX natural gas futures contract. Thus, in

CME's opinion there appears to be little chance that the ICE contract will deviate from the NYMEX settlement price for final settlement. With respect to arbitrage, CME Group offers anecdotal information indicating a strong and active arbitrage between the two contracts. Finally, CME Group observes that the ICE Henry Financial LD1 Fixed Price contract satisfies the statutory standard for material price reference, as ICE itself relies on the settlement prices generated by NYMEX for its own settlement prices in the contract, rather than on prices generated by its own system. Moreover, CME Group notes its understanding that ICE has for several years been selling its price information for this contract to interested persons.¹⁰

SMA/ETEC supports recognition of the Henry Financial LD1 Fixed Price contract as a SPDC; the bulk of its comment letter, however, focuses on issues beyond the narrow scope of the instant action, which is to determine whether the ICE contract performs a significant price discovery function. For instance, SMA/ETEC advocates subjecting all natural gas investment vehicles to aggregate position limits and discusses the Commission's proposed limited risk management exemption.

After considering the entire record in this matter, including the ECM Study and the comments received, the Commission has determined that the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function under the material liquidity, price linkage and arbitrage criteria established in section 2(h)(7) of the CEA.

The issuance of this order triggers the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its Henry Financial LD1 Fixed Price contract,¹¹ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.¹²

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹³ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA¹⁴ requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits of this Order in light of the specific provisions of section 15(a) of the Act and has concluded that this Order, which strengthens Federal oversight of the ECM and helps to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation and other disruptions to

⁹ APGA members note that in general the written cash market contracts that they enter into reference the NYMEX price, as does the ICE Henry Financial LD1 Fixed Price contract itself. While the cash contracts commonly do not explicitly reference the ICE contract as the settlement price, APGA states that it is common market practice for dealers to provide cash market price quotes based upon the ICE Henry Financial LD1 Fixed Price contract. With respect to material price reference, while it appreciates the anecdotal information provided by both APGA and CME Group, the Commission has not reached a conclusion with respect to this factor.

¹⁰ As noted above, the Commission has not reached a conclusion with respect to the material price reference factor.

¹¹ See 73 FR 75888, 75893 (Dec. 12, 2008).

¹² This Order determining that the ICE Henry Financial LD1 Fixed Price contract is a SPDC represents the first time the Commission has determined that one of ICE's contracts performs a significant price discovery function. Accordingly, ICE must, within 90 calendar days of the date of this Order, submit to the Commission a written demonstration of compliance with the section 2(h)(7) core principles.

¹³ 44 U.S.C. 3507(d).

¹⁴ 7 U.S.C. 19(a).

market integrity, both on the ECM itself and in any related futures contracts trading on designated contract markets (“DCMs”). An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issuance of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Amendments to section 4(i) of the CEA authorize the Commission to require large trader reports for SPDCs listed on ECMs. These increased ECM responsibilities, along with the CFTC’s increased regulatory authority, subject the ECM’s risk management practices to the Commission’s supervision and oversight and generally enhance the financial integrity of the markets.

V. Order

After considering the complete record in this matter and the comment letters received in response to its request for comments, the Commission has determined to issue the following:

Order

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the ICE Henry Financial LD1 Fixed Price contract satisfies the statutory material liquidity, price linkage and arbitrage criteria for a significant price discovery contract. Consistent with this determination, and effective immediately, IntercontinentalExchange, Inc., shall be and is considered a registered entity with respect to the Henry Financial LD1 Fixed Price contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by IntercontinentalExchange, Inc. commence with the issuance of this Order.

Issued in Washington, DC, on July 24, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9-18159 Filed 7-29-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0145]

Federal Acquisition Regulation; Submission for OMB Review; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. A request for public comments was published in the **Federal Register** at 74 FR 18719 on April 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 31, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501-3775 or via e-mail at Ernest.woodson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204-7, Central Contractor Registration. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

C. Annual Reporting Burden

Respondents: 35,694.

Responses per Respondent: 4.00.

Annual Responses: 142,776.

Hours per Response: .0200 (Averaged).

Total Burden Hours: 2,852.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, Room 4041, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: July 22, 2009.

Al Matera,

Director, Office of Contract Policy.

[FR Doc. E9-18132 Filed 7-29-09; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.
ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, September 14th, 2009, from 8 a.m. to 11 a.m. The closed Executive Session will be held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Russell Senate Office Building, Room SR-385, Washington DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David S. Forman, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402-5000, telephone: (410) 293-1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. The proposed closed session from 11 a.m. to 12 p.m. will include a discussion of new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the

Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: July 23, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9-18193 Filed 7-29-09; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 28, 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: July 27, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Student Aid on the Web.

Frequency: On Occasion; Monthly; Annually.

Affected Public: Federal Government; Individuals or Household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,655,377.
Burden Hours: 245,198.

Abstract: Federal Student Aid, an office of the U.S. Department of Education, seeks renewal of the registration system within the Student Aid on the Web, an Internet Portal Web site (hereafter "The Web Site"). The Web site makes the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Web site uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Web site also provides a database of demographic information that helps Federal Student Aid target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Web site helps us to identify potential customers in the middle school age range. The FAFSA4caster Data Transfer module has been added to the Web site since its last approval. As with the FAFSA Data Transfer module, data from the student's MyFSA profile pre-populates the FAFSA4caster—FAFSA4caster is the U.S. Department of Education's financial aid estimator tool that determines what type of financial aid the student is eligible to receive and

provides an estimated award amount for each. The FAFSA4caster data transfer module uses current MyFSA profile information and, therefore, does not require the collection of additional data items.

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 4097. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-18190 Filed 7-29-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 31, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or send e-mail to oir_submission@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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.

Dated: July 24, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of the

Implementation of the Carl D. Perkins Career and Technical Education Act of 2006.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,087.

Burden Hours: 1,376.

Abstract: The 2011 National Assessment of Career and Technical Education (NACTE) will examine the implementation of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV). This evaluation study, which is part of a larger evaluation effort directed by the Policy and Program Studies Service (PPSS), focuses on evaluating how state agencies and local providers are responding to the new legislation and how new provisions contained within the legislation are being implemented. Information collected from the NACTE study will be incorporated in two reports submitted to Congress: an interim report (due January 1, 2010) and final report (due July 1, 2011), which are mandated in the legislation. These reports are to detail the condition of

CTE and the success of state agencies and local programs in improving the quality of CTE services. To capture state agency staff and local provider input about the Act's implementation, researchers will administer surveys to the state secondary and postsecondary director of CTE in each of the 50 states, the District of Columbia, and other territories and possessions in outlying areas. A second set of surveys will be administered to a nationally representative sample of 1,265 secondary level local education agencies and/or intermediary agencies (i.e., dedicated CTE facilities) and 765 institutions of higher education. To assess the distribution of federal resources to local programs, researchers will collect 2008-09 fiscal allocation data from state secondary and postsecondary agencies administering federal Perkins dollars.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4012. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-18191 Filed 7-29-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13391-000]

Lock+™ Hydro Friends Fund I, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 23, 2009.

On March 6, 2009, and supplemented on May 29, 2009, and June 26, 2009,

Lock+™ Hydro Friends Fund I, LLC filed an application for a three-year preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the proposed Mighty Mouse Project. The Mighty Mouse Project would be located on the Mississippi River at the U.S. Army Corps of Engineers Lock and Dam No. 5a in Fountain City, Winona County, Minnesota, and in Buffalo County, Wisconsin.

The proposed project would consist of: (1) A new lock door placed in an auxiliary lock that would hold seven new turbine generating units with a total capacity of 4,963 kW; (2) new removable panels to control flow through the turbine units; and (3) appurtenant facilities. Project power would be transmitted through a 1,000-foot-long, 36.7-kV transmission line. The estimated annual generation is 41,330 megawatt-hours.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Friends Fund I, LLC, 5090 Richmond Avenue, Suite 390, Houston, TX 77056; 877-556-6566, ext. 709.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13391) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18150 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13465-000]

Henry County, IA; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 23, 2009.

On May 12, 2009, Henry County, Iowa filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Oakland Mills Dam Project No. 13465, to be located at the existing Oakland Mills Dam, on the Skunk River, in Henry County, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The existing Oakland Mills Dam is owned by Henry County and was constructed in 1926 and used for power generation for nearly 40 years before being abandoned. The proposed project would consist of: (1) The existing 7-foot-high Oakland Mills concrete dam equipped with a 250-foot-long spillway, an 8-foot-wide fishway, a 75-foot-wide section consisting of a 23-foot-wide taintor gate, and a 127-foot-wide section that includes the remaining foundation of the original powerhouse; (2) an existing 28-acre impoundment with 62-acre-feet of usable storage; (3) a new 45-foot-wide by 60-foot-long intake conduit connecting to; (4) five new 200-kilowatt (kw) turbine generator units to be located in the Skunk River for a total installed capacity of 1,000 kw; (5) a new 50-foot-long, 12.5-kilovolt transmission line; and (6) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 7,008,000 kilowatt-hours.

Applicant Contact: John Pullis, Director, Henry County Conservation Department, 2593 Nature Center Drive, Mount Pleasant, Iowa 52641, (319) 986-5067.

FERC Contact: Michael Watts, (202) 502-6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene,

and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13465) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18152 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13432-000]

America Renewables, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 23, 2009.

On April 14, 2009, America Renewables, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lake Clementine Hydroelectric Project, which is located on the North Fork of American River, in Placer County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) An existing 620-foot-long, 155-foot-high, concrete arch North Fork dam; and (2) an existing reservoir having a surface area of 280 acres, a

storage capacity of 14,700 acre-feet, and normal water surface elevation of 718 feet mean sea level. American Renewables proposes to study the following three options to develop the Lake Clementine Hydroelectric Project. Option 1: (1) A 9-foot-diameter, 600-foot-long, steel penstock to convey water to the powerhouse; (2) a penstock bifurcation in the powerhouse supplying water to two generating units; (3) a powerhouse containing two new generating units having a total installed capacity of 8 to 10 megawatts (MW); (4) a 300-foot-long tailrace channel returning flow to the North Fork of the American River; (5) a proposed 8,400-foot-long, 60-kilovolt (kV) transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 25 to 30 gigawatt-hours (GWh). Option 2: (1) A 9-foot-diameter, 600-foot-long, concrete-lined tunnel to convey water to the powerhouse, (2) outlet works that would bifurcate in the powerhouse supplying water to two generating units; (3) a powerhouse containing two new generating units having a total installed capacity of 8 to 10 MW; (4) a 300-foot-long tailrace channel returning flow to the North Fork of the American River; (5) a proposed 8,400-foot-long, 60-kV transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 25 to 30 GWh. Option 3: (1) A 9-foot-diameter, 600-foot-long steel penstock through the dam to convey water to the powerhouse, (2) outlet works that would bifurcate in the powerhouse supplying water to two generating units; (3) a powerhouse containing two new generating units having a total installed capacity of 8 to 10 MW; (4) a 300-foot-long tailrace channel returning flow to the North Fork of the American River; (5) a proposed 8,400-foot-long, 60-kV transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 25 to 30 GWh.

Applicant Contact: Magna Johansson, CEO, America Renewables, LLC, 28605 Quailhill Drive, Rancho Palos Verdes, CA 90275, phone: (310) 699-6400.

FERC Contact: J. Timothy Looney, 202-502-6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13432) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18151 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 22, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09-93-000.

Applicants: Caprock Wind LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Consideration re Caprock Wind, LLC.

Filed Date: 07/14/2009.

Accession Number: 20090715-0150.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 04, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09-76-000.

Applicants: Sollunar Energy, Inc.

Description: Self Certification Notice of Exempt Wholesale Generator Status filed by Sollunar Colorado, Inc.

Filed Date: 07/22/2009.

Accession Number: 20090722-5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08-1398-002.

Applicants: Smoky Hills Wind Project II, LLC.

Description: Smoky Hills Wind Project II, LLC, Notice of Non-Material Change in Status.

Filed Date: 07/07/2009.

Accession Number: 20090707-5142.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Docket Numbers: ER09-863-001.

Applicants: SMART Papers Holdings, LLC.

Description: SMART Paper Holdings, LLC, supplements its 3/23/09 Application for Market Based Rate Authority with Attachment A *et al.*

Filed Date: 07/21/2009.

Accession Number: 20090721-0337.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM09-6-000.

Applicants: PPL Electric Utilities Corporation.

Description: Application to terminate purchase obligation of PPL Electric Utilities Corporation.

Filed Date: 07/22/2009.

Accession Number: 20090722-5037.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 19, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18100 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 21, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06-1228-000.

Applicants: Phibro LLC.

Description: Phibro LLC submits notice of cancellation of Phibro's Third Revised Rate Schedule FERC No. 1.

Filed Date: 07/17/2009.

Accession Number: 20090720-0025.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER08-824-004.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits an errata tariff sheet to correct a ministerial error in one of the tariff sheets that it previously filed.

Filed Date: 07/21/2009.

Accession Number: 20090721-0336.

Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER08-1297-002; ER01-1071-013; ER02-1903-010; ER02-2559-009; ER03-1104-009; ER03-1105-009; ER03-34-012; ER06-1261-007; ER06-9-008; ER07-1157-004; ER07-174-007; ER07-875-003; ER08-1293-002; ER08-1294-002; ER08-1296-002; ER08-1300-002; ER08-197-006; ER08-250-003.

Applicants: Ashtabula Wind, LLC; Badger Windpower, LLC; FPL Energy Marcus Hook, L.P.; Backbone Mountain Windpower, LLC; FPL Energy North

Dakota Wind, LLC; FPL Energy North Dakota Wind II, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Mower County, LLC; FPL Energy Burleigh County Wind, LLC; Logan Wind Energy LLC; Osceola Windpower, LLC; Peetz Table Wind Energy, LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Osceola Windpower II, LLC; Story Wind, LLC; FPL Energy Oliver Wind II, LLC; Langdon Wind, LLC.

Description: NextEra Companies submits revisions to their MBR schedules to include tariff provision to allow market-based rate sellers to sell ancillary services in the Ancillary Services Market *etc.*

Filed Date: 07/17/2009.

Accession Number: 20090720-0104.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1462-000.

Applicants: Lake Benton Power Partners II, LLC.

Description: Lake Benton Power Partners II, LLC submits request for authorization to sell energy and capacity at market based rates and CD containing work papers of Julie Solomon.

Filed Date: 07/17/2009.

Accession Number: 20090720-0220.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1463-000.

Applicants: Xcel Energy Services Inc.

Description: Public Service Company of Colorado submits the proposed termination of various Umbrella Service Agreements for the Sale, Assignment or Transfer of Transmission Rights under FERC Electric Tariff, Original Volume 5.

Filed Date: 07/17/2009.

Accession Number: 20090720-0004.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1464-000.

Applicants: Phibro LLC.

Description: Phibro LLC submits notice of cancellation of Phibro's Third Revised Rate Schedule FERC No. 1.

Filed Date: 07/17/2009.

Accession Number: 20090720-0025.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1465-000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc. submits certain amendments to a cost-based Wholesale Power Contract dated 4/1/96, providing requirements service to one if members Garkane Energy Coop, Inc.

Filed Date: 07/17/2009.

Accession Number: 20090720-0020.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1466-000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc submits annual Information Filing setting forth updated approved costs for member-own generation for 2009, and the resulting reimbursements by Desert.

Filed Date: 07/17/2009.

Accession Number: 20090720-0021.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1467-000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power and Light Company submits Notice of Cancellation of Rate Schedules.

Filed Date: 07/17/2009.

Accession Number: 20090720-0022.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1468-000.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submits Interconnection and Local Delivery Service Agreement between AEP and the City of Auburn.

Filed Date: 07/17/2009.

Accession Number: 20090720-0023.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1469-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement among PJM *etc.*

Filed Date: 07/17/2009.

Accession Number: 20090720-0024.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1470-000.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England Inc et al submits a consolidated and revised ISO Financial Assurance Policy.

Filed Date: 07/17/2009.

Accession Number: 20090720-0226.

Comment Date: 5 p.m. Eastern Time on Friday, August 07, 2009.

Docket Numbers: ER09-1471-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits letter of agreement for Phase 2 of a temporary project by PG&E and the City and County of San Francisco.

Filed Date: 07/20/2009.

Accession Number: 20090720-0224.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: ER09-1472-000.

Applicants: Viridian Energy, Inc.
Description: Viridian, Inc submits notice of succession.
Filed Date: 07/20/2009.
Accession Number: 20090720-0221.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: ER09-1473-000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corp submits an executed Large Generator Interconnection Agreement with NaturEner Glacier Wind Energy 2, LLC.
Filed Date: 07/20/2009.
Accession Number: 20090721-0252.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: ER09-1474-000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Revision No 7 to Appendix A of First Revised Rate Schedule FERC No 297 *et al.*
Filed Date: 07/20/2009.
Accession Number: 20090721-0250.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: ER09-1475-000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Original Sheet 1 *et al* to FERC Electric Tariff, 7th Revised Volume 11, Original Agreement No 580.
Filed Date: 07/20/2009.
Accession Number: 20090721-0249.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: ER09-1476-000; ER09-1477-000; ER04-1113-002; ER06-270-002; ER06-271-002.
Applicants: Solios Asset Management LLC; Pythagoras Global Investors L.P.; Solios Asset Management LLC; Solios Power, LLC.
Description: Solios Power, LLC *et al* (Relinquishing Marketers) submits Notice of Non-Material Change in Status and Notice of Cancellation of Rate Schedules.
Filed Date: 07/20/2009.
Accession Number: 20090721-0248.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
 Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA08-35-004.
Applicants: Xcel Energy Services, Inc.
Description: Compliance Filing of Xcel Energy Services, Inc.
Filed Date: 07/20/2009.
Accession Number: 20090720-5126.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: OA08-42-002.
Applicants: American Transmission System Operator, Inc; Midwest

Independent Transmission System Operator, Inc.
Description: American Transmission System Operator, Inc *et al* submits their compliance filing with the changes directed by the Commission to the transmission planning principles in Attachment FF-ATCLLC.
Filed Date: 07/20/2009.
Accession Number: 20090721-0292.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: OA08-53-002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits compliance filing revising its Open Access Transmission, Energy and Operating Reserve Markets Tariff and Open Access Transmission and Energy Markets Tariff.
Filed Date: 07/20/2009.
Accession Number: 20090721-0291.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.
Docket Numbers: OA08-62-005.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp. submits filing to comply with the Commission's 5/21/09 Order Denying Rehearing and on Compliance and conditional accepting the ISO's 10/31/08 compliance filing.
Filed Date: 07/20/2009.
Accession Number: 20090721-0293.
Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18101 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 21, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09-830-000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Report of July 14, 2009 Dominion flow through refund to Transcontinental Gas Pipeline Company LLC Rate Schedules GSS and LSS.

Filed Date: 07/15/2009.

Accession Number: 20090715-5148.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-831-000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits report on the refund of penalty revenues to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 07/17/2009.

Accession Number: 20090720-0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-832-000.

Applicants: Granite State Gas Transmission, Inc.

Description: Granite State Gas Transmission, Inc submits Sixteenth Revised Sheet 289 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 8/1/09.

Filed Date: 07/17/2009.

Accession Number: 20090720-0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-833-000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits First Revised Sheet 871.02 to FERC Gas Tariff, First Revised Volume 1, to be effective 7/17/09.

Filed Date: 07/17/2009.

Accession Number: 20090720-0027.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-834-000.

Applicants: Texas Eastern Transmission LP, Algonquin Gas Transmission, LLC, Maritimes & Northeast Pipeline, LLC, East Tennessee Natural Gas, LLC, Egan Hub Storage, LLC, Moss Bluff Hub, LLC, Saltville Gas Storage Company LLC, Southeast Supply Header, LLC, Steckman Ridge, LP.

Description: Texas Eastern Transmission, LP *et al* request for temporary waivers of certain tariff provision, NAESB Standards and Regulations Due to LInk Outages Associated with the Performance of System Maintenance.

Filed Date: 07/17/2009.

Accession Number: 20090720-0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-835-000.

Applicants: TransColorado Gas Transmission Company.

Description: TransColorado Gas Transmission Company, LLC submits First Revised Sheet 208 *et al.* to its FERC Gas Tariff, First Revised Volume 1, to be effective 8/20/09.

Filed Date: 07/20/2009.

Accession Number: 20090720-0216.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-836-000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits First Revised Sheet 492 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/19/09.

Filed Date: 07/20/2009.

Accession Number: 20090720-0215.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-837-000.

Applicants: Cheyenne Plains Gas Pipeline Company, LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits First Revised Sheet 278 to its FERC Gas Tariff, Original Volume 1, to be effective 8/20/09.

Filed Date: 07/20/2009.

Accession Number: 20090720-0214.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or

call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18103 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 22, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09-637-001.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company Fuel Retention Adjustment/Cash-Out Refund.

Filed Date: 07/21/2009.

Accession Number: 20090721-5045.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-707-001.

Applicants: White River Hub, LLC.

Description: White River Hub, LLC submits Substitute First Revised Sheet No. 145 to its FERC Gas Tariff, Original Volume No. 1.

Filed Date: 07/21/2009.

Accession Number: 20090721-0243.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-708-001.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Substitute Thirteenth Revised Sheet No. 99A to its FERC Gas Tariff, First Revised Volume No. 1, to be effective 8/1/09.

Filed Date: 07/21/2009.

Accession Number: 20090721-0244.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-709-001.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits Substitute First Revised Sheet No. 108 to its FERC Gas Tariff, Second Revised Volume No. 1-A, to be effective 8/1/09.

Filed Date: 07/21/2009.

Accession Number: 20090721-0245.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-710-001.

Applicants: Clear Creek Storage Company, LLC.

Description: Clear Creek Storage Company, LLC submits Substitute Sixth

Revised Sheet No. 77 to its FERC Gas Tariff, Original Volume No. 1, to be effective 8/1/09.

Filed Date: 07/21/2009.

Accession Number: 20090721-0246.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-711-001.

Applicants: Questar Southern Trails Pipeline Company.

Description: Questar Southern Trails Pipeline Company submits Substitute Fourth Revised Sheet No. 101 to its FERC Gas Tariff, Original Volume No. 1, to be effective 8/1/09.

Filed Date: 07/21/2009.

Accession Number: 20090721-0247.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-775-001.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits revisions to the service agreements originally filed on 6/23/09.

Filed Date: 07/21/2009.

Accession Number: 20090722-0111.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18105 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 17, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP06-200-052.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Fourth Revised Sheet No. 8 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 07/16/2009.

Accession Number: 20090716-0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Docket Numbers: RP09-508-001.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Seventh Revised Sheet No. 501 *et al.* to its FERC Gas Tariff, Seventh Revised Volume No. 1.

Filed Date: 07/14/2009.

Accession Number: 20090714-0103.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-687-001.

Applicants: Equitrans, LP.

Description: Equitrans, LP submits Substitute Seventh Revised Sheet 308 to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 07/14/2009.

Accession Number: 20090714-0104.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-601-001.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Twelfth Revised Sheet No. 290A to its FERC Gas Tariff, Second Revised Volume No. 1-A.

Filed Date: 07/15/2009.

Accession Number: 20090716-0074.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-684-001.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corp submits Sub Fifth

Revised Sheet No. 231 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1-A.

Filed Date: 07/15/2009.

Accession Number: 20090715-0165.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-692-001.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits Substitute First Revised Sheet No. 433 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 07/15/2009.

Accession Number: 20090715-0201.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-693-001.

Applicants: Pine Needle LNG Company, LLC.

Description: Pine Needle LNG Company, LLC submits Substitute Sixth Revised Sheet No. 89 *et al.* to its FERC Gas Tariff, Original Volume No. 1.

Filed Date: 07/15/2009.

Accession Number: 20090715-0202.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09-738-001.

Applicants: MarkWest Pioneer, LLC.

Description: MarkWest Pioneer, LLC submits First Revised Sheet 98 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 07/15/2009.

Accession Number: 20090715-0203.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP99-220-026.

Applicants: Great Lakes Gas Transmission Limited Par.

Description: Great Lakes Gas Transmission Limited Partnership submits a negotiated rate contract with CMS Energy Resource Management Company commencing 7/16/09.

Filed Date: 07/15/2009.

Accession Number: 20090715-0166.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18106 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 21, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96-272-095.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 11 Revised Sheet 66B.01a *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1 to be effective 7/21/09.

Filed Date: 07/20/2009.

Accession Number: 20090720-0217.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP05-422-033.

Applicants: El Paso Natural Gas Company.

Description: Supplemental Revenue Sharing Report of El Paso Natural Gas Company.

Filed Date: 07/17/2009.

Accession Number: 20090717-5081.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-61-008.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits replacement amendment to negotiated rate letter agreements executed by Gulf Crossing and one of its customers in relation to the Gulf Crossing Project.

Filed Date: 07/17/2009.

Accession Number: 20090720-0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-670-001.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits Substitute Twelfth Revised Sheet 212H to its FERC Gas Tariff, Seventh Revised Volume, to be effective 9/1/09.

Filed Date: 07/17/2009.

Accession Number: 20090717-0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-671-001.

Applicants: Southern LNG Inc.

Description: Southern LNG, Inc., submits Substitute Fourth Revised Sheet 99 to its FERC Gas Tariff, Original Volume 1, to be effective 9/1/09.

Filed Date: 07/17/2009.

Accession Number: 20090717-0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-811-001.

Applicants: Guardian Pipeline, LLC.

Description: Guardian Pipeline, LLC, submits Second Revised Sheet 223 to its FERC Gas Tariff, Original Volume 1.

Filed Date: 07/17/2009.

Accession Number: 20090720-0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: RP09-685-001.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Sub First Revised Sheet 100A *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 07/20/2009.

Accession Number: 20090720-0218.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18104 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP06-200-053.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Fifth Revised Sheet No. 8 *et al.* to its FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 07/22/2009.

Accession Number: 20090722-0149.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP06-298-009.

Applicants: Public Service Commission of New York v.

Description: Semi-Annual Report of Operational Sales of Gas of National Fuel Gas Supply Corporation.

Filed Date: 07/23/2009.

Accession Number: 20090723-5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 04, 2009.

Docket Numbers: RP09-275-002.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Tenth Revised Sheet 191A in its FERC Gas Tariff, Second Revised Volume 1 effective 7/11/09.

Filed Date: 07/22/2009.

Accession Number: 20090722-0145.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-618-001.

Applicants: Stingray Pipeline Company, LLC.

Description: Stringray Pipeline Company, LLC submits Substitute Tenth Revised Sheet No. 199 to its FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 07/22/2009.

Accession Number: 20090722-0147.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-685-002.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Co submits Second Sub Eighth Revised Sheet No. 15 to FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 07/22/2009.

Accession Number: 20090722-0146.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: RP09-687-002.

Applicants: Equitrans, L.P.

Description: Motion of Equitrans, LP for extension of time to comply with Order No. 587-T.

Filed Date: 07/17/2009.

Accession Number: 20090720-0108.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18102 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mid-Columbia Coho Restoration Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on funding the Confederated Tribes and Bands of the Yakama Nation (YN) to undertake the reintroduction of coho salmon into mid-Columbia River basin tributaries. The reintroduction would occur in the Methow and Wenatchee river basins in Chelan and Okanogan counties, Washington. The proposed reintroduction project would use both existing hatchery facilities as well as require construction of some new permanent and temporary facilities and modification of existing sites to serve as semi-natural rearing areas for juvenile coho.

With this Notice of Intent, BPA is initiating the public scoping process for the EIS. BPA is requesting comments about potential environmental impacts that it should consider as it prepares the EIS for the proposed project, as well as comments on other alternatives that may meet the goals of the project.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS.

DATES: Written scoping comments are due to the address below no later than September 15, 2009. Comments may also be made at the EIS scoping meetings to be held on August 20, 2009 and August 21, 2009 at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS, and requests to be placed on the project mailing list, to

Bonneville Power Administration, Public Affairs Office—DKE-7, P.O. Box 14428, Portland, OR 97293-4428, or by fax to (503) 230-3285. You also may call BPA's toll free comment line at (800) 622-4519 and leave a message (please include the name of this project), or submit comments online at <http://www.bpa.gov/comment>. BPA will post all comment letters in their entirety on BPA's Web site at <http://www.bpa.gov/comment>.

On Thursday, August 20, 2009, a scoping meeting will be held from 6:30 p.m. to 9 p.m. at the Chelan Fire District 3 Community Center in Leavenworth, Washington. On Friday, August 21, 2009, a scoping meeting will be held from 6:30 p.m. to 9 p.m. at the Methow Valley Community Center in Twisp, Washington. At these meetings, we will provide a brief presentation of the proposal, beginning about 7 p.m. We will take comments and answer questions during the presentation. Following the presentation, members of the project team will be available to answer questions, accept oral and written comments, and provide maps and other information about the project. You may stop by anytime during the open house.

FOR FURTHER INFORMATION CONTACT:

Bruce Hollen, Environmental Coordinator, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon 97208-3621; toll-free telephone 1-800-282-3713; direct telephone 503-230-5756; or e-mail bahollen@bpa.gov. Additional information can be found at BPA's Web site: http://www.efw.bpa.gov/environmental_services/nepadocs.aspx, click on "Project Reviews—Active," then use the drop-down box and click on Mid-Columbia Coho Restoration Project.

SUPPLEMENTARY INFORMATION: In 1999, BPA prepared an Environmental Assessment/Finding of No Significant Impact to support the funding of the YN-proposed Mid-Columbia Coho Restoration Feasibility Project. Over the past 10 years, the feasibility project has indicated that the concepts that were tested have the potential to result in the successful re-introduction of naturally reproducing populations of coho. The YN has also prepared a Master Plan to assess and guide the development of the full reintroduction program based on what was learned from the feasibility study and comments from the Northwest Power and Conservation Council's (NPCC) Independent Scientific Review Panel (ISRP).

Alternatives Proposed for Consideration. BPA is currently

considering two action alternatives for evaluation in the EIS. The alternatives propose a combination of sites used in the feasibility study and new hatchery sites and juvenile rearing sites. The difference between the alternatives is largely the number and distribution of juvenile rearing sites.

- **Master Plan Alternative:** The Master Plan alternative would follow the steps and transition points for the reintroduction phases described in the Master Plan. This alternative would include 20 juvenile rearing sites distributed throughout the Wenatchee and Methow basins. The number and distribution is intended to optimize the use of resources and result in efficient distribution of returning adults to the best habitat while minimizing potential interactions with other salmon species.

- **Reduced Production Alternative:** This alternative would follow the same implementation steps as described in the Master Plan, but would use fewer juvenile rearing sites with a corresponding decrease in released juveniles. This is intended to further reduce inter-species competition and potential water quality effects.

BPA is also considering the No Action Alternative, that is, not funding the YN's proposal. Under the no action alternative the YN would use internal non-federal funding to implement their proposal but the scope of the proposed activities would be less than the Reduced Production Alternative. Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. The potential environmental issues identified for this reintroduction project include threatened and endangered species, sensitive plants and animals, fisheries, water quality and quantity, land use, socioeconomic, cultural resources, soil erosion, wetlands, and floodplains. BPA has established a 45-day scoping period during which tribes, affected landowners, concerned citizens, special interest groups, local and Federal governments, and any other interested parties are invited to comment on the scope of the proposed EIS, including potential alternatives to be considered and environmental impacts to be evaluated. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public meetings to answer questions and receive comments. BPA

will consider and respond to comments received on the Draft EIS in the Final EIS. The Final EIS is expected to be published in late summer 2011. BPA's decision will be documented in a Record of Decision that will follow the Final EIS.

Issued in Portland, Oregon, on July 22, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.
[FR Doc. E9-18188 Filed 7-29-09; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232-522]

Duke Power Company, LLC; North Carolina and South Carolina; Notice of Availability of the Final Environmental Impact Statement for the Catawba-Wateree Hydroelectric Project

July 23, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Catawba-Wateree Hydroelectric Project (FERC No. 2232), located on the Catawba River in the counties of Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln, and Gaston in North Carolina, and the counties of York, Lancaster, Chester, Fairfield, and Kershaw in South Carolina, and has prepared a Final Environmental Impact Statement (final EIS) for the project.

The final EIS contains staff evaluations of the applicant's proposal and the alternatives for relicensing the Catawba-Wateree Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Commission's Web site at <http://www.ferc.gov> under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-

free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Sean Murphy at (202) 502-6145 or at sean.murphy@ferc.gov.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-18154 Filed 7-29-09; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR09-7-000]

North American Electric Reliability Corporation; Notice of Filing

July 23, 2009.

Take notice that on July 20, 2009, the North American Electric Reliability Corporation filed a Three-Year Electric Reliability Organization Performance Assessment Report, pursuant to section 215(c) of the Federal Power Act and the Federal Energy Regulatory Commission regulations, 18 CFR 39.3(c).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 3, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18149 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1302-000]

Northwest Wind Partners, LLC; Notice of Filing

July 23, 2009.

Take notice that, on July 10, 2009, Northwest Wind Partners, LLC filed a replacement Attachment A to revise its June 16, 2009 application for market-based rate authority filing in the above-captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on July 31, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18155 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13528-000—Alaska; Soule River Hydroelectric Project]

Soule Hydro, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 23, 2009.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alaska State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. section 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Soule River Hydroelectric Project No. 13528-000.²

¹ 18 CFR section 385.2010.

² Previously, the project was given Project No. 12615-001. Upon issuance of a new preliminary

The programmatic agreement, when executed by the Commission and the SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities, pursuant to section 106 for the Soule River Hydroelectric Project, would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Soule Hydro, LLC, as applicant for the Soule River Hydroelectric Project No. 13528-000, is invited to participate in consultations to develop the programmatic agreement.

For the purpose of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004.

Glen Martin or Representative, Alaska Power & Telephone Company, 193 Otto Street, P.O. Box 3222, Port Townsend, WA 98368.

T. Weber Greiser, Historical Research Associates, Inc., 125 Bank Street, Suite 500, Missoula, MT 59802.

Norman Gross, Director, or Representative, Soule Hydro, LLC, 11978 Artery Drive, Fairfax, VA 22030.

Judith Bittner, SHPO or Representative, Office of History & Archaeology, 550 W. 7th Avenue, Suite 1310, Anchorage, AK 99501.

Martin Stanford or Representative, U.S. Forest Service, 3031 Tongass Avenue, Ketchikan, AK 99901.

John Autrey or Representative, U.S. Forest Service, 648 Mission Street, Ketchikan, AK 99901.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including properties of traditional religious and cultural importance to an Indian tribe. If historic properties would

permit on July 1, 2009, the project was given Project No. 13528-000.

be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

The original and 8 copies of any such motion must be filed with Kimberly D. Bose, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. Please put the following on the first page: Soule River Hydroelectric Project No. 13528-000. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18153 Filed 7-29-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8937-4]

Access to Confidential Business Information by Science Applications International Corporation (SAIC) and Eastern Research Group (ERG)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of access to data.

SUMMARY: EPA will authorize its contractors, SAIC and ERG to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions.

DATES: Access to confidential data submitted to EPA will occur no sooner than August 10, 2009.

FOR FURTHER INFORMATION CONTACT: LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 605-0516.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contracts No. EP-W-04-046 and EP-W-04-047, SAIC and ERG respectively, will assist the Office of Enforcement and Compliance Assurance, Office of Civil Enforcement with the development, litigation, and settlement of administrative and civil judicial cases against serious violators pursuant to CWA, CAA, RCRA, EPCRA, OPA, TSCA, and FIFRA. ORCR collects data from industry to support the RCRA hazardous waste regulatory program. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR Part 2, Subpart B, OSW has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals.

SAIC and ERG, shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

The U.S. Environmental Protection Agency has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. SAIC and ERG will be authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual."

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide SAIC and ERG, access to the CBI records located in the RCRA Confidential Business Information Center. Access to RCRA CBI under this contract will take place at EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: July 23, 2009.

Matthew Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9-18199 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Numbers EPA-HQ-OECA-2009-0522 to 0537 and 0542 to 0545, FRL-8937-7]

Agency Information Collection Activities: Request for Comments on Twenty Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following twenty existing, approved, continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) for the purpose of renewing the ICRs. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before September 28, 2009.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, section A.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, section II. C.

SUPPLEMENTARY INFORMATION:

A. How Can I Access the Docket and/or Submit Comments?

(1) Docket Access Instructions

EPA has established a public docket for the ICRs listed in the **SUPPLEMENTARY INFORMATION**, section II. B. The docket is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) docket is (202) 566-1752.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public

comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified in this document.

(2) Instructions for Submitting Comments

Submit your comments by one of the following methods:

(a) *Electronic Submission*: Access <http://www.regulations.gov> and follow the on-line instructions for submitting comments.

(b) *E-mail*: docket.oeca@epa.gov.

(c) *Fax*: (202) 566-1511

(d) *Mail*: Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(e) *Hand Delivery*: Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Deliveries are accepted only during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Direct your comments to the specific docket listed in **SUPPLEMENTARY INFORMATION**, section II. B, and reference the OMB Control Number for the ICR. It is 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> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

B. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

C. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing comments:

(1) Explain your views as clearly as possible and provide specific examples.

(2) Describe any assumptions that you used.

(3) Provide copies of any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(5) Offer alternative ways to improve the collection activity.

(6) Make sure to submit your comments by the deadline identified under **DATES**.

(7) 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.

II. ICRs To Be Renewed

A. For All ICRs

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the PRA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The listed ICRs address Clean Air Act information collection requirements in standards (*i.e.*, regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the Agency displays a currently valid OMB control number. The OMB control numbers for EPA's regulations under Title 40 of the Code of Federal Regulations are published in the **Federal Register**, or on the related collection instrument or form. The display of OMB control numbers for certain EPA regulations is consolidated at 40 CFR part 9.

B. What Information Collection Activity or ICR Does This Apply to?

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following twenty continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Docket ID Number:* EPA-HQ-OECA-2009-0523.

Title: NSPS for Large Appliance Surface Coating (40 CFR part 60, Subpart SS).

ICR Numbers: EPA ICR Number 0659.11, OMB Control Number 2060-0108.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(2) *Docket ID Number:* EPA-HQ-OECA-2009-0529.

Title: NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, Subpart HHH).

ICR Numbers: EPA ICR Number 1156.11, OMB Control Number 2060-0059.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(3) *Docket ID Number:* EPA-HQ-OECA-2009-0524.

Title: NSPS for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, Subpart D).

ICR Numbers: EPA ICR Number 1052.09, OMB Control Number 2060-0026.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(4) *Docket ID Number:* EPA-HQ-OECA-2009-0536.

Title: Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 62, Subpart GGG).

ICR Numbers: EPA ICR Number 1893.05, OMB Control Number 2060-0430.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(5) *Docket ID Number:* EPA-HQ-OECA-2009-0533.

Title: NESHAP for the Secondary Lead Industry (40 CFR part 63, Subpart X).

ICR Numbers: EPA ICR Number 1686.07, OMB Control Number 2060-0296.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(6) *Docket ID Number:* EPA-HQ-OECA-2009-0528.

Title: NSPS for Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, Subpart Db).

ICR Numbers: EPA ICR Number 1088.12, OMB Control Number 2060-0072.

ICR Status: This ICR is scheduled to expire on February 28, 2010.

(7) *Docket ID Number:* EPA-HQ-OECA-2009-0545.

Title: NESHAP Site Remediation (40 CFR part 63, Subpart GGGGG).

ICR Numbers: EPA ICR Number 2062.04, OMB Control Number 2060-0534.

ICR Status: This ICR is scheduled to expire on February 28, 2010.

(8) *Docket ID Number:* EPA-HQ-OECA-2009-0522.

Title: NESHAP for Primary Magnesium Refining (40 CFR part 63, Subpart TTTTT).

ICR Numbers: EPA ICR Number 2098.05, OMB Control Number 2060-0536.

ICR Status: This ICR is scheduled to expire on March 31, 2010.

(9) *Docket ID Number:* EPA-HQ-OECA-2009-0527.

Title: NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR part 60, Subpart PP).

ICR Numbers: EPA ICR Number 1066.05, OMB Control Number 2060-0032.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(10) *Docket ID Number:* EPA-HQ-OECA-2009-0530.

Title: NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, Subpart PPP, and 40 CFR part 60, Subpart NNN).

ICR Numbers: EPA ICR Number 1160.09, OMB Control Number 2060-0114.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(11) *Docket ID Number:* EPA-HQ-OECA-2009-0537.

Title: NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, Subpart CCCC).

ICR Numbers: EPA ICR Number 1926.05, OMB Control Number 2060-0450.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(12) *Docket ID Number:* EPA-HQ-OECA-2009-0525.

Title: NSPS for Nitric Acid Plants (40 CFR part 60, Subpart G).

ICR Numbers: EPA ICR Number 1056.10, OMB Control Number 2060-0019.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(13) *Docket ID Number:* EPA-HQ-OECA-2009-0535.

Title: NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR part 63, Subparts AA and BB).

ICR Numbers: EPA ICR Number 1790.05, OMB Control Number 2060-0361.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(14) *Docket ID Number:* EPA-HQ-OECA-2009-0542.

Title: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, Subpart DDDD).

ICR Numbers: EPA ICR Number 1927.05, OMB Control Number 2060-0451.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(15) *Docket ID Number:* EPA-HQ-OECA-2009-0531.

Title: NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, Subpart T).

ICR Numbers: EPA ICR Number 1652.07, OMB Control Number 2060-0273.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(16) *Docket ID Number:* EPA-HQ-OECA-2009-0532.

Title: NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, Subpart EE).

ICR Numbers: EPA ICR Number 1678.07, OMB Control Number 2060-0326.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(17) *Docket ID Number:* EPA-HQ-OECA-2009-0543.

Title: NESHAP for Organic Liquids Distribution (40 CFR part 63, Subpart EEEE).

ICR Numbers: EPA ICR Number 1963.07, OMB Control Number 2060-0539.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(18) *Docket ID Number:* EPA-HQ-OECA-2009-0534.

Title: NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, Subpart DD).

ICR Numbers: EPA ICR Number 1717.07, OMB Control Number 2060-0313.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(19) *Docket ID Number:* EPA-HQ-OECA-2009-0526.

Title: NSPS for Incinerators (40 CFR part 60, Subpart E).

ICR Numbers: EPA ICR Number 1058.10, OMB Control Number 2060-0040.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(20) *Docket ID Number:* EPA-HQ-OECA-2009-0544.

Title: NESHAP for Stationary Combustion Turbines (40 CFR part 63, Subpart YYYY).

ICR Numbers: EPA ICR Number 1967.04, OMB Control Number 2060-0540.

ICR Status: This ICR is scheduled to expire on September 30, 2010.

C. Contact Individuals for ICRs

(1) NSPS for Large Appliance Surface Coating (40 CFR part 60, Subpart SS); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 0659.11; OMB Control Number 2060-0108; expiration date October 31, 2009.

(2) NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, Subpart HHH); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1156.11; OMB Control Number 2060-0059; expiration date October 31, 2009.

(3) NSPS for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, Subpart D); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1052.09; OMB Control Number 2060-0026; expiration date January 31, 2010.

(4) Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 62, Subpart GGG); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1893.05; OMB Control Number 2060-0430; expiration date January 31, 2010.

(5) NESHAP for the Secondary Lead Industry (40 CFR part 63, Subpart X); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1686.07; OMB Control Number 2060-0296; expiration date January 31, 2010.

(6) NSPS for Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, Subpart Db); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1088.12; OMB Control Number 2060-0072; expiration date February 28, 2010.

(7) NESHAP Site Remediation (40 CFR part 63, Subpart GGGGG); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 2062.04; OMB Control Number 2060-0534; expiration date February 28, 2010.

(8) NESHAP for Primary Magnesium Refining (40 CFR part 63, Subpart TTTTT); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021

or via e-mail to marshall.robort@epa.gov; EPA ICR Number 2098.05; OMB Control Number 2060-0536; expiration date March 31, 2010.

(9) NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR part 60, Subpart PP); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1066.05; OMB Control Number 2060-0032; expiration date May 31, 2010.

(10) NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, Subpart PPP, and 40 CFR part 60, Subpart NNN); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1160.09; OMB Control Number 2060-0114; expiration date May 31, 2010.

(11) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, Subpart CCCC); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1926.05; OMB Control Number 2060-0450; expiration date May 31, 2010.

(12) NSPS for Nitric Acid Plants (40 CFR part 60, Subpart G); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1056.10; OMB Control Number 2060-0019; expiration date May 31, 2010.

(13) NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR part 63, Subparts AA and BB); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1790.05; OMB Control Number 2060-0361; expiration date June 30, 2010.

(14) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, Subpart DDDD); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1927.05; OMB Control Number 2060-0451; expiration date June 30, 2010.

(15) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, Subpart T); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1652.07; OMB Control Number 2060-0273; expiration date June 30, 2010.

(16) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, Subpart EE); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1678.07; OMB Control Number 2060-0326; expiration date June 30, 2010.

(17) NESHAP for Organic Liquids Distribution (40 CFR part 63, Subpart EEEE); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1963.07; OMB Control Number 2060-0539; expiration date July 31, 2010.

(18) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, Subpart DD); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1717.07; OMB Control Number 2060-0313; expiration date July 31, 2010.

(19) NSPS for Incinerators (40 CFR part 60, Subpart E); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1058.10; OMB Control Number 2060-0040; expiration date July 31, 2010.

(20) NESHAP for Stationary Combustion Turbines (40 CFR part 63, Subpart YYYY); Robert C. Marshall, Jr. of the Office of Compliance at (202) 564-7021 or via e-mail to marshall.robort@epa.gov; EPA ICR Number 1967.04; OMB Control Number 2060-0540; expiration date September 30, 2010.

D. Information for Individual ICRs

(1) NSPS for Large Appliance Surface Coating (40 CFR part 60, Subpart SS); Docket ID Number EPA-HQ-OECA-2009-0523; EPA ICR Number 0659.11; OMB Control Number 2060-0108; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of large appliance surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart SS.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any

period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 7 hours per response.

Respondents/Affected Entities: Large appliance surface coating facilities.

Estimated Number of Respondents: 72.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 7,659.

Estimated Total Annual Cost: \$8,000, which is comprised of no annualized capital/startup costs and operation and maintenance (O&M) costs of \$8,000.

(2) NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, Subpart HHH); Docket ID Number EPA-HQ-OECA-2009-0529; EPA ICR Number 1156.11; OMB Control Number 2060-0059; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of synthetic fiber production facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart HHH.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 34 hours per response.

Respondents/Affected Entities: Synthetic fiber production facilities.

Estimated Number of Respondents:

Frequency of Response: Initially, occasionally, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 1,859.

Estimated Total Annual Cost: \$165,000, which is comprised of no annualized capital/startup costs and O&M costs of \$165,000.

(3) NSPS for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, subpart D); Docket ID Number EPA-HQ-OECA-2009-0524; EPA ICR

Number 1052.09; OMB Control Number 2060-0026; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of fossil fuel fired steam generating units.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart D.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 47 hours per response.

Respondents/Affected Entities: Fossil fuel fired steam generating units.

Estimated Number of Respondents: 660.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 61,545.

Estimated Total Annual Cost: \$9,900,000, which is comprised of no annualized capital/startup costs and O&M costs of \$9,900,000.

(4) Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 62, subpart GGG); Docket ID Number EPA-HQ-OECA-2009-0536; EPA ICR Number 1893.05; OMB Control Number 2060-0430; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of existing municipal solid waste landfills.

Abstract: This supporting statement addresses information collection activities imposed by the Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 62, subpart GGG).

The emission guidelines can be thought of as "model regulations" that a State agency can use in developing plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approvable State plan, the Federal government must develop a plan to implement the emission guidelines. This ICR includes the burden for an affected entity whether it is ultimately regulated under a State or Federal plan.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 72 hours per response.

Respondents/Affected Entities:

Existing municipal solid waste landfills.

Estimated Number of Respondents: 173.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 12,456.

Estimated Total Annual Cost: \$242,000, which is comprised of no annualized capital/startup costs and O&M costs of \$242,000.

(5) NESHAP for the Secondary Lead Industry (40 CFR part 63, subpart X); Docket ID Number EPA-HQ-OECA-2009-0533; EPA ICR Number 1686.07; OMB Control Number 2060-0296; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of secondary lead smelters.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart X.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 229 hours per response.

Respondents/Affected Entities:

Secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 16,034.

Estimated Total Annual Cost:

\$150,000, which is comprised of no annualized capital/startup costs and O&M costs of \$150,000.

(6) NSPS for Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, Subpart Db); Docket ID Number EPA-HQ-OECA-2009-0528; EPA ICR Number 1088.12; OMB Control Number 2060-0072; expiration date February 28, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of industrial/commercial/institutional steam generating units.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Db.

Owners or operators of the affected facilities must make an initial notification, performance tests, and periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 200 hours per response.

Respondents/Affected Entities: Industrial/commercial/institutional steam generating units.

Estimated Number of Respondents: 1,230.

Frequency of Response: Initially, occasionally, quarterly and semiannually.

Estimated Total Annual Hour Burden: 591,389.

Estimated Total Annual Cost: \$2,677,500, which is comprised of \$900,000 in annualized capital/startup costs and O&M costs of \$1,775,000.

(7) NESHAP Site Remediation (40 CFR part 63, Subpart GGGGG); Docket ID Number EPA-HQ-OECA-2009-0545; EPA ICR Number 2062.04; OMB Control Number 2060-0534; expiration date February 28, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of site remediation facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart GGGGG.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for

this collection of information is estimated to average approximately 219 hours per response.

Respondents/Affected Entities: Site remediation facilities.

Estimated Number of Respondents: 286.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 125,027.

Estimated Total Annual Cost: \$582,000, which is comprised of no annualized capital/startup costs and O&M costs of \$582,000.

(8) NESHAP for Primary Magnesium Refining (40 CFR part 63, Subpart TTTTT); Docket ID Number EPA-HQ-OECA-2009-0522; EPA ICR Number 2098.05; OMB Control Number 2060-0536; expiration date March 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of primary magnesium refining facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart TTTTT.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 153 hours per response.

Respondents/Affected Entities: Primary magnesium refining facilities.

Estimated Number of Respondents: 1.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 612.

Estimated Total Annual Cost: \$1,000, which is comprised of no annualized capital/startup costs and O&M costs of \$1,000.

(9) NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR part 60, Subpart PP); Docket ID Number EPA-HQ-OECA-2009-0527; EPA ICR Number 1066.05; OMB Control Number 2060-0032; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or

operators of ammonium sulfate manufacturing plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart PP.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 62 hours per response.

Respondents/Affected Entities: Ammonium sulfate manufacturing plants.

Estimated Number of Respondents: 2.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 246.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(10) NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, Subpart PPP, and 40 CFR part 60, Subpart NNN); Docket ID Number EPA-HQ-OECA-2009-0530; EPA ICR Number 1160.09; OMB Control Number 2060-0114; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of wool fiberglass insulation manufacturing plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart PPP.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 1,012 hours per response.

Respondents/Affected Entities: Wool fiberglass insulation manufacturing plants.

Estimated Number of Respondents: 61.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 18,216.

Estimated Total Annual Cost: \$489,000, which is comprised of no annualized capital/startup costs and O&M costs of \$489,000.

(11) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, Subpart CCCC); Docket ID Number EPA-HQ-OECA-2009-0537; EPA ICR Number 1926.05; OMB Control Number 2060-0450; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of commercial and industrial solid waste incineration units.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart CCCC.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 325 hours per response.

Respondents/Affected Entities: Commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 30.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 16,899.

Estimated Total Annual Cost: \$18,000, which is comprised of \$13,000, in annualized capital/startup costs and O&M costs of \$5,000.

(12) NSPS for Nitric Acid Plants (40 CFR part 60, Subpart G); Docket ID Number EPA-HQ-OECA-2009-0525; EPA ICR Number 1056.10; OMB Control Number 2060-0019; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of nitric acid plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart G.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 25 hours per response.

Respondents/Affected Entities: Nitric acid plants.

Estimated Number of Respondents: 24.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,290.

Estimated Total Annual Cost: \$2,468,000, which is comprised of \$68,000, in annualized capital/startup costs and O&M costs of \$2,400,000.

(13) NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR part 63, Subparts AA and BB); Docket ID Number EPA-HQ-OECA-2009-0535; EPA ICR Number 1790.05; OMB Control Number 2060-0361; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of phosphoric acid manufacturing and phosphate fertilizers production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart AA and BB.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average approximately 18 hours per response.

Respondents/Affected Entities: Phosphoric acid manufacturing and phosphate fertilizers production facilities.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 1,542.

Estimated Total Annual Cost: \$11,000, which is comprised of no annualized capital/startup costs and O&M costs of \$11,000.

(14) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD); Docket ID Number EPA-HQ-OECA-2009-0542; EPA ICR Number 1927.05; OMB Control Number 2060-0451; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of commercial and industrial solid waste incineration units.

Abstract: This supporting statement addresses information collection activities imposed by the Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD).

The emission guidelines can be thought of as model regulations that a State agency can use in developing plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approvable State plan, the Federal government must develop a plan to implement the emission guidelines. This ICR includes the burden for an affected entity whether it is ultimately regulated under a State or Federal plan.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 262 hours per response.

Respondents/Affected Entities: Commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 97.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 72,423.

Estimated Total Annual Cost: \$99,000, which is comprised of \$87,000, in annualized capital/startup costs and O&M costs of \$12,000.

(15) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T);

Docket ID Number EPA-HQ-OECA-2009-0531; EPA ICR Number 1652.07; OMB Control Number 2060-0273; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of halogenated solvent cleaning facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart T.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 14 hours per response.

Respondents/Affected Entities: Halogenated solvent cleaning facilities.

Estimated Number of Respondents: 1,431.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 41,035.

Estimated Total Annual Cost: \$1,015,000, which is comprised of no annualized capital/startup costs and O&M costs of \$1,015,000.

(16) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, Subpart EE); Docket ID Number EPA-HQ-OECA-2009-0532; EPA ICR Number 1678.07; OMB Control Number 2060-0326; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of magnetic tape manufacturing operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EE.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain

records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 200 hours per response.

Respondents/Affected Entities: Magnetic tape manufacturing operations.

Estimated Number of Respondents: 6.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 3,395.

Estimated Total Annual Cost: \$47,000, which is comprised of \$11,000, in annualized capital/startup costs and O&M costs of \$36,000.

(17) NESHAP for Organic Liquids Distribution (40 CFR part 63, Subpart EEEE); Docket ID Number EPA-HQ-OECA-2009-0543; EPA ICR Number 1963.07; OMB Control Number 2060-0539; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of organic liquids distribution facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEEE.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 197 hours per response.

Respondents/Affected Entities: Organic liquids distribution facilities.

Estimated Number of Respondents: 197.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 137,170.

Estimated Total Annual Cost: \$1,800,000, which is comprised of \$264,000, in annualized capital/startup costs and O&M costs of \$1,536,000.

(18) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, Subpart DD); Docket ID Number EPA-HQ-OECA-2009-0534; EPA ICR Number 1717.07; OMB Control Number 2060-0313; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of off-site waste and recovery operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart DD.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 218 hours per response.

Respondents/Affected Entities: Off-site waste and recovery operations.

Estimated Number of Respondents: 236.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 154,306.

Estimated Total Annual Cost: \$5,000, which is comprised of no annualized capital/startup costs and O&M costs of \$5,000.

(19) NSPS for Incinerators (40 CFR part 60, Subpart E); Docket ID Number EPA-HQ-OECA-2009-0526; EPA ICR Number 1058.10; OMB Control Number 2060-0040; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of incinerators.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart E.

Owners or operators of the affected facilities must make an initial

notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 51 hours per response.

Respondents/Affected Entities: Incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 8,393.

Estimated Total Annual Cost: \$205,000, which is comprised of no annualized capital/startup costs and O&M costs of \$205,000.

(20) NESHAP for Stationary Combustion Turbines (40 CFR part 63, Subpart YYYY); Docket ID Number EPA-HQ-OECA-2009-0544; EPA ICR Number 1967.04; OMB Control Number 2060-0540; expiration date September 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of stationary combustion turbines.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart YYYY.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately nine hours per response.

Respondents/Affected Entities: Stationary combustion turbines.

Estimated Number of Respondents: 132.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 2,448.

Estimated Total Annual Cost: \$8,000, which is comprised of \$8,000 in annualized capital/startup costs and no O&M costs.

EPA will consider any comments received and may amend any of the above ICRs, as appropriate. Then the final ICR packages will be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue one or more **Federal Register** notices pursuant to 5 CFR

1320.5(a)(1)(iv) to announce the submission of the ICR(s) to OMB and the opportunity to submit additional comments to OMB. If you have any questions about any of the above ICRs or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 22, 2009.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. E9-18203 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8937-6]

NACEPT Subcommittee on Promoting Environmental Stewardship

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a meeting of the NACEPT Subcommittee on Promoting Environmental Stewardship.

The purpose of the proposed Subcommittee on Promoting Environmental Stewardship (SPES) of the National Advisory Council for Environmental Policy and Technology (NACEPT) will be to advise the U.S. Environmental Protection Agency (EPA) on how to promote environmental stewardship practices that encompass all environmental aspects of an organization in the regulated community and other sectors, as appropriate, in order to enhance human health and environmental protection. A copy of the meeting agenda will be posted at <http://epa.gov/ncei/dialogue.htm>. This Web site also includes the draft charge of the SPES, which provides further information about the purpose of the Subcommittee.

DATES: The NACEPT Subcommittee on Promoting Environmental Stewardship will hold an open meeting on August 18, 2009 (9 a.m.-5 p.m.) and August 19, 2009 (9 a.m.-5 p.m.) Eastern.

ADDRESSES: The meeting will be held at the EPA Office of Pesticide Programs, One Potomac Yard Conference Center (1st Floor), 2777 S. Crystal Dr., Arlington, VA 22202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Regina Langton, Designated Federal Officer, langton.regina@epa.gov, 202-566-2178, U.S. EPA Office of Policy, Economics, and Innovation (MC1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the SPES should be sent to Jennifer Peyser at (202) 965-6215 or jpeyser@RESOLV.org. All requests must be received no later than August 4, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Jennifer Peyser at jpeyser@RESOLV.org. To request accommodation of a disability, please contact Jennifer Peyser at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: July 24, 2009.

Regina Langton,

Designated Federal Officer.

[FR Doc. E9-18201 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0513; FRL-8428-2]

Triclosan; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide triclosan pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a April 22, 2009 **Federal Register** Notice of Receipt of Requests from the triclosan registrant to voluntarily cancel all their triclosan technical grade product registrations. These are not the last triclosan products registered for use in the United States. In the April 22, 2009 notice, EPA indicated that it would issue an order implementing the cancellations to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would

merit its further review of these requests, or unless the registrant withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the triclosan products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0034; fax number: (703) 305-5620; e-mail address: garvie.heather@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0513. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of certain manufacturing-use triclosan products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—TRICLOSAN PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
70404-2	Irgasan DP300R
70404-5	Irgaguard B1000

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS OF CANCELLED TRICLOSAN PRODUCTS

EPA Company Number	Company Name and Address
70404	Ciba Corporation 4090 Premier Drive High Point, NC 27265

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the April 22, 2009 **Federal Register** notice (74 FR 18378; FRL-8410-6) announcing the Agency’s receipt of the requests for voluntary cancellations of triclosan.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of triclosan registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the triclosan product registrations identified in Table 1 of Unit II. are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency’s Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions. Registrants may sell and distribute existing stocks for one year from the date of the cancellation request. The products may be sold, distributed, and used by people other than the registrant until existing stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product.

List of Subjects

Environmental protection, Pesticides and pests, Triclosan, Antimicrobials.

Dated: July 17, 2009.

Joan Harrigan Farrelly

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9-18196 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2009-0180; FRL-8426-1]

Product Stewardship Program for Six Siloxanes Conducted Under a Memorandum of Understanding (MOU) Signed by EPA and The Dow Corning Corporation; Notice of Receipt and Availability of the MOU Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the receipt of toxicity and exposure data and information that were developed through a Product Stewardship Program (PSP) agreed upon under a

Memorandum of Understanding (MOU) signed by EPA and Dow Corning Corporation. The MOU covered six siloxanes deemed representative of a broad class of siloxanes that have widespread use in a variety of industrial and consumer applications. A docket has been established to make data and information developed through this MOU available to the public.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8182; e-mail address: lintner.colby@epa.gov.

For technical information contact: Robert Jones, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (202) 564-8161; e-mail address: jones.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be interested in the information developed on the six siloxane chemicals subject to the PSP MOU. If you have any questions regarding the completion of the MOU or the availability of the information from this effort, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2009-0180. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301

Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. Background

The 30th Report of the TSCA Interagency Testing Committee (ITC) to the EPA Administrator recommended 56 silicone chemicals for health effects testing to meet data needs expressed by the U.S. Food and Drug Administration (57 FR 30608, July 9, 1992). The six siloxanes covered by this MOU between EPA and the Dow Corning Corporation are included among the 56 silicone chemicals recommended by the ITC in its 30th Report to EPA. In response to that ITC recommendation, EPA issued a final TSCA section 8(d) information reporting rule (58 FR 28511, May 14, 1993) requiring manufacturers, importers, and processors of the 56 silicone chemicals to submit to EPA unpublished health and safety data on those chemicals; information concerning the uses of and exposure to the chemicals was submitted voluntarily by industry directly to the ITC. On review of the TSCA section 8(d) information materials received, the ITC considered the need for formal designations for testing under section 4 of TSCA. EPA issued a notice titled *Testing Consent Agreement; Development for Octamethylcyclotetrasiloxane (OMCTS); Solicitation of Interested Parties* (53 FR 11341, April 6, 1988) and a final rule titled *Testing Consent Order for Octamethylcyclotetrasiloxane* (54 FR 818, January 10, 1989) docket number OPTS-42071B.

These actions lead to the more broadly based discussion of an appropriate PSP based on the Responsible Care principles developed by the Chemical Manufacturers Association—now the American Chemistry Council. Dow Corning Corporation agreed to develop a specific

PSP for six siloxane chemicals including: Octamethylcyclotetrasiloxane (D4) CAS No. 556-67-2; decamethylcyclotetrasiloxane (D5) CAS No. 541-02-6; dodecamethylcyclotetrasiloxane (D6) CAS No. 540-97-6; hexamethyldisiloxane (HMDS) CAS No. 107-46-0; polydimethylsiloxane (PDMS 10 cst) CAS No. 63148-62-9; and polydimethylsiloxane (PDMS 350 cst) CAS No. 63148-62-9. These were selected because they are representative of the broad class of siloxane materials that have widespread use in industrial and consumer applications. Dow Corning Corporation and EPA signed the formal PSP MOU on April 9, 1996. The MOU was initiated in 1996 with a baseline report, and a Project Plan for assessing exposure. The MOU was monitored through annual progress reports and regular scientific briefings with EPA.

This notice acknowledges that work agreed upon in the MOU has been received and announces that the data and information produced under the MOU is available in the public docket at <http://www.regulations.gov> at docket number EPA-HQ-OPPT-2009-0180. Materials include annual progress reports, over 88 reports assessing potential toxicity and exposures concerning the six siloxanes, and related TSCA section 8(e) notices and FYI submissions. The MOU and a baseline report describe the PSP based on "Implementing Product Stewardship: a Resource Guide," Chemical Manufacturers Association (CMA), 1992. The program included a description of the PSP goals, plans for communicating health and safety information, toxicity testing, exposure assessment and monitoring, identifying any additional data needs for risk assessment, development and implementation of pollution prevention, waste minimization, and exposure reduction plans, and exercising its environmental responsibility through design of processes, products, packaging, etc. to minimize the consumption of natural resources and energy and eliminate, where feasible, generation of waste materials and releases to the environment.

List of Subjects

Environmental protection, Hazardous chemicals, Siloxanes.

Dated: July 21, 2009.

Jim Willis,

Director, Chemical Control Division, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E9-18195 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8937-3]

Proposed Consent Decree and Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree and proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or “Act”), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree and proposed settlement agreement to address a lawsuit filed by the Business Coalition for Clean Air (BCCA) Appeal Group, Texas Association of Business, and Texas Oil and Gas Association in the United States District Court for the Northern District of Texas, Dallas Division in *BCCA Appeal Group, et al. v. EPA, No. 3-08CV1491-G (N.D. Tex.)*. Plaintiffs filed a complaint in this action on August 25, 2008, which alleges that EPA has failed to perform nondiscretionary duties pursuant to section 110(k)(1)(B) and (k)(2) of the Federal CAA, 42 U.S.C. 7410(k)(1)(B) and (k)(2), to take final action on numerous Texas State Implementation Plan (“SIP”) air quality revisions by the statutory deadline. The SIP revisions are related to Texas New Source Review (NSR) air permitting and banking and trading rules. The proposed consent decree and proposed settlement agreement, if finalized, will collectively resolve plaintiffs’ claims in this matter. A schedule for acting on the SIP revisions is attached to the proposed consent decree and proposed settlement agreement.

DATES: Written comments on the proposed consent decree and proposed settlement agreement must be received by August 31, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2009-0560, online at <http://www.regulations.gov> (EPA’s preferred method); by e-mail to 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:

Victoria L. Johnson, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 6 (6RC-M), 1445 Ross Ave., Dallas, TX 75202-2733; telephone: (214) 665-7569; fax number (214) 665-2182; e-mail address: johnson.victoria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree and Proposed Settlement Agreement

The proposed consent decree and proposed settlement agreement resolve a lawsuit filed by BCCA seeking to compel action by the EPA under section 110(k) of the CAA on identified SIP revisions submitted by the Texas Commission on Environmental Quality (TCEQ). The SIP revisions involve Texas NSR air permitting and banking and trading rules. The proposed consent decree and proposed settlement agreement provide that EPA shall sign for publication in the **Federal Register** a notice of final rulemaking to approve or disapprove, in whole or in part, the SIP revisions identified by the deadline specified in the Exhibit attached to each document and to deliver the notice promptly to the Office of the Federal Register. If EPA has discharged its obligations under the consent decree, the case will be dismissed with prejudice. Plaintiffs have agreed to stay this case in its entirety pending completion of, and subject to the terms of, the consent decree and settlement agreement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree and 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 consent decree and proposed settlement agreement if comments disclose facts or circumstances indicating 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 which may be submitted, that consent to the consent decree and settlement agreement should be withdrawn, the terms of the decree and agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree and Proposed Settlement Agreement

A. How Can I Get A Copy of the Proposed Consent Decree and Proposed Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2009-0560) contains a copy of the proposed consent decree and 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 <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: July 23, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9-18197 Filed 7-29-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

July 27, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 28, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov and/or Cathy.Williams@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of: Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060-1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123 and WC Docket No. 05-196, FCC 08-151 and FCC 08-275.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 12 respondents; 5,608,692 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 1 hour.

Frequency of Response: One-time, quarterly and on occasion reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 206,061.

Total Annual Cost: \$4,251,635.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1, 2, 4(i), (4)(j), 225, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, and 303(r).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because the Commission has no direct involvement in the collection of personally identifiable information (PII) from individuals and/or households.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On November 30, 2005, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Access to Emergency Services*, Notice of Proposed Rulemaking (*VRS/IP Relay 911 NPRM*), CG Docket No. 03-123, FCC 05-196, published at 71 FR 5221 (February 1, 2006), which addressed the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (TRS), namely Video Relay Service (VRS) and Internet Protocol (IP) Relay. The Commission sought to adopt means to ensure that such calls promptly reach the appropriate emergency service provider.

On May 8, 2006, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of IP Relay Service and Video Relay Service*, Further Notice of Proposed Rulemaking (*IP Relay/VRS*

Misuse FNPRM), CG Docket No. 03–123, FCC 06–58, published at 71 FR 31131 (June 1, 2006), which sought further comment on whether IP Relay and VRS providers should be required to implement user registration systems and what information users should provide, as a means of curbing illegitimate IP Relay and VRS calls.

On May 9, 2006, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking (*Interoperability Declaratory Ruling and FNPRM*), CG Docket No. 03–123, FCC 06–57, published at 71 FR 30818 and 71 FR 30848 (May 31, 2006). In the *Interoperability Declaratory Ruling and FNPRM*, the Commission sought comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, without having first to ascertain the VRS user's current IP address.

On June 24, 2008, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking (*First Numbering Order*), CG Docket No. 03–123 and WC Docket No. 05–196, FCC 08–151, addressing the issues raised in these notices. The *First Numbering Order* establishes a reliable and consistent means by which others (including emergency personnel) can identify or reach VRS and IP Relay users by, among other things, integrating VRS and IP Relay users into the ten-digit, North American Numbering Plan (NANP) numbering system.

To complete a telephone call to an Internet-based TRS user, a provider must have some method of logically associating the telephone number dialed by the caller to the Internet-based TRS user's device. The method adopted by the Commission, known as the TRS Numbering Directory, is a central database that maps each user's telephone number to routing information needed to find that user's device on the Internet. The *First Numbering Order* requires VRS and IP Relay providers to collect and maintain the routing information from their registered users and to provision that information to the TRS Numbering Directory so that this mapping can occur.

In addition, to establish a reliable means for VRS and IP Relay providers to automatically know the physical location of their users, the *First Numbering Order* requires VRS and IP Relay providers to collect and maintain the Registered Location of their registered users. And to ensure that emergency personnel can retrieve a user's Registered Location (along with the provider's name and the identification number of the Communications Assistant for call back purposes), the *First Numbering Order* requires VRS and IP Relay providers to make that information available from or through the appropriate automatic location information (ALI) database.

To ensure that VRS and IP Relay users are aware of their providers' numbering and E911 service obligations and to inform those users of their providers' E911 capabilities, the *First Numbering Order* requires each VRS and IP Relay provider to post an advisory on its Web site, and in any promotional materials directed to consumers, addressing numbering and E911 services for VRS or IP Relay. Providers also must obtain and keep a record of affirmative acknowledgement from each of their registered users of having received and understood the user notification.

On December 19, 2008, the Commission released the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration (*Second Numbering Order*), CG Docket No. 03–123 and WC Docket No. 05–196, FCC 08–275, further addressing the duties of VRS and IP Relay providers to supply numbering and E911 capabilities to their users, as established in the *First Numbering Order*.

The *Second Numbering Order* revises the "User Notification" information collection requirement adopted in the *First Numbering Order*. Specifically, VRS and IP Relay consumer advisories must explain that: (1) The consumer may obtain a telephone number from, and register with, his or her provider of choice; (2) the consumer may change default providers while retaining the same telephone number by porting that number to the new default provider; (3) the consumer may make calls through, and receive calls from, any provider; and (4) the provider cannot condition the ongoing use or possession of equipment, or the receipt of different or upgraded equipment, on the consumer continuing to use the provider as his or her default provider.

The *Second Numbering Order* also adds five new information collection requirements to those adopted in the *First Numbering Order*. First, once a VRS or IP Relay user with a "proxy" or "alias" number obtains a NANP telephone number, the VRS or IP Relay provider must provide a message notifying callers of the user's new NANP telephone number and advising callers that, after November 12, 2009, the user may only be reached by the NANP telephone number. (Although the permissive dialing period was scheduled to end on June 30, 2009, the Consumer and Governmental Affairs Bureau later extended this deadline until after November 12, 2009.) This notification requirement is intended to smooth the transition of VRS and IP Relay users to NANP telephone numbers by ensuring that a VRS or IP Relay user can be reached by a calling party who may not yet know the user's new number.

Second, VRS and IP Relay providers must verify whether a user who places a call through a provider is registered with another provider in order to distinguish a new user who has not yet registered from an existing user who is dialing around the default provider with which he or she is registered. A VRS or IP Relay provider may do this by requesting a user's ten-digit NANP number and querying the Numbering Directory using that number.

Third, VRS and IP Relay providers must institute procedures to verify the accuracy of registration information, including the consumer's name and mailing address, and include a self certification component requiring consumers to verify that they have a medically recognized hearing or speech disability necessitating their use of TRS. These measures will be used by VRS and IP Relay providers to ensure that their services are not used for fraudulent or other purposes not authorized by the statute or by the Commission's rules.

Fourth, any VRS or IP Relay provider wishing to pass through numbering-related costs to its users must obtain Commission approval to do so. This requirement will be used by the Consumer and Governmental Affairs Bureau, acting on delegated authority, to ensure that only customer-specific, actually incurred costs are passed on to VRS and IP Relay users.

Finally, each VRS provider that provisions equipment to a consumer must make available to the consumer's newly selected default provider certain information about that equipment that will be used by the new default provider to perform the functions required of a default provider, including enabling

point-to-point (non-relay) communications between VRS users, when a user switches providers but wishes to use equipment supplied by another default provider.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E9-18260 Filed 7-29-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09-56; DA 09-1376]

Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of Broadband Radio Service Licenses (Auction 86). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Applications to participate in Auction 86 must be filed prior to 6:00 p.m. Eastern Time (ET) on August 18, 2009. Bidding for licenses in Auction 86 is scheduled to begin on October 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For legal questions: Sayuri Rajapakse at (202) 418-0660. For general auction questions: Debbie Smith or Linda Sanderson at (717) 338-2868. *Broadband Division:* For licensing information and service rule questions: Nancy Zaczek (legal) or Stephen Zak (technical) at 202-418-2487. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 86 Procedures Public Notice*, which was released on June 26, 2009. The complete text of the *Auction 86 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and

copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 86 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>, using document number DA 09-1376 for the *Auction 86 Procedures Public Notice*. The *Auction 86 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/86/>.

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of licenses for unassigned Broadband Radio Service (BR) spectrum. This auction, which is designated as Auction 86, is scheduled to commence on October 27, 2009. Auction 86 will offer 78 licenses. On April 24, 2009 the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 86. Interested parties submitted 7 comments and 4 reply comments in response to the *Auction 86 Comment Public Notice 74 FR 22166*, May 12, 2009.

i. Licenses To Be Offered in Auction 86

2. The licenses to be offered in Auction 86 consist of the available spectrum in 78 BRS service areas. BRS service areas are BTAs or additional service areas similar to BTAs adopted by the Commission. In the *BRS/EBS 4th MO&O*, the Commission amended its rules to establish Gulf of Mexico service areas for BRS, and Auction 86 therefore includes licenses for three BRS service areas in the Gulf of Mexico. A complete list of licenses available for Auction 86 is included as Attachment A of the *Auction 86 Procedures Public Notice*.

3. Two commenters sought the removal of certain licenses from the Auction 86 inventory: Sarasota-Bradenton, Florida, BTA 408; Burlington, Vermont, BTA 063; and Rutland-Bennington, Vermont, BTA 388. The Bureau does not believe that the public interest would be served by the removal of the licenses from the auction. Therefore the Bureau declines

to remove these three licenses from the Auction 86 inventory.

B. License Descriptions

4. Where unencumbered, the licenses to be auctioned consist of 76.5 megahertz of spectrum at 2496-2502, 2602-2615, and 2616-2673.5 MHz. We note that the licenses issued pursuant to this auction will be issued pursuant to the post-transition band plan contained in Section 27.5(i)(2) of the Commission's rules. A table showing the channelization of this spectrum is included as Attachment B of the *Auction 86 Procedures Public Notice*.

C. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding as well as decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

6. Commenters sought a revision of the performance requirement set forth in the BRS service rules. 47 CFR 27.14(o) provides that a BRS licensee must demonstrate substantial service in its service area no later than May 1, 2011. Other commenters oppose the proposal, contending that it would not be in the public interest. The requests to change the BRS service rules are beyond the scope of the public notice regarding the procedures for Auction 86. Any such rule change would require action by the full Commission. Absent such action, new licensees will be subject to the requirements set forth in the current rules.

ii. Prohibition of Collusion; Compliance With Antitrust Laws

7. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

8. The anti-collusion rule will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same markets. In Auction 86, the rule would prohibit any applicants that have selected any of the same licenses

in their short form applications from communicating absent an agreement.

9. Under the terms of the rule, applicants that have applied for licenses covering the same markets—unless they have identified each other on their short form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii)—must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

10. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

11. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.

b. Prohibition Applies Until Down Payment Deadline

12. 47 CFR 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

c. Prohibited Communications

13. Applicants for the upcoming Auction 86 and other parties that may be engaged in discussion with such applicants are cautioned on the need to comply with the Commission's anti-collusion rule, 47 CFR 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect,

bids or bidding strategy, or the negotiation of settlement agreements.

14. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

15. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 86, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 86 bidding could also violate the rule.

16. Applicants selecting licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

17. A violation of the anti-collusion rule could occur in other contexts, such

as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

18. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the limited information procedures in effect for Auction 86. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

19. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same geographic areas after the short-form filing deadline.

e. Anti-Collusion Certification

20. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C to the *Auction 86 Procedures Public Notice*, each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau

cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

f. Antitrust Laws

21. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

g. Duty To Report Prohibited Communications; Reporting Procedure

22. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by 47 CFR 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

23. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may

be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications of bids or bidding strategies that result in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.

24. Parties reporting communications pursuant to 47 CFR 1.65 or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

25. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

26. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Anti-Collusion Rule

27. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment F of the *Auction 86 Procedures Public Notice*. These documents are available on the Commission's auction anti-collusion Web page.

iii. Incumbency Issues

28. There are pre-existing BRS site-based incumbent licenses. The service area for each of those incumbent licenses is a 35-mile circle centered at

the station's reference coordinates, and is bounded by the chord(s) drawn between the intersection points of the licensee's previous protected service area and those of respective adjacent market, co-channel licensees. Any licenses granted pursuant to this auction will not include the geographic service areas of any co-channel incumbent site-based licenses. If a site-based incumbent license cancels or is forfeited, however, the right to operate within that area shall revert to the overlay licensee that holds the license for the BRS service area that encompasses that BTA. BRS incumbent licenses are entitled to interference protection in accordance with the applicable technical rules. BRS licenses have previously been awarded through auction (Auction 6) for BTAs other than those in this auction, and the previously-awarded licenses may have since been assigned or partitioned. Such BRS geographic area licenses authorize operation within a BTA and provide the licensee with rights similar to those being offered in Auction 86.

29. In addition, on the E and F channel groups, grandfathered Educational Broadband Service (EBS) licenses originally issued on those channels prior to 1983 may continue to operate indefinitely. Such grandfathered EBS licenses must be protected in accordance with the applicable technical rules.

30. Operations within the 2614–2618 MHz band are secondary to adjacent channel operations.

31. Finally, in the 2496–2500 MHz band, BRS licensees must share the band on a co-primary basis with the Code Division Multiple Access, Mobile Satellite Service, grandfathered Broadcast Auxiliary Service stations, and grandfathered land mobile and microwave licenses licensed under Parts 90 and 101 of the Commission's rules, respectively. In addition, the 2400–2500 MHz band is allocated for use by Industrial, Scientific, and Medical equipment under Part 18 of the Commission's rules.

32. A comment was filed noting that in certain markets, the transition to the new band plan is not yet complete, and in those markets, new licensees may not be able to operate on some or all of their spectrum until the transition process is completed. Under the Commission's rules, until a transition has been completed in a BTA, existing licensees operating under the pre-transition band plan are entitled to interference protection in accordance with the applicable technical rules. Potential bidders can check on the status of transition in a market by checking the Commission's Electronic Comment

Filing System and reviewing WT Docket No. 06–136. If a post-transition notification has been filed for a BTA, the transition has been completed in that BTA. In a BTA where no transition initiation plan had been filed by January 21, 2009, for a BTA, existing licensees in the BTA could file notifications with the Commission by April 21, 2009, of an intent to self-transition. Once a licensee completes a self-transition, it is required to modify its license to reflect its operation pursuant to the new band plan. Potential bidders can review the Universal Licensing System to see if a license has been modified to operate pursuant to the new band plan.

33. The commenter also asked that potential bidders be reminded of obligations to reimburse certain licensees of their costs in transitioning to the new BRS/EBS band plan. Under the Commission's rules, BRS licensees are responsible for reimbursing transition proponents or self-transitioning EBS licensees in accordance with the Commission's rules. Potential bidders should be aware that in BTAs where the transition to the new band plan has not yet been completed as of the date licenses are issued pursuant to this auction, they may be required to reimburse eligible licensees for a *pro rata* share of transition costs.

a. International Coordination

34. BRS licensees must individually apply for and receive a separate license for each transmitter if the proposed operation requires coordination with either Mexico or Canada. Potential bidders seeking licenses in Auction 86 for geographic areas that are near the Canadian or Mexican borders are encouraged to consult all international agreements with Canada and Mexico. We also note that the current agreement with Mexico does not provide for two-way operation in the border area. If the agreements with Mexico or Canada are modified in the future, licensees must likewise comply with these modifications.

b. Quiet Zones

35. BRS licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

iv. Due Diligence

36. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example, there are

incumbent operations already licensed and operating in the band that must be protected. These limitations may restrict the ability of BRS licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

37. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a licensee subject to certain conditions and regulations. The auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

38. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 86 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 86 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

39. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the

Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 86. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 86. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

40. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 86. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

41. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

42. Applicants may obtain information about licenses available in Auction 86 through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System (ULS) support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480–3201, option two. The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

43. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any

incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

44. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

v. Use of Integrated Spectrum Auction System

45. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 86 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not

limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

46. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility.

D. Auction Specifics

i. Auction Start Date

47. Bidding in Auction 86 will begin on Tuesday, October 27, 2009, as announced in the Auction 86 Comment Public Notice. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction; unless otherwise announced bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Bidding Methodology

48. The bidding methodology for Auction 86 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

49. The following dates and deadlines apply:

Auction Seminar	August 5, 2009.
Short-Form Application (FCC Form 175) Filing Window Opens	August 5, 2009; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	August 18, 2009; prior to 6:00 p.m. ET.
Upfront Payments (via wire transfer)	September 24, 2009; 6:00 p.m. ET.
Mock Auction	October 23, 2009.
Auction Begins	October 27, 2009.

iv. Requirements for Participation

50. Those wishing to participate in this auction must: (1) submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, August 18, 2009; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, September 24, 2009 and (3) comply with all provisions outlined in the Auction 86 Procedures Public Notice and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

51. Entities seeking licenses available in Auction 86 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on August 18, 2009, following the procedures prescribed in Attachment C of the Auction 86 Procedures Public Notice. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. The information provided in its short-form

application will be used in determining, among other things, if the applicant is eligible for a bidding credit.

52. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules is included with their short-form applications.

53. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may become qualified to bid.

54. Applicants also should note that submission of a short-form application and any amendments thereto constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents

of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

55. An applicant must select the licenses on which it wants to bid from the Eligible Licenses list on its short-form application. Applicants will not be able to change their license selections after the short-form application deadline. Applicants interested in participating in Auction 86 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

C. Disclosure of Bidding Arrangements

56. An applicant must identify in its short-form application all parties with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

57. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

58. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

59. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

60. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted with an ownership disclosure information report (FCC Form 602) or in a short-form application (FCC Form 175) filed for a

previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 86 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 86 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

E. Designated Entity Provisions

61. Eligible applicants in Auction 86 may claim designated entity status, as an entrepreneur, a small business, or very small business eligible for bidding credits. Applicants should review carefully the Commission's recent decisions regarding the designated entity provisions.

i. Bidding Credits for Small and Very Small Businesses

62. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 86, bidding credits will be available to entrepreneurs, small businesses and very small businesses, and consortia thereof.

63. The level of bidding credit is determined as follows: (1) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (2) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (3) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.

ii. Attributable Interests

a. Controlling Interests

64. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.

b. Affiliates

65. Affiliates of an applicant or controlling interest include an

individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C to the *Auction 86 Procedures Public Notice*.

c. Material Relationships

66. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as material relationships—in determining designated entity eligibility, i.e., for bidding credits. Material relationships fall into two categories: Impermissible and attributable.

67. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits and (ii) subject to unjust enrichment on a license-by-license basis.

68. An applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.

69. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility

for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

70. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

71. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) of the Commission's rules are met. An applicant claiming this exemption must provide in an attachment an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions.

e. Bidding Consortia

72. A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur. Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 86 must individually meet the criteria for small businesses, very small businesses, or entrepreneurs. Each consortium member must disclose its gross revenues along with those of its

affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, very small business, or entrepreneur this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

73. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

G. Provisions Regarding Former and Current Defaulters

74. Current defaulters are not eligible to participate in Auction 86, but former defaulters can participate so long as they are otherwise qualified and must make upfront payments that are fifty percent more than the normal upfront payment amounts.

75. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payments for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

76. Applicants are encouraged to review the Bureau's previous guidance

on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

77. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

78. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

H. Minor Modifications to Short-Form Applications

79. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.

80. Applicants are, however, permitted to make minor changes to their short-form applications after the filing deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

I. Maintaining Current Information in Short-Form Applications

81. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

82. After the short-form filing deadline, applicants may make only minor changes to their short-form applications. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by e-mail at the following address: auction86@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 86 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Applicants must not submit application-specific material through ECFS. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount or bidding eligibility,

should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

III. Pre-Auction Procedures

A. Auction Seminar—August 5, 2009

83. On Wednesday, August 5, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 86 at FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction System, auction rules, and Broadband Radio Service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction. To register, see Attachment G of the *Auction 86 Procedures Public Notice*.

B. Short-Form Applications—Due Prior to 6 p.m. ET on August 18, 2009

84. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C of the *Auction 86 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6:00 p.m. ET on August 18, 2009. Late applications will not be accepted.

C. Application Processing and Minor Corrections

85. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) Those applications that are complete, (2) those applications that are rejected, and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

86. After the August 18, 2009, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

87. Applicants should be aware the Commission staff will communicate

only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: auction86@fcc.gov.

D. Upfront Payments—Due September 24, 2009

88. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 86 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6 p.m. ET on September 24, 2009.

i. Making Upfront Payments by Wire Transfer

89. Wire transfer payments must be received by 6 p.m. ET on September 24, 2009. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

90. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 86. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

91. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 86 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to

deliver a sufficient upfront payment as instructed by the September 24, 2009, deadline will result in dismissal of the application and disqualification from participation in the auction

ii. FCC Form 159

92. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 86 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

93. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

94. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

95. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 86 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its short-form

application, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

96. The Bureau proposed to calculate upfront payments for Auction 86 on a license-by-license basis using the following formula based on bandwidth and license area population.

97. Several commenters addressed the proposed upfront payment amounts as well as minimum opening bids for this auction. These commenters sought a downward adjustment of the formulas used to calculate upfront payments and minimum opening bids. Commenters offered two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*. The Commission received reply comments and an ex parte submission regarding the proposal.

98. Upon careful consideration of the comments, reply comments, and ex parte submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust upfront payments. In making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised upfront payments are calculated on a license-by-license basis using formulas based on bandwidth, license area population, and the encumbrance data, as follows:

Encumbrance	\$/MHz-pop
0%–20%	\$0.0125
21%–50%	0.0100
51%–80%	0.0050
above 80%	0.0025

99. The results of the formulas are subject to the Bureau's standard rounding procedures and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the upfront payments will be \$20,000 as originally proposed. The upfront payment and bidding units for each license are set forth in Attachment A.

100. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount

covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. Applicants that are former defaulters must calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

101. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175. For wire transfer instructions see *Auction 86 Procedures Public Notice* at paragraph 129.

E. Auction Registration

102. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed complete and upfront payments that are sufficient to make them eligible to bid.

103. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

104. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, October 21, 2009, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for

ensuring it has received all of the registration material.

105. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement SecurID tokens.

F. Remote Electronic Bidding

106. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the short-form application. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 86.

G. Mock Auction—October 23, 2009

107. All qualified bidders will be eligible to participate in a mock auction on Friday, October 23, 2009. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

A. Auction Structure

i. Simultaneous Multiple Round Auction

108. The Bureau will auction all licenses in Auction 86 using the Commission's standard simultaneous multi-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

ii. Information Available to Bidders Before and During the Auction

109. In the *Auction 86 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) Bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

110. The Bureau adopts the limited information procedures proposed in the *Auction 86 Comment Public Notice*. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

111. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. 47 CFR Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

112. In Auction 86, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other

portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

113. To assist applicants in identifying other parties subject to the anti-collusion rule, the Bureau will notify separately each applicant that has filed a short-form application to participate in a pending auction whether applicants in Auction 86 have applied for licenses in any of the same geographic areas as the applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 86, it will send to each applicant in Auction 86 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

114. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 86. While applicants' license selection will not be disclosed until after Auction 86 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

115. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

116. The Bureau hereby warns applicants that the direct or indirect

communication to other applicants or the public disclosure of non-public information, (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and the anti-collusion rule. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission before making such disclosure.

iii. Eligibility and Activity Rules

117. The Bureau will use upfront payments to determine initial eligibility for Auction 86. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auction 86 Procedures Public Notice*. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

118. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

119. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license

in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

120. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 86. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

121. In the *Auction 86 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 90 percent of its current bidding eligibility, during each round of Stage One, and at least 98 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

122. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages.

123. *Stage One*: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 90 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by ten-ninths (10/9).

124. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

125. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 86.

v. Stage Transitions

126. In the *Auction 86 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 98 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

127. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the

discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 98 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

128. In the *Auction 86 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue.

129. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers.

vii. Auction Stopping Rules

130. For Auction 86, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

131. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 86:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

132. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely. The Bureau noted that before exercising these options, it is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau received no comment on these proposals, and the Bureau adopts them for Auction 86.

viii. Auction Delay, Suspension, or Cancellation

133. In the *Auction 86 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue. The Bureau adopts its proposed rules regarding auction delay, suspension or cancellation.

B. Bidding Procedures

i. Round Structure

134. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

135. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

136. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

137. In the *Auction 86 Comment Public Notice*, the Bureau did not propose to establish a separate reserve price for the licenses to be offered in Auction 86. The Bureau, however, did propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used on other auctions, is an effective bidding tool for accelerating the competitive bidding process.

Specifically, for Auction 86, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population as follows:

$\$0.01 * \text{MHz} * \text{BTA population}$ with a minimum of \$20,000 per license

138. The Bureau sought comment on this proposal and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.

139. Several commenters sought a downward adjustment in the formula for calculating minimum opening bids (as well as the formula for upfront payments). Commenters offer two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*.

140. In the *Auction 86 Comment Public Notice*, the Bureau noted the presence of pre-existing BRS site-based incumbent licenses within some of the geographic areas available in Auction 86. In its discussion of the proposed minimum opening bid amounts, the Bureau noted, it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula intended to reflect overall incumbency levels within the BRS service areas being offered.

141. Upon careful consideration of the comments, reply comments, and *ex parte* submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust minimum opening bids. In

making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised minimum opening bids are calculated on a license-by-license basis using formulas based on bandwidth, license area population, and the encumbrance data submitted in the *ex parte* filing as follows:

Encumbrance	\$/MHz-pop
0%–20%	0.0125
21%–50%	0.0100
51%–80%	0.0050
above 80%	0.0025

142. The results of the formulas are subject to the Bureau's standard rounding procedures and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the minimum opening bids will be \$20,000 as originally proposed. The specific minimum opening bid amounts for each license available in Auction 86 calculated pursuant to the procedure described above are set forth in Attachment A of the *Auction 86 Procedures Public Notice*.

iii. Bid Amounts

143. In the *Auction 86 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, we adopt the proposals for Auction 86.

a. Minimum Acceptable Bids

144. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

145. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount is calculated at the end of each round, based on an activity index. The activity index is a weighted average of (a) the number of bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.

146. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.3 (30%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity for the license.

b. Additional Bid Amounts

147. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

148. For Auction 86, the Bureau proposed to set the bid increment percentage at 0.05, so that any additional bid amounts would increase by approximately 5 percent of the minimum acceptable bid. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin the auction with a bid increment percentage of 0.05.

149. The Bureau also sought comment on whether we should start Auction 86 with eight additional bid amounts (for a total of nine bid amounts) or with fewer or no additional bid amounts per license. The Bureau received no comments on this proposal. The Bureau adopts its proposal, and Auction 86 will begin with eight additional bid amounts per license.

150. The Bureau also sought comment on circumstances under which the Bureau should cap (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

151. The Bureau will start the auction without a cap on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to impose a cap on bid amounts.

152. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the cap on bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

iv. Provisionally Winning Bids

153. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

154. In the *Auction 86 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No comments were received on this proposal. Hence, the Bureau adopts the proposal.

v. Bidding

155. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site

bidding during Auction 86. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

156. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

157. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

158. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

159. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

160. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round—multiple bids on the exact same license, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

161. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning

bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

162. In the *Auction 86 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

163. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

164. *Bid Removal*. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity.

165. *Bid Withdrawal*. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in Section 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

166. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

167. These procedures will permit bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 86.

168. *Calculation of Bid Withdrawal Payment*. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

169. 47 CFR 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 86 Comment Public Notice*, the Bureau proposed to establish the percentage at 15% for Auction 86 and sought comment on the proposal.

170. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to 15% of the amount of the withdrawn bids. The 15% interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

171. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and

whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

viii. Auction Announcements

172. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

173. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, final payments, and ownership disclosure information reports.

A. Down Payments

174. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 86 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business or very small business bidding credits).

B. Final Payments

175. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

176. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 86. Winning bidders claiming eligibility for a small business, very small business, or entrepreneur bidding credit must demonstrate their eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing notice.

177. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report*

and *Order 71 FR 6992*, February 10, 2006. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

D. Ownership Disclosure Information Report (FCC Form 602)

178. Within ten business days after release of the auction closing notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.

179. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

180. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing notice.

E. Tribal Lands Bidding Credit

181. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding

credit for which a winning bidder may qualify.

182. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

F. Default and Disqualification

183. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

184. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 86 Comment Public Notice*, the Bureau proposed to set the additional default payment for this auction at fifteen percent of the applicable bid. The Bureau received no comments on this proposal and therefore adopts the proposal.

185. Finally, in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action

that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

186. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E9-18198 Filed 7-29-09; 8:45 am]

BILLING CODE 6712-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0044]

Public Buildings Service; Submission for OMB Review; GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds. A request for public comments was published at 74 FR 19094, April 27, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the

quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Frank Giblin, Public Buildings Service, at telephone (202) 501-1856, or via e-mail to frank.giblin@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.

Responses per Respondent: 1.

Hours per Response: 0.05.

Total Burden Hours: 400.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

Dated: July 21, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9-18129 Filed 7-29-09; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-D-0324]

International Conference on Harmonisation; Draft Guidance on E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes recommendations regarding context, structure, and format of regulatory submissions for qualification of genomic biomarkers. The draft guidance is intended to foster consistency of applications across regions and facilitate joint discussions with and among regulatory authorities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by September 28, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/oc/ohrt/>

www.regulations.gov. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Federico Goodsaid, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2148, Silver Spring, MD 20903-0002, 301-796-1535; or Jennifer Catalano, Center for Biologics Evaluation and Research (HFM-735), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-0706.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International

Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2009, the ICH Steering Committee agreed that a draft guidance entitled "E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions" should be made available for public comment. The draft guidance is the product of the E16 Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the E16 Expert Working Group.

The use of biomarkers in drug discovery, development, and postapproval has the potential to facilitate development of safer and more effective medicines, to guide dose selection, and to enhance the benefit-risk profile of approved medicines. This draft guidance describes recommendations regarding context, structure, and format of regulatory submissions for qualification of genomic biomarkers. To support the evaluation of genomic biomarkers, the draft guidance describes and defines a submission standard applicable across regions. The recommendations are based on previous experiences in the various regions with submissions containing genomic biomarker data. Such submissions have been either stand-alone biomarker qualification applications or a component of medicinal product-related regulatory process. Where appropriate, the proposed document format is expected to facilitate incorporation of genomic biomarker data into specific product-related applications.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may

submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.regulations.gov>, <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

Dated: July 23, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-18227 Filed 7-29-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Family-To-Family Health Information Center Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of noncompetitive replacement award to Colorado Non-Profit Development Center.

SUMMARY: The Health Resources and Services Administration (HRSA) will be transferring Family Voices Colorado Family-To-Family Health Information Center (F2F HIC) grant (H84 MC 09577) from Cerebral Palsy of Colorado to the Colorado Non-Profit Development Center in Denver in order to ensure the continued provision of health resources, financing, related services and parent-to-parent support for families with children and youth with special health care needs in the State of Colorado.

SUPPLEMENTARY INFORMATION:

Former Grantee of Record: Cerebral Palsy of Colorado.

Original Period of Grant Support: June 1, 2008, to May 31, 2011.

Replacement awardee: Colorado Non-Profit Development Center.

Amount of Replacement Award: \$153,572 for year 2 and \$95,700 for year 3 of the remaining project period.

Period of Replacement Award: The period of support for the replacement award is July 1, 2009, to May 31, 2011.

Authority: Section 501(c)(1)(A) of the Social Security Act.

CFDA Number: 93.110.

Justification for the Exception to Competition:

The F2F HICs were legislated by Congress under the Family Opportunity Act/Budget Deficit Reduction Act. Congress specified that there be a family staffed center in each State and the District of Columbia by June 2009. The former grantee, Family Voices of Colorado, received a competitive grant in 2008 operating under the non-profit, Cerebral Palsy of Colorado. Family Voices of Colorado notified HRSA that it would be unable to continue providing services to families and providers as had been proposed in their Family-To-Family Health Information Center grant application under Cerebral Palsy of Colorado and will now be providing services under the Colorado Nonprofit Development Center.

It is critical that Family Voices of Colorado continue helping families of children and youth with special health care needs (CYSHCN) gain access to information they need to make informed health care decisions, be full partners in decision-making and access needed resources/referrals and financing for those services in the State of Colorado. It is also critical that they continue to train and support healthcare providers and other professionals in public and private agencies who serve Colorado's CYSHCN, helping them better understand the needs of children, youth and their families.

CYSHCN are defined as "those children and youth who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally" (American Academy of Pediatrics, 1998). This is particularly relevant since more than 28% of CYSHCN in Colorado had problems getting referrals to care. Only 22% of Colorado families of a CYSHCN identified that community-based service systems are organized for easy use. In addition, because of changes occurring in State services and their funding for CYSHCN, many families and providers alike need to be kept up to date on these changes so that they can access appropriate services. This center is urgently needed to address these gaps and disparities in information and services.

The Colorado Non-Profit Development Center was identified as an umbrella agency with a demonstrated history of providing a full array of technical assistance and fiscal management services to entities such as Family Voices of Colorado. This

replacement award will ensure that Family Voices of Colorado can continue to provide critical information, referral and support services to families with children having special health care needs throughout Colorado and in a manner which avoids any disruption of services.

FOR FURTHER INFORMATION CONTACT: Diana Denboba, Integrated Services Branch Chief, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Rockville, MD 20857, via e-mail at DDenboba@hrsa.gov or via telephone at 301 443-9332.

Dated: July 22, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9-18125 Filed 7-29-09; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-D-0128] (formerly Docket No. 2007D-0396)

Guidance for Industry on Drug-Induced Liver Injury: Premarketing Clinical Evaluation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Drug-Induced Liver Injury: Premarketing Clinical Evaluation." This guidance is intended to assist the pharmaceutical industry and others engaged in new drug development in the assessment of the potential of a drug to cause severe drug-induced liver injury (DILI) during the conduct of premarketing trials. This guidance defines severe DILI as injury that is fatal or requires liver transplantation.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. The guidance may also be obtained from the Center for Biologics Evaluation and Research by

mail by calling 1-800-835-4709 or 301-827-1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Hee Shelia Lianos, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5329, Silver Spring, MD 20993-0002, 301-796-4147; or

Steve Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 310-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Drug-Induced Liver Injury: Premarketing Clinical Evaluation." Severe DILI has been an important cause of drug marketing withdrawal. This has led FDA to pay particular attention to how the risk of severe DILI can be predicted before a drug is approved. The science of detecting and evaluating DILI during drug development is evolving, and FDA is working with industry, academia, and other government groups toward better understanding of how best to do this.

Even for drugs that prove to be significant hepatotoxins in some patients (e.g., bromfenac, troglitazone, and ximelagatran), it is unlikely that cases of severe DILI will be identified during a drug development program with only a few thousand exposed subjects. Therefore, it is critical to discover signals of a drug's potential to cause such injury during drug development by detection of lesser degrees of liver injury that may be more frequently seen. There are a number of such signals that have varying levels of sensitivity and specificity in predicting the potential for severe DILI. However, the most specific finding to date is a finding of cases of serum aminotransferase elevation together with elevated bilirubin concentration (and no evidence of biliary obstruction or impaired ability to conjugate bilirubin) in some trial subjects (i.e., Hy's Law cases).

The guidance describes the sensitivity and specificity of various indicators of hepatotoxic potential, as well as the observations needed to evaluate those indicators, including detection, confirmation and monitoring of liver test abnormalities, close evaluation and exclusion of other causes, and careful supportive care and follow-up to normality or return to baseline status. The guidance makes specific recommendations about the use of Hy's Law and interpretation of Hy's Law cases that are identified during clinical development and suggests research opportunities to learn more about what makes certain people more susceptible to DILI than are most persons exposed to the drug.

The guidance was issued in draft form in October 2007 for public comments. We received a total of 12 comments submitted to Docket No. 2007D-0396. FDA organized a public meeting in March 2008 for discussion of issues raised by the draft guidance and reopened the public comment period from March 6, 2008, to June 30, 2008, with Docket No. FDA-2008-D-0128 (formerly Docket No. 2007D-0396). One comment was submitted to Docket No. FDA-2008-D-0128. The comments are available at <http://www.fda.gov/Drugs/ScienceResearch/ResearchAreas/ucm071471.htm>. Presentations, discussion, and materials from the March 2008 public meeting also are available at the above Web site.

FDA considered written and verbal comments submitted to the dockets and at the public meeting before finalizing the guidance. The guidance reflects clarifying and editorial changes made in response to comments and at our own initiative.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the premarketing evaluation of a drug's potential for causing severe DILI. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR parts 312, 314, and 601 have been approved under

OMB Control Numbers 0910-0014, 0910-0001, and 0910-0338, respectively.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/Drugs/Guidance/ComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.regulations.gov>.

Dated: July 22, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-18135 Filed 7-29-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2009 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Supplement Grant to the Community Anti-Drug Coalitions of America (CADCA).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately \$30,000 (total costs) for one year to the Community Anti-Drug Coalitions of America (CADCA). This is not a formal request for applications. Assistance will be provided only to the Community Anti-Drug Coalitions of America (CADCA) based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SP-09-007.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Sections 509, 516 and 520A of the Public Health Service Act, as amended.

Justification: Only the Community Anti-Drug Coalitions of America (CADCA) is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to supplement a single source grant to the Community Anti-Drug Coalitions of America (CADCA) to support a Prevention Town Hall Meeting and a Partners Meeting at CADCA's Mid-Year Training Institute. The Training Institute will disseminate knowledge and transfer state-of-the-art information, assisting community leaders in developing effective local programs, practices, and policies that support national substance abuse goals, outcomes and efforts, such as National Alcohol and Drug Addiction Recovery Month, and prevention of underage drinking. The Prevention Town Hall Meeting will provide an in-depth overview of substance abuse prevention principles, and make the link to community-level change strategies promoted by the Drug-Free Communities grant program. The Partners Meeting is intended to bring all Federal and other key constituents together to update and discuss new initiatives and ongoing projects. Grant funds will also support evaluation of the Prevention Town Hall Meeting to obtain findings and identify directions for future trainings.

The Community Anti-Drug Coalitions of America (CADCA) is uniquely qualified to carry out the activities of this program because the purpose of the program is to partner with a national organization that has special expertise and unique broad, national-level experience in working with community anti-drug coalitions. CADCA is the only national organization that annually provides training and technical assistance through a mid-year leadership conference for thousands of members of community coalitions dedicated to preventing substance abuse. CADCA currently is the sole organization that plays a major role in helping to strengthen and develop the nation's prevention infrastructure of anti-drug coalitions in support of ongoing activities funded by SAMHSA's priority grant programs including: the Substance Abuse Prevention and Treatment Block Grant, the Strategic Prevention Framework State Incentive Grant, and the Drug Free Communities Support Program. CADCA is the only identified organization that currently meets this experience level and national reach to over 5,000 identified anti-drug coalitions across the country.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8-1081, Rockville, MD 20857; telephone: (240) 276-2321; E-mail: shelly.hara@samhsa.hhs.gov.

Dated: July 24, 2009.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E9-18187 Filed 7-29-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 Allergy and Infectious Diseases Special Emphasis Panel; Immunobiology of Xenotransplantation.

Date: September 18, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3264, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Maryam Feili-Hariri, PhD, Scientific Review Officer, Immunology Review Branch, Scientific Review Program, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-5658, haririmf@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18225 Filed 7-29-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA-F Special Emphasis Panel.

Date: August 3, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-402-2105, rogersn2@nida.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 Drug Abuse Special Emphasis Panel; Diversity-promoting Institutions' Drug Abuse Research Development Program.

Date: August 3, 2009.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-402-2105, rogersn2@nida.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18017 Filed 7-29-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 9, 2009.

Open: 8:30 a.m. to 11:45 a.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: September 9, 2009.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: September 9, 2009.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 9, 2009.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidk.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs and hotel and airport

shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18226 Filed 7-29-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Part C Early Intervention Services Grant

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Noncompetitive Award to Wyoming Department of Health.

SUMMARY: HRSA will be awarding noncompetitively Part C Ryan White HIV/AIDS program funds to support comprehensive primary care services for persons living with HIV/AIDS including primary medical care, laboratory testing, oral health care, outpatient mental health and substance abuse treatment, specialty and subspecialty care, referrals for health and support services, and adherence monitoring/education services to the Wyoming Department of Health in order to ensure continuity of critical HIV medical care and treatment services, and to avoid a disruption of HIV clinical care to clients in the State of Wyoming.

SUPPLEMENTARY INFORMATION:

Grantee of record: Equality State Infection Foundation. Intended recipient of the award: Wyoming Department of Health.

Amount of the award: Wyoming Department of Health will receive \$182,812 fiscal year 2009 funds to cover 9 months of support to ensure ongoing clinical services to the target population and provide seamless services to the State of Wyoming.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff-51.

CFDA Number: 93.918.

Project period: July 1, 2009, to March 31, 2010. The period of support for the replacement award is from July 1, 2009, to March 31, 2010.

Justification for the Exception to Competition:

Critical funding for HIV medical care and treatment services to clients in the State of Wyoming will be continued through a noncompetitive award to the Wyoming Department of Health, as it has the fiscal and administrative infrastructure to administer the Part C Grant. This is a temporary replacement award, as the previous grant recipient serving this population notified HRSA that it could not continue providing services after March 31, 2009. HRSA identified the Wyoming Department of Health as the best qualified entity for this temporary grant, as it is the current Ryan White Part B Grantee of record that serves as the State/regional HIV care consortia for funding services such as primary care, case management, support services and the AIDS Drug Assistance Program. The Wyoming Department of Health can ensure comprehensive services are provided including primary medical care, antiretroviral therapies, medical case management, prevention education and medication adherence teaching, referrals for mental health, substance abuse and dental services; on-site social services with linkages to community HIV case management services; and referrals to HIV counseling and testing sites. The Wyoming Department of Health is willing and able to provide critical services with the least amount of disruption to the service population while the service area is re-competed.

This award will cover the time period from July 1, 2009, through March 31, 2010. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services competing application process for project periods starting April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dora Ober, Chief, Western Branch, Division of Community Based Programs, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; via e-mail dober@hrsa.gov, or via telephone, 301-443-0759.

Dated: July 23, 2009.

Mary K. Wakefield,
Administrator.

[FR Doc. E9-18123 Filed 7-29-09; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF THE INTERIOR**Request for Nominations for the Invasive Species Advisory Committee Extension of Submission Deadline**

AGENCY: Office of the Secretary, National Invasive Species Council.

ACTION: Request for Nominations for the Invasive Species Advisory Committee Extension of Submission Deadline.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council (NISC) proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: *The submission deadline for nominations has been extended.* All must now be postmarked by August 25, 2009.

ADDRESSES: Nominations should be sent to Christopher P. Dionigi, PhD, Acting Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513-7243, fax: (202) 371-1751, or by e-mail at Kelsey_Brantley@ios.doi.gov.

SUPPLEMENTARY INFORMATION:**Advisory Committee Scope and Objectives**

The purpose and role of the Invasive Species Advisory Committee (ISAC) are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues concerning invasive species and the economic, ecological, and human health impacts that they cause. NISC is co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with coordinating, planning, and leading invasive species Federal invasive species efforts. Pursuant to the Executive Order, NISC developed the 2008-2012 National Invasive Species Management Plan (Plan), which is available at <http://www.invasivespeciesinfo.gov>. NISC is responsible for implementation of the Plan including any revisions. NISC guides Federal interdepartmental activities concerning invasive species, and NISC encourages planning and action at local, Tribal, State, regional

and ecosystem-based levels. NISC also develops recommendations and encourages international cooperation on invasive species. NISC facilitates the development of information networks to document, evaluate, and monitor invasive species populations and their impacts and works to share that information using the Internet and by other means.

ISAC maintains an open and productive dialogue and engages in a regular exchange of information regarding the aforementioned issues. ISAC provides timely advice and information to NISC based upon their understanding of the issue and the views of stakeholders, constituencies, and organizations. The ISAC meets up to three (3) times per year. Terms for many of the current members of the ISAC will expire in October 2009. The Secretary of the Interior is actively soliciting nominees to ISAC and will appoint members to ISAC in consultation with the other members of NISC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: Agronomy, crop production, horticulture, livestock production, wildlife management, fisheries science, aquaculture, rangeland management, forest science, weed science, plant pathology, pesticide science, nematology, biological control of invasive species, microbiology, phycology, entomology, mammalogy, herpetology, ichthyology, ornithology, invertebrate zoology, ecology, invasion biology, agricultural and natural resource economics, fire science, climate change, veterinary medicine, public health, epidemiology, environmental sociology, risk assessment, public risk communication, political science, natural resource journalism, ecological restoration, biodiversity conservation, applicable laws and regulations relevant to invasive species, international affairs and trade, tribal or State government interests, environmental education, ecosystem monitoring, natural resource statistics, library and information science, and natural resource database design and integration.

Prospective nominees should also have knowledge and practical experience in one or more of the following areas: Representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.*, agriculture, fisheries, public utilities, public health, recreational users, hunting and fishing interests, etc.); representing sectors of the national economy whose routine operations may pose risks of new or

expanded biological invasions (*e.g.*, shipping, forestry, horticulture, aquaculture, pet trade, tourism, etc.); developing natural resource management plans; invasive species prevention, early detection and rapid response, control and monitoring; integrating science and the human dimension to craft effective solutions to complex conservation issues; environmental education, outreach, and public relations; coordination of diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with National Environmental Policy Act (NEPA) and other Federal requirements and policies.

Members will be selected in order to achieve a balanced representation of viewpoints to effectively address the wide range of invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of ISAC, ISAC members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Note: Employees of the Federal Government are not eligible for nomination or appointment to ISAC.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. At least two (2) letters of reference.

Incomplete nominations (missing one or more of the items described above) will not be considered. *The submission deadline for nominations has been extended.* All nominations should now be postmarked no later than August 25, 2009 to Christopher P. Dionigi, PhD, Acting Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

Christopher P. Dionigi,

Acting Executive Director, National Invasive Species Council.

[FR Doc. E9-18148 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[F-93724; AK-965-1410-KC-P]****Alaska Native Claims Selection****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Elim Native Corporation. The lands are in the vicinity of Elim, Alaska, and are located in:

Kateel River Meridian, AlaskaT. 6 S., R. 15 W.,
Sec. 10.

Containing 2.45 acres.

T. 6 S., R. 17 W.,
Secs. 33 and 34.

Containing 1,280 acres.

T. 7 S., R. 17 W.,
Secs. 4, 5, and 6;
Secs. 8 and 9.

Containing 3,162.46 acres.

T. 8 S., R. 18 W.,
Sec. 22.

Containing 0.01 acre.

Aggregating 4,444.92 acres.

Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a

week, to contact the Bureau of Land Management.

Jennifer L. Noe,*Land Law Examiner, Land Transfer Adjudication II Branch.*

[FR Doc. E9-18208 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[F-21903-94, F-21904-35, F-21904-36, F-21905-47, F-21905-51; AK-964-1410-KC-P]****Alaska Native Claims Selection****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Tanana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 5 N., R. 24 W.,

Secs. 3, 4, 5, and 8;

Secs. 9, 10, 15, and 16;

Secs. 17, 20, 21, and 22;

Secs. 27, 28, and 33;

Secs. 34 and 35.

Containing approximately 10,260 acres.

T. 6 N., R. 24 W.,

Secs. 2, 3, 9, and 10;

Secs. 15, 16, 20, and 21;

Secs. 22, 28, 29 and 32;

Sec. 33.

Containing approximately 7,785 acres.

T. 4 N., R. 25 W.,

Secs. 6, 7, and 8;

Secs. 17 to 36, inclusive.

Containing approximately 9,636 acres.

T. 4 N., R. 26 W.,

Secs. 1 and 2;

Secs. 9 to 17, inclusive.

Containing approximately 5,284 acres.

Aggregating approximately 32,965 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,*Land Law Examiner, Land Transfer Adjudication I.*

[FR Doc. E9-18209 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[F-19148-12, F-19148-13, F-19148-29, F-19148-35; AK-964-1410-KC-P]****Alaska Native Claims Selection****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arctic Slope Regional Corporation. The lands are in the vicinity of the Colville River and Cape Lisburne, Alaska, and are located in:

Lands Outside the National Petroleum Reserve in Alaska*Umiat Meridian, Alaska*

T. 1 S., R. 1 W.,

Secs. 1 and 2;

Secs. 10, 11, and 15.

Containing approximately 1,286 acres.

T. 1 S., R. 1 E.,

Secs. 3 to 6, inclusive.

Containing approximately 1,320 acres.

T. 1 N., R. 1 E.,

Secs. 24, 25, and 26;

Secs. 32 to 36, inclusive.

Containing approximately 2,543 acres.

T. 1 N., R. 2 E.

Secs. 1 and 2;

Secs. 11 to 14, inclusive;

Secs. 19 to 24, inclusive;

- Sec. 30.
Containing approximately 2,580 acres.
- T. 2 N., R. 2 E.,
Sec. 36.
Containing approximately 97 acres.
- T. 1 N., R. 3 E.,
Secs. 6, 7, and 18.
Containing approximately 933 acres.
- T. 2 N., R. 3 E.,
Secs. 20 and 21;
Secs. 28 to 33, inclusive.
Containing approximately 2,899 acres.
- T. 3 S., R. 4 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 11,520 acres.
- T. 4 S., R. 4 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 11,520 acres.
- T. 5 S., R. 4 E.,
Secs. 1 to 9, inclusive.
Containing approximately 5,643 acres.
- T. 12 S., R. 4 E.,
Secs. 5, 6, 7, and 25.
Containing approximately 2,266 acres.
- T. 7 S., R. 6 W.,
Secs. 2, 3, and 4;
Secs. 9, 10, and 11;
Secs. 14, 15, and 16;
Secs. 21, 22, and 23.
Containing approximately 7,680 acres.
- T. 6 S., R. 7 W.,
Secs. 19, 20, and 21;
Secs. 28 to 33, inclusive.
Containing approximately 5,660 acres.
- T. 7 S., R. 7 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 18, inclusive.
Containing approximately 7,602 acres.
- T. 6 S., R. 56 W.,
Sec. 36.
Containing approximately 7 acres.
- T. 7 S., R. 56 W.,
Secs. 1 to 12, inclusive.
Containing approximately 5,658 acres.
- T. 7 S. R. 57 W.,
Sec. 1;
Secs. 7 to 12, inclusive.
Containing approximately 3,210 acres.
- T. 7 S., R. 58 W.,
Secs. 4 to 12, inclusive.
Containing approximately 2,159 acres.
Aggregating approximately 74,582 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E9-18214 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14897-B; AK-964-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Seth-De-Ya-Ah Corporation. The lands are in the vicinity of Minto, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 4 N., R. 8 W.,
Secs. 7, 15, 22 and 27;
Secs. 30 and 31.

Containing approximately 2,426 acres.

T. 3 N., R. 9 W.,
Sec. 1.

Containing approximately 594 acres.

T. 2 N., R. 10 W.,
Secs. 3 and 11.

Containing approximately 804 acres.

T. 3 N., R. 10 W.,
Sec. 35.

Containing approximately 619 acres.

Aggregating approximately 4,444 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Seth-De-Ya-Ah Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara J. Walker,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9-18216 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-19155-10; AK-964-1410-KC-P]

Alaska Native Claims Selection.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Ruby, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 7 S., R. 17 E.,
Sec. 31.

Containing 626.65 acres.

T. 11 S., R. 17 E.,
Secs. 2, 10, 15 and 16;
Secs. 21, 22, 27 and 28;
Secs. 33 and 34.

Containing 7,176.04.
Aggregating 7,802.69 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara J. Walker,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9-18217 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14901-A and F-14901-A2; AK-965-1410-KC-P]

Alaska Native Claims Selection

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Napakiak Corporation. The lands are in the vicinity of Napakiak, Alaska, and are located in:

Seward Meridian, Alaska

T. 7 N., R. 72 W.,

Secs. 1 to 4, inclusive;
Secs. 8, 9, and 10;
Sec. 17.

Containing approximately 3,388 acres.

T. 6 N., R. 73 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 17, inclusive;
Secs. 19 to 24, inclusive;
Secs. 29 and 30.

Containing approximately 9,916 acres.

T. 5 N., R. 74 W.,
Secs. 5, 7, and 8;
Secs. 17, 18, and 19;
Secs. 22 and 23;
Secs. 26 and 27;
Secs. 33, 34, and 35.

Containing approximately 5,526 acres.

T. 6 N., R. 74 W.,
Secs. 2 to 5, inclusive;
Secs. 8, 17, and 20;
Secs. 29 and 32.

Containing approximately 5,251 acres.

T. 7 N., R. 74 W.,
Sec. 34.

Containing approximately 488 acres.

T. 6 N., R. 76 W.,
Secs. 4 to 9, inclusive;
Secs. 16 and 17;
Secs. 20, 21, and 22;
Secs. 27, 28 and 29.

Containing approximately 6,859 acres.

T. 6 N., R. 77 W.,
Secs. 1 to 9, inclusive;
Secs. 16 and 17;
Secs. 19 to 22, inclusive;
Secs. 27 to 30, inclusive;
Secs. 32 and 33.

Containing approximately 11,068 acres.
Aggregating approximately 42,496 acres.

The subsurface of these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Napakiak Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until _____ to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of this decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone

at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov.

Gina A. Kendall,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9-18218 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-8103-1, AA-8103-3, AA-8103-4; AK-964-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Telida, McGrath, and Takotna, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 28 S., R. 14 E.,
Secs. 20, 28, 29, and 33.

Containing approximately 2,560 acres.

T. 29 S., R. 15 E.,
Secs. 2 and 3.

Containing approximately 1,124 acres.

T. 22 S., R. 28 E.,
Secs. 26, 34, and 35.

Containing approximately 1,325 acres.

T. 23 S., R. 29 E.,
Secs. 4, 9, 16, and 28;
Secs. 33, 34, and 35.

Containing approximately 4,003 acres.

Seward Meridian, Alaska

T. 34 N., R. 32 W.,
Secs. 33 to 36, inclusive.

Containing approximately 2,372 acres.

T. 32 N., R. 34 W.,
Secs. 19 to 22, inclusive;
Secs. 26 to 34, inclusive.

Containing approximately 5,663 acres.

T. 31 N., R. 35 W.,
Secs. 1 and 2;
Secs. 10 to 15, inclusive;
Secs. 23 to 27, inclusive;
Secs. 35 and 36.

Containing approximately 7,281 acres.

T. 33 N., R. 35 W.,
Secs. 1 to 4, inclusive.

Containing approximately 2,560 acres.

T. 33 N., R. 37 W.,
Sec. 34.

Containing approximately 635 acres.

T. 32 N., R. 38 W.,

Secs. 27, 28, 33, and 34.

Containing approximately 2,560 acres.
Aggregating approximately 30,083 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9-18219 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

The subsurface estate in these lands will be conveyed to Cook Inlet Region, Inc., when the surface estate is conveyed to Eklutna, Inc. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 31, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Christy Favorite,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9-18221 Filed 7-29-09; 8:45 am]

BILLING CODE 4310-JA-P

Montrose, CO 81401, 970-240-5300; or Erin Curtis, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO 81506, 970-244-3097.

Correction

In the **Federal Register** of April 3, 2009, FR Doc. E9-7606, on page 15519, the second column, correct the

ADDRESSES caption to read:

ADDRESSES: The Southwest Colorado RAC meetings will be held May 29, 2009, in Dolores, CO, at the Anasazi Heritage Center, 27501 Highway 184, Dolores, CO 81323; August 28, 2009, at the Mary Stigall Theater in the Mosley Arts Center, 304 Silver Street in Lake City, CO 81235; and November 6, 2009, in Delta, CO at the Bill Heddles Recreation Center, 530 Gunnison River Drive, Delta, CO 81416. Field trips will be conducted to appropriate sites the day before each scheduled meeting. All Southwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m., with public comment periods regarding matters on the agenda at 2:30 p.m.

Barbara Sharrow,

Designated Federal Official.

[FR Doc. E9-18215 Filed 7-29-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW164374]

WYOMING: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Thunderbird Energy, Inc. for competitive oil and gas lease WYW164374 for land in Weston County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-61292; AK-965-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska National Interest Lands Conservation Act will be issued to Eklutna, Inc. The lands are in the vicinity of Eklutna, Alaska, and are located in:

Seward Meridian, Alaska

T. 16 N., R. 1 E.,

Secs. 27 and 28.

Containing 500 acres.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000 L1010 PH]

Notice of Public Meeting, BLM Colorado Southwest Resource Advisory Council Meeting; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting; Correction.

SUMMARY: The Bureau of Land Management (BLM) published a document in the **Federal Register** of April 3, 2009, notifying the public regarding meeting dates and locations for the BLM Colorado Southwest Resource Advisory Council (RAC). The location of the August 28, 2009 meeting was incorrect.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, BLM Uncompahgre Field Manager, 2505 S. Townsend Ave.,

\$10.00 per acre or fraction thereof, per year and 16–2/3 percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW1674374 effective January 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–18213 Filed 7–29–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 23, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor-Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTE 2002–12).

OMB Control Number: 1210–0115.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60.

Total Estimated Annual Burden Hours: 855.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$509.

Description: PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a "trading adviser" for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise. For additional information,

see related notice published at 74 FR 17985 on April 20, 2009.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Bank Collective Investment Funds; Prohibited Transaction Class Exemption 91–38.

OMB Control Number: 1210–0082.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,600.

Total Estimated Annual Burden Hours: 600.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$0.

Description: PTE 91–38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund. Under PTE 91–38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. The PTE also contains more limited or differently defined relief for funds holding more than the specified percentage, for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified interested persons (including the Department and the Internal Revenue Service) on request for a period of six years. For additional information, see related notice published at 74 FR 17988 on April 20, 2009.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: PTE 90–1; Insurance Company Pooled Separate Accounts.

OMB Control Number: 1210–0083.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60.

Total Estimated Annual Burden Hours: 100.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$0.

Description: PTE 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement. For additional information, see related notice published at 74 FR 17989 on April 20, 2009.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Foreign Currency Transactions; Prohibited Transaction Class Exemption 94–20.

OMB Control Number: 1210–0085.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 279.

Total Estimated Annual Burden Hours: 230.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$0.

Description: PTE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV(e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) Develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. The ICR relates to the foregoing disclosure and recordkeeping requirements. For additional information, see related notice published at 74 FR 17990 on April 20, 2009.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

OMB Control Number: 1210–0104.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Total Estimated Annual Burden Hours: 1,756.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$310,000.

Description: PTE 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (funds)

registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97–41. These disclosures are the basis for the ICR. For additional information, see related notice published at 74 FR 17986 on April 20, 2009.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Prohibited Transaction Exemption 2004–07, Transactions with Trust REIT Shares.

OMB Control Number: 1210–0124.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 38.

Total Estimated Annual Burden Hours: 3,990.

Total Estimated Annual Costs Burden (excludes hourly wage costs): \$201,894.

Description: PTE 2004–07 exempts from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITs to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit "contributions in kind" of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. For additional information, see related notice published at 74 FR 17987 on April 20, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-18068 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,882]

Belcher-Robinson Foundry, Alexander City, AL; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 25, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on June 17, 2009. The Notice of Determination was published in the **Federal Register** on July 14, 2009 (74 FR 34038).

The initial investigation resulted in a negative determination based on the finding that imports of automotive drive train components did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding customers of the subject firm and imports of automotive drive train components.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of July 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18180 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,401]

Qimonda 200MM Facility, Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA-Tencor Craftscorps, Inc. and Colonial Webb, and Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG, Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200MM Facility, Sandston, Virginia. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914). The certification was amended on February 10, 2009, March 3, 2009, March 31, 2009 and June 12, 2009 to include on-site leased workers of Tokyo Electron America, Nikon Precision, Ebara Technologies, Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc. and KLA/Tencor and Qimonda North America

Corp., Qimonda Richmond, an on-site subsidiary of the subject firm. These notices were published in the **Federal Register** on February 23, 2009 (74 FR 8111), March 11, 2009 (74 FR 10619), April 7, 2009 (74 FR 15752) and June 24, 2009 (74 FR 30112), respectfully.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

The company reports that workers leased from Craftscorps, Inc., and Colonial Webb were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Craftscorps, Inc., and Colonial Webb working on-site at the Sandston, Virginia location of the subject firm.

The intent of the Department's certification to include all workers employed at Qimonda 200MM Facility, Sandston, Virginia who were adversely affected by a shift in production to a foreign country followed by increased imports of articles like or directly competitive with DRAM semiconductor wafers produced by the subject firm.

The amended notice applicable to TA-W-64,401 is hereby issued as follows:

All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA-Tensor, Craftscorps, Inc., and Colonial Webb and including on-site workers of Qimonda North America Corp., Qimonda Richmond, a subsidiary of Qimonda AG, Sandston, Virginia, who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18177 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration****Notice of Determinations Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of *June 29 through July 17, 2009*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under

the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

**Affirmative Determinations for Worker
Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

**Affirmative Determinations for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA-W-65,890; Automatic Machine
Product, Corinth, MS; May 1, 2008.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-65,630; National Envelope, Scottsdale, PA

TA-W-65,704; Chipblaster, Inc., Meadville, PA

TA-W-65,753; Weyerhaeuser Company, Warrenton, OR

TA-W-65,914; Alliance Machine Systems International, Spokane Valley, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

None.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA-W-65,324; General Aluminum Manufacturing Co., Richmond Plant, Richmond, IN

I hereby certify that the aforementioned determinations were issued during the period of *June 29 through July 17, 2009*. Copies of these determinations are available for inspection in Room n-5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 21, 2009.

Linda G. Poole,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E9-18176 Filed 7-29-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,725]

Weather Shield Manufacturing, Inc., Corporate Office, Medford, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 26, 2009, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on June 2, 2009, and published in the **Federal Register** on June 18, 2009 (74 FR 28956).

The initial investigation revealed that workers of the subject firm are engaged in support functions such as administrative, human resources, accounting, sales, and marketing operations. It was also revealed that the workers of the subject firm support production of windows at various Weather Shield Manufacturing facilities. The investigation resulted in a negative determination that was based on the finding that imports of windows did not contribute importantly to worker separations at the subject facility and there was no shift of production to a

foreign country. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's declining domestic customers. The survey of the major declining customers revealed negligible imports of windows in 2008 compared with 2007. The subject firm did not import windows during the relevant period.

A careful review of previously-submitted material shows that one of the facilities supported by workers of the Weather Shield Manufacturing, Inc., Corporate Office in Milford, Wisconsin produced doors. During the reconsideration investigation, the Department conducted additional customer survey regarding purchases of doors (including like or directly competitive articles) during 2007 and 2008. Based on the information obtained through the survey, the Department determined no imports of doors during the relevant period.

The petitioner also alleges that the competitor of the subject firm has been certified for TAA during August 2008 and therefore workers of the subject firm should be also certified for TAA.

The impact of competitors on the subject firm is revealed in an investigation through customer survey analysis. In the case at hand, the Department solicited information from the customers of the subject firm to determine if customers purchased imported windows and doors during 2007 and 2008. The survey is intended to determine if competitor imports contributed importantly to layoffs at the subject firm. The survey revealed that imports of windows and doors were negligible during the relevant period.

The investigation also revealed the subject firm did not import windows and doors nor was there a shift in production of windows and doors from subject firm abroad during the relevant period. Furthermore, U.S. aggregate imports of windows and doors declined from 2007 to 2008.

Based on the information above, the Department determines that the group eligibility requirements under section 222(a) of the Trade Act of 1974, as amended, were not met.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for

worker adjustment assistance for workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin.

Signed at Washington, DC, this 14th day of July 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18182 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,770; TA-W-65,770A; TA-W-65,770B; TA-W-65,770C]

Westport Shipyard, Inc., Westport, WA; Westport Shipyard, Inc., Hoquiam, WA; Westport Shipyard, Inc., Port Angeles, WA; Westport Shipyard, Inc., La Conner, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 12, 2009, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 15, 2009 and published in the **Federal Register** on June 18, 2009 (74 FR 28961).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination, which was based on the finding that imports of large motor yachts did not contribute importantly to worker separations at the subject facility and there was no shift of production to a foreign country. The subject firm did not import large motor yachts nor shift production of large motor yachts to a foreign country during the 2007, 2008 and January through March 2009 period. Furthermore, the investigation revealed that sales and production of large motor yachts at the

subject firm increased from January through March, 2009 when compared with the same period in 2008.

The petitioners alleged that the customers of the subject firm, who are individual buyers and not business entities, can purchase "similar products" in foreign countries. The individuals can subsequently ship or sail the yachts back to the United States as a personal property, thus these products are not considered imports. To support their allegations, the petitioners attached information about aggregate imports, which reflects ports of unloading of "yachts, row boats, canoes and sailboats, with or without auxiliary motor" for the state of Washington in 2006, 2007, 2008 and January 2009. This data shows that aggregate imports into the state of Washington of the above mentioned products declined from 2006 to 2007, further declined from 2007 to 2008, and increased in January 2009 when compared with January 2008. The petitioners seem to allege that these increasing imports in January 2009 amounted to a significant amount contributing importantly to the worker separations at all Westport Shipyard locations.

In order to establish import impact, the Department solicits relevant information from the subject firm, customers of the subject firm and analyzes available United States aggregate data regarding imports of products, including those like or directly competitive with the products manufactured by the subject firm for the relevant period (one year prior to the date of the petition). In the case at hand, the customers were not surveyed, as they are individuals and one-time buyers. According to the data available from the U.S. Department of Commerce and the U.S. International Trade Commission, United States imports of motorized vessels and yachts have declined from 2007 to 2008 and decreased from January through April 2009, when compared with the corresponding 2008 period.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 9th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18183 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,613]

Longview Fibre Paper and Packaging, Inc., Longview Mill, Formerly Longview Fibre Company, Including On-Site Leased Workers From Oregon Electric and J.H. Kelly, Longview, WA; Amended Notice of Revised Determination on Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on April 16, 2008. The notice was published in the **Federal Register** on April 23, 2008 (73 FR 21992-21993).

At the request of the State agency, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are engaged in the production of kraft paper.

New information shows that workers leased workers from Oregon Electric and J.H. Kelly were employed on-site at the Longview, Washington location of Longview Fibre Paper and Packaging, Inc., Longview Mill, Formerly Longview Fibre Company. The Department has determined that these workers were sufficiently under the control of Longview Fibre Paper and Packaging, Inc., Longview Mill, Formerly Longview Fibre Company to be considered leased workers.

Based on these findings, the Department is amending this revised determination to include workers leased from Oregon Electric and J.H. Kelly working on-site at the Longview, Washington location of the subject firm.

The intent of the Department's certification is to include all workers adversely affected by increased imports of kraft paper who were employed at Longview Fibre Paper and Packaging, Inc., Longview Mill, formerly Longview Fibre Company, Longview, Washington.

The amended notice applicable to TA-W-62,613 is hereby issued as follows:

All workers of Longview Fibre Paper and Packaging, Inc., Longview Mill, formerly Longview Fibre Company, including on-site leased workers from Oregon Electric and J.H. Kelly, Longview, Washington, engaged in the production of kraft paper, who became totally or partially separated from employment on or after December 27, 2006, through April 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of July 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18181 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-71,353]

Albion Associates, Inc., High Point, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 23, 2009 in response to a worker petition filed on behalf of workers of Albion Associates, Inc., High Point, North Carolina.

The petitioning group of workers is covered by an earlier petition TA-W-71,121 filed on June 10, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of July 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18175 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-70,303]

Bentex Mills Inc. Greensboro, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2009 in response to a worker petition filed on behalf of workers of Bentex Mills Inc., Greensboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 17th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18178 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-71,052]

Clarity Technologies, Inc., Auburn Hills, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 6, 2009 by a Washington State agency representative on behalf of workers of Clarity Technologies, Inc., Auburn Hills, Michigan.

The petition has been deemed invalid. A State agency representative or One-Stop Office Operator/Partner may not file a petition on behalf of workers of a firm located in another State. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of July, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18179 Filed 7-29-09; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 31, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740-6001.

E-mail: request.schedule@nara.gov.

FAX: 301-837-3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: 301-837-1539. E-mail: records.mgt@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this

accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Risk Management Agency (N1-258-08-10, 11 items, 8 temporary items). Background materials that relate to the development of agency handbooks and policy documents as well as policy materials that relate to routine internal administrative matters. Proposed for permanent retention are records that relate to policies that pertain to the agency's mission and internal management.

2. Department of Agriculture, Risk Management Agency (N1-258-08-18, 3 items, 2 temporary items). General legislative relations records that do not pertain to specific program areas and copies of records maintained by offices other than the office of record that relate to external relations. Proposed for permanent retention are external relations records maintained in the office of record that relate to high level policy issues involving other nations, Federal, state, and local governmental agencies, the President, and Congress.

3. Department of Agriculture, Risk Management Agency (N1-258-08-23, 2 items, 1 temporary item). Copies of press releases maintained by offices other than the office of record. Press releases maintained by the office of record are proposed for permanent retention.

4. Department of the Army, Agency-wide (N1-AU-09-16, 1 item, 1 temporary item). Master files of an electronic information system that contains training requirements and resources data, such as course descriptions, quota allocations, and identification information concerning students and instructors. Annual reports generated from the data were previously approved for permanent retention.

5. Department of the Army, Agency-wide (N1-AU-09-35, 1 item, 1 temporary item). Master files of an electronic information system that contains information used to create enlisted personnel distribution targets. Included is data relating to military occupational skill codes, unit identification codes, grades, and authorizations as well as strength data.

6. Department of the Army, Agency-wide (N1-AU-09-36, 1 item, 1 temporary item). Master files of an electronic information system that contains data used to verify whether an individual should remain on active duty or is eligible for transfer to a reserve component.

7. Department of the Army, Agency-wide (N1-AU-09-37, 1 item, 1 temporary item). Master files of an electronic information system that is

used to manage the assignments of enlisted personnel.

8. Department of Commerce, National Institute of Standards and Technology (N-167-09-1, 4 items, 2 temporary items). Files relating to the processing of applications for the Malcolm Baldrige National Quality Award, an award which recognizes quality achievements by U.S. business firms. Proposed for permanent retention are annual reports to program overseers and reports to Congress.

9. Department of Homeland Security, Immigration and Customs Enforcement (N1-567-09-1, 2 items, 2 temporary items). Master files and outputs of an electronic information system to identify victims of child pornography.

10. Department of the Interior, Office of the Secretary (N1-48-08-27, 3 items, 1 temporary item). Issuances that identify who will act for an absent official. Proposed for permanent retention are issuances that contain policies approved by the Secretary or the Assistant Secretary for Policy Management and Budget.

11. Department of Justice, Environment and Natural Resources Division (N1-60-09-21, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning personnel.

12. Department of Justice, Executive Office for Immigration Review (N1-60-08-7, 2 items, 1 temporary item). Digital audio recordings of cases heard by Immigration Courts and the Board of Immigration Appeals. Master files of a case tracking system that includes testimony, decisions rendered, and other information concerning each case are proposed for permanent retention.

13. Department of Justice, Executive Office for United States Attorneys (N1-60-09-9, 6 items, 3 temporary items). Vetting reports and summaries of background investigations relating to nominees for U.S. Attorney positions as well as nomination files relating to those who are not appointed or confirmed. Proposed for permanent retention are nomination files relating to those who are appointed and confirmed as well as master files of an electronic information system used to track nominations.

14. Department of Labor, Office of Labor-Management Standards (N1-448-09-1, 5 items, 5 temporary items). Private and public sector collective bargaining agreements covering 1,000 or more workers and related listings and requests for copies received from the public.

15. Department of Transportation, Federal Highway Administration (N1-406-08-8, 31 items, 24 temporary

items). Records of the Office of Policy and Government Affairs, including such records as administrative files, files relating to budget and contract matters, drafts of reports, toll facilities files, files relating to the highway trust fund, Web site versions of published highway statistics, and research program files. Proposed for permanent retention are such records as published highway statistics, reports on the status of highways, bridges, and transit submitted to Congress, master files of electronic information systems relating to highway system performance, files relating to foreign highway projects, and master files of an electronic system relating to motor fuel and highway finance.

16. Department of Transportation, Federal Highway Administration (N1-406-09-6, 79 items, 73 temporary items). Records of the Office of Planning, Environment, and Realty, including such records as files relating to routine administrative activities, air quality analyses, right-of-way records, files relating to civil rights activities, property management files, environmental impact records, noise files, records relating to the payback program, project files, research files, airport access records, urban planning files, and public transportation files. Proposed for permanent retention are such records as air quality program files, annual reports, policy files, and speeches made by high officials.

17. Department of Transportation, Federal Highway Administration (N1-406-09-11, 2 items, 2 temporary items). Applications for Federal credit assistance submitted under the Transportation Infrastructure Finance and Innovation Act of 1998.

18. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (N1-564-09-2, 1 item, 1 temporary item). Master files of an electronic information system used to track agency accountable personal property.

19. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (N1-564-09-12, 2 items, 2 temporary items). Master files of an internet-based electronic system which allows industry members to apply online for certificates of label approval.

20. Department of the Treasury, Bureau of Engraving and Printing (N1-318-09-1, 3 items, 3 temporary items). Daily production records and other records relating to day-to-day operations and product accountability.

21. Department of the Treasury, Internal Revenue Service (N1-58-09-34, 3 items, 3 temporary items). Inputs, outputs, and master files of an electronic information system used to

identify forms missing from electronically filed tax returns.

22. Department of the Treasury, Internal Revenue Service (N1-58-09-35, 3 items, 3 temporary items). Inputs, outputs, and master files of an electronic information system that contains employee performance data.

23. Department of the Treasury, Internal Revenue Service (N1-58-09-36, 3 items, 3 temporary items). Inputs, outputs, and master files of an electronic information system that contains earned income tax credit data.

24. Department of the Treasury, Internal Revenue Service (N1-58-09-42, 4 items, 4 temporary items). Fingerprint cards and professional credentials provided by tax professionals who apply for authorization to transmit tax return information to the agency on behalf of taxpayers.

25. Department of the Treasury, Internal Revenue Service (N1-58-09-43, 1 item, 1 temporary item). Data contained in an electronic system used to transmit sensitive tax-related information that cannot be transmitted using regular electronic mail.

26. Department of the Treasury, Office of Thrift Supervision (N1-483-09-1, 3 items, 3 temporary items). Master files of an electronic information system that is used to store employee contact information and deliver emergency communications to staff.

27. Agency for International Development, Bureau of Global Health (N1-286-09-2, 1 item, 1 temporary item). Data contained in an electronic information system used to track the expenditure of funds, including a module with data on the funding of projects relating to HIV/AIDS.

28. National Archives and Records Administration, Office of Presidential Libraries (N1-64-09-5, 1 item, 1 temporary item). Data contained in an electronic system pertaining to visits, tours, and events at Presidential library museums.

29. National Archives and Records Administration, Office of Regional Records Services (N1-64-08-10, 21 items, 20 temporary items). Records relating to operations and administration of records centers, regional archives, and records management services, including files relating to such matters as the collection and expenditure of funds, outreach activities, the operation of records centers, and records processing activities. Proposed for permanent retention are program records accumulated by Regional Administrators.

Dated: July 27, 2009.

Michael J. Kurtz.

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9-18312 Filed 7-29-09; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Denied Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits denied under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits denied under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 1, 2009, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit application from Stacy Kim was denied on July 23, 2009.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9-18107 Filed 7-29-09; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7015; CLI-09-15]

Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility)

Commissioners: Gregory B. Jaczko, Chairman, Dale E. Klein, Kristine L. Svinicki.

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) received on December 30, 2008, an application, safety analysis report, and environmental report from AREVA

Enrichment Services LLC (AES), for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U-235 by the gas centrifuge process. The plant, to be known as the Eagle Rock Enrichment Facility (EREF), would be located in Bonneville County, Idaho. AES is a Delaware limited liability corporation and is a wholly owned subsidiary of AREVA NC Inc., which is a wholly owned subsidiary of AREVA NC SA, a part of AREVA SA, a corporation formed under the laws of France. On March 12, 2009, the NRC staff notified AES, by letter, that staff had completed its acceptance review and had determined that the application was acceptable for formal review. On March 31, 2009, AES notified the NRC of its intent to revise the license application for the EREF to expand the capacity of the facility from 3.3 million separative work units (SWU) per year to 6.6 million SWU per year. Thereafter, on April 23, 2009, AES filed a revised license application. On April 30, 2009, the NRC staff notified AES that its revised license application was accepted for review. On May 4, 2009, the NRC published notice of its intent to prepare an Environmental Impact Statement (EIS) on the proposed action and the opportunity for public comment on the appropriate scope of issues to be considered in the EIS. See 74 FR 20508 (May 4, 2009).

Copies of AES's application, safety analysis report, and environmental report (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for review and copying using any of the following methods: (1) Enter the NRC's Gas Centrifuge Enrichment Facility Licensing Web site at <http://www.nrc.gov/materials/fuel-cycle-fac/gas-centrifuge.html#correspondence>; (2) enter the NRC's Agencywide Document Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, where the accession number for AES's application (including AES's safety analysis report and AES's environmental report) is ML090300658, and the accession number for the revised application is ML091210558; (3) contact the PDR by calling (800) 397-4209, faxing a request to (301) 415-3548, or sending a request by electronic mail to pdr@nrc.gov. Hard

copies of the documents are available from the PDR for a fee.

As indicated above, the AES's initial and revised application has been accepted for docketing and formal review (ADAMS accession numbers ML090540516 and ML091210040) and, accordingly, the Commission is providing this notice of hearing and notice of opportunity to intervene on AES's application for a license to construct and operate a centrifuge enrichment facility. Pursuant to the Atomic Energy Act of 1954, as amended (Act), the NRC staff will prepare a safety evaluation report (SER) after reviewing the application and make findings concerning the public health and safety and common defense and security. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the NRC staff will complete an environmental evaluation and prepare an environmental impact statement (EIS) before the hearing on the issuance of a license is completed. See Notice of Intent and Opportunity to Provide Written Comments AREVA Enrichment Services LLC Eagle Rock Enrichment Facility, Idaho Falls, ID, 74 FR20508 (May 4, 2009).

In *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028 (9th Cir. 2006), cert. denied, 127 S. Ct. 1124 (2007), the United States Court of Appeals for the Ninth Circuit held that the NRC NEPA analysis performed as a result of an NRC licensing decision should consider the potential environmental consequences, if any, were a terrorist attack on the facility under review to occur. The Ninth Circuit's holding is in sharp contrast to the position the NRC has consistently taken with respect to this issue, i.e., that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. See *AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-07-08, 65 NRC 124, 129 (2007). The Third Circuit recently upheld the NRC's approach. See *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009) (upholding the NRC's *Oyster Creek* decision). Nonetheless, as of this writing, the Commission remains bound by Ninth Circuit law when, as here, the agency is considering facilities located within the Ninth Circuit's jurisdiction. As the proposed location for the EREF is within the jurisdictional boundaries of the Ninth Circuit, the Commission is obligated to ensure that the EIS prepared by the NRC staff considers the NEPA-terrorism issue as mandated in

San Luis Obispo Mothers for Peace, supra.

Accordingly, in keeping with the Commission's directive in *Pacific Gas & Electric Co., (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, CLI-07-11, 65 NRC 148 (2007),¹ the Commission directs the NRC staff to address in the EIS the environmental impacts of a terrorist attack at the EREF. To the extent practicable, the NRC staff should base its environmental analysis on information available in agency records and other information on the EREF design, mitigative, and security arrangements bearing on likely environmental consequences, consistent with the requirements of NEPA, the Ninth Circuit's decision, and the regulations for the protection of sensitive and safeguards information.

The NRC staff may rely, where appropriate, on qualitative rather than quantitative considerations. In addition, the NRC should rely on as much public information as practicable and make public as much of its environmental analysis as feasible recognizing, however, that it may prove necessary to withhold some facts underlying the staff's findings and conclusions as "safeguards" information, classified Restricted Data or National Security Information, or sensitive unclassified non-safeguards information. Further guidance on how the NRC treats NEPA-terrorism contentions is available in the *Diablo Canyon* docket. See, e.g., CLI-08-26, 68 NRC __ (Oct. 23, 2008); CLI-08-8, 67 NRC 193 (2008); CLI-08-1, 67 NRC 1 (2008). The *Diablo Canyon* proceeding is again before the Ninth Circuit. See *San Luis Obispo Mothers for Peace v. NRC*, No. 08-75058 (9th Cir.).

When available, the NRC staff's SER and EIS (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will also be placed in the PDR and in ADAMS. Copies of correspondence between the NRC and AES, and transcripts of prehearing conferences and hearings (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) similarly will be made available to the public.

If, following the hearing, the Commission is satisfied that AES has complied with the Commission's regulations and the requirements of this Notice and Commission Order and the

¹In *San Luis Obispo Mothers for Peace*, the Ninth Circuit explicitly left to the Commission's discretion the manner in which the NRC reviews the NEPA-terrorism issues with respect to the NRC's consideration of the merits and procedural approach.

Commission finds that the application satisfies the applicable standards set forth in 10 CFR parts 30, 40, and 70, a single license will be issued authorizing: (1) The construction and operation of the Eagle Rock Enrichment Facility; and (2) the receipt, possession, use, delivery, and transfer of byproduct (e.g., calibration sources), source and special nuclear material at the Eagle Rock Enrichment Facility. Prior to commencement of operations of the Eagle Rock Enrichment Facility, if it is licensed, in accordance with section 193(c) of the Act and 10 CFR 70.32(k), the NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation. The inspection findings will be published in the **Federal Register**.

II. Notice of Hearing

A. Pursuant to 10 CFR 70.23a and section 193 of the Act, as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 Public Law 101-575, § 5, 104 Stat. 2834, 2835-36 (codified as amended at 42 U.S.C. 2243), a hearing will be conducted according to the rules of practice in 10 CFR part 2, subparts A, C, G, and to the extent that classified information becomes involved, subpart I. The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the Act. The applicant and the NRC staff shall be parties to the proceeding.

B. Pursuant to 10 CFR part 2, subparts C and G, a contested hearing shall be conducted by an Atomic Safety and Licensing Board (Licensing Board) appointed by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Licensing Board will be published in the **Federal Register** at a later date.

C. The matters of fact and law to be considered are whether the application satisfies the standards set forth in this Notice and Commission Order and the applicable standards in 10 CFR parts 30, 40, and 70, and whether the requirements of NEPA and the NRC's implementing regulations in 10 CFR part 51 have been met.

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Licensing Board will determine the following without conducting a *de novo* evaluation of the application: (1) Whether the application and record of the proceeding contain sufficient information to support license issuance and whether the NRC staff's review of the application has been adequate to support findings to be made by the

Director of the Office of Nuclear Materials Safety and Safeguards, with respect to the matters set forth in paragraph C of this section; and (2) whether the review conducted by the NRC staff pursuant to 10 CFR part 51 has been adequate.

E. Regardless of whether the proceeding is contested or uncontested, the Licensing Board will, in the initial decision, in accordance with subpart A of 10 CFR part 51: determine whether the requirements of sections 102(2)(A), (C), and (E) of NEPA and subpart A of 10 CFR part 51 have been complied with in the proceeding; independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

F. If the proceeding becomes a contested proceeding, the Licensing Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section, but not covered by admitted contentions, the Licensing Board will make the determinations set forth in paragraph D without conducting a *de novo* evaluation of the application.

III. Intervention

A. By September 28, 2009, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the provisions of 10 CFR 2.309. Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD (or call the PDR at (800) 397-4209 or (301) 415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at <http://www.nrc.gov>.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with

particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to AES's application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the

Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

B. A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by September 28, 2009. The petition must be filed in accordance with the filing instructions in section IV, and should meet the requirements for petitions for leave to intervene set forth in section III.A, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

C. Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by September 28, 2009.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a petition for leave to intervene and proffered contentions, any motion or other document filed in the proceeding prior to the submission of a petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at Hearing.Docket@nrc.gov, or by calling (301) 415-1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner (or its counsel or representative) already holds an NRC issued digital ID certificate). Each petitioner will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/sitehelp/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene including proffered contentions. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-filing system may seek assistance through the

"Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672-7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at MSHD.Resource@nrc.gov.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, the Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

V. Commission Guidance

A. Licensing Board Determination of Contentions

The Licensing Board shall issue a decision on the admissibility of contentions no later than December 28, 2009.

B. Novel Legal Issues

If rulings on petitions, on admissibility of contentions, or the admitted contentions themselves, raise novel legal or policy questions, the Commission will provide early guidance and direction on the treatment and resolution of such issues. Accordingly, the Commission directs the Licensing Board to promptly certify to the Commission in accordance with 10 CFR 2.319(l) and 2.323(f) all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding.

C. Discovery Management

(1) All parties, except the NRC staff, shall make the mandatory disclosures required by 10 CFR 2.704(a) and (b) within forty-five (45) days of the issuance of the Licensing Board order admitting contentions.

(2) The Licensing Board, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round for admitted contentions.

(3) All discovery against the NRC staff shall be governed by 10 CFR 2.336(b) and 2.709. The NRC staff shall comply with 10 CFR 2.336(b) no later than 30 days after the Licensing Board order admitting contentions and shall update the information at the same time as the issuance of the SER or the Final Environmental Impact Statement (FEIS), and, subsequent to the publication of the SER and FEIS, as otherwise required by the Commission's regulations. Discovery under 10 CFR 2.709 shall not commence until the issuance of the particular document, *i.e.*, SER or EIS, unless the Licensing Board, in its discretion, finds that commencing discovery against the NRC staff on safety issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely affecting the Staff's ability to complete its evaluation in a timely manner.

(4) No later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC staff shall make the pretrial disclosures required by 10 CFR 2.704(c).

D. Hearing Schedule

In the interest of providing a fair hearing, avoiding unnecessary delays in NRC's review and hearing process, and producing an informed adjudicatory record that supports the licensing determination to be made in this proceeding, the Commission expects that both the Licensing Board and NRC

staff, as well as the applicant and other parties to this proceeding, will follow the applicable requirements contained in 10 CFR part 2 and guidance in the *Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998) [63 FR41872 (August 5, 1998)]* to the extent that such guidance is not inconsistent with specific guidance in this Order. The guidance in the Statement of Policy on Conduct of Adjudicatory Proceedings is intended to improve the management and the timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions and discovery management. In addition, the Commission is providing the following direction for this proceeding:

(1) The Commission directs the Licensing Board to set a schedule for the hearing in this proceeding consistent with this Order that establishes, as a goal, the issuance of a final Commission decision on the pending application within two-and-one-half years (30 months) from the date of this Order. Accordingly, the Licensing Board should issue its decision on either the contested or mandatory hearing, or both, held in this matter no later than 28½ months (855 days) from the date of this Order. Formal discovery against the Staff shall be suspended until after the Staff completes its final SER and EIS in accordance with the direction provided in paragraph C(3) above.

(2) The evidentiary hearing with respect to issues should commence

promptly after completion of the final Staff documents (SER or EIS) unless the Licensing Board, in its discretion, finds that starting the hearing with respect to one or more safety issues prior to issuance of the final SER² (or one or more environmental contentions directed to the applicant's Environmental Report) will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(3) The Commission also believes that issuing a decision on the pending application within about two-and-one-half years may be reasonably achieved under the rules of practice contained in 10 CFR part 2 and the enhancements directed by this Order. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect the Licensing Board to use the applicable techniques specified in: this Order; 10 CFR 2.332, 2.333 and 2.334; and the Commission's policy statement on the conduct of adjudicatory proceedings (CLI-98-12, *supra*) to ensure prompt and efficient resolution of contested issues. *See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).*

(4) If this is a contested proceeding, the Licensing Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding.³

Within September 28, 2009	Deadline for Requests for Hearing; Petitions to Intervene and Contentions; and Requests for Limited Participation.
Within October 28, 2009	Answers to Requests for Hearing; Petitions to Intervene and Request for Limited Participation.
Within November 9, 2009	Replies to Answers regarding Requests for Hearing; Petitions to Intervene and Request for Limited Participation.
Within November 27, 2009	Licensing Board holds Pre-hearing Conference to hear arguments on petitions to intervene and contention admissibility.
Within 30 days of pre-hearing conference	Licensing Board issues order determining intervention.
Within 10 days of the Licensing Board order determining intervention.	Discovery commences, except against the Staff.
Within 20 days of the Licensing Board order determining intervention.	Persons admitted or entities participating under 10 CFR 2.309(d) may submit a motion for reconsideration (see below, at Section VI.B).*
Within 30 days of the Licensing Board decision determining intervention.	Persons admitted or entities participating under 10 CFR 2.309(d) may respond to any motion for reconsideration.
Date of issuance of final SER/EIS	Staff prepares hearing file.
Within 20 days of the issuance of the final SER/EIS	Staff updates hearing file.
Within 40 days of the issuance of final SER/EIS	Discovery commences against the Staff.
	Motions to amend contentions; motions for late-filed contentions.
	Completion of answers and replies to motions for amended and late-filed contentions.
	Completion of discovery on original contentions.

² The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, *supra*, to ensure a fair, prompt, and efficient resolution of contested issues. For example, it may be

appropriate for the Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.

³ This schedule assumes that the SER and FEIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the timeframes herein for each document.

Within 50 days of the issuance of the final SER/EIS	Deadline for summary disposition motions on original contentions.**
Within 55 days of the issuance of the final SER/EIS	Licensing Board decision on admissibility of late-filed contentions.**
Within 65 days of the issuance of the final SER/EIS	Licensing Board determination as to whether resolution of any motion for summary disposition will serve to expedite the proceedings.
Within 75 days of the issuance of the final SER/EIS	Answers to motions for summary disposition identified by Licensing Board.
Within 80 days of the issuance of final SER/EIS	Replies to answers to motions for summary disposition.
Within 105 days of the issuance of the final SER/EIS	Completion of discovery on late-filed contentions.
Within 115 days of the issuance of final SER/EIS	Licensing Board decision on summary disposition motions on original contentions.
Within 125 days of the issuance of final SER/EIS	Direct testimony filed on original contentions and any amended or admitted late-filed contentions.
Within 135 days of the issuance of final SER/EIS	Cross-examination plans filed on original contentions and any amended or admitted late-filed contentions.
Within 160 days of the issuance of final SER/EIS	Evidentiary hearing begins on original contentions and any amended or admitted late-filed contentions.
Within 205 days of the issuance of final SER/EIS	Completion of evidentiary hearing on remaining contentions and any amended or admitted late-filed contentions.
Within 245 days of the issuance of final SER/EIS	Completion of findings and replies.
	Licensing Board's initial decision.***

* Motions for reconsideration do not stay this schedule.

** No summary disposition motions on late-filed contentions are contemplated.

*** The Licensing Board's initial decision with respect to either a contested adjudicatory hearing or an uncontested, mandatory hearing should be issued no later than 28½ months from the date of this Order.

To avoid unnecessary delays in the proceeding, the Licensing Board should not routinely grant requests for extensions of time and should manage the schedule such that the overall hearing process is completed within 28½ months. Although summary disposition motions are included in the schedule above, the Licensing Board shall not entertain motions for summary disposition under 10 CFR 2.710, unless the Licensing Board finds that such motions, if granted, are likely to expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

(5) Parties are obligated to comply with applicable requirements in 10 CFR part 2, unless directed otherwise by this Order or the Licensing Board. They are also obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed from the proceeding.

(6) The Commission directs the Licensing Board to inform the Commission promptly, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board must include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

E. Commission Oversight

As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

VI. Applicable Requirements

A. Licensing

The Commission will license and regulate byproduct, source, and special nuclear material at the Eagle Rock Enrichment Facility in accordance with the Atomic Energy Act of 1954, as amended. Section 274c.(1) of the Act was amended by Public Law 102-486 (October 24, 1992) to require the Commission to retain authority and responsibility for the regulation of uranium enrichment facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory authority with respect to byproduct, source, and special nuclear material for the Eagle Rock Enrichment Facility and with respect to the control and use of any equipment or device in connection therewith.

Many rules and regulations in 10 CFR Chapter I are applicable to the licensing of a person to receive, possess, use, transfer, deliver, and process byproduct, source and special nuclear material in the quantities that would be possessed at the Eagle Rock Enrichment Facility. These include 10 CFR parts 19, 20, 21, 25, 30, 40, 51, 70, 71, 73, 74, 95, 140, 170, and 171 for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal,

decommissioning funding, and insurance.

With respect to these regulations, the Commission notes that this is the fourth proceeding involving the licensing of an enrichment facility. The Commission issued a number of decisions in earlier proceedings regarding proposed sites in Homer, Louisiana (*Claiborne Enrichment Center*), Eunice, New Mexico (*National Enrichment Facility*) and Piketon, Ohio (*American Centrifuge Plant*). These final decisions, *Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-92-7, 35 NRC 93 (1992); *Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-97-15, 46 NRC 294 (1997); *Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77 (1998); *Louisiana Energy Services (National Enrichment Facility)*, CLI-05-05, 61 NRC 22, 36 (2005); *Louisiana Energy Services (National Enrichment Facility)*, et al., CLI-05-17, 62 NRC 5 (2005); *USEC, Inc. (American Centrifuge Plant)*, CLI-07-05, 65 NRC 109 (2007); resolve a number of issues concerning uranium enrichment licensing and may be relied upon as precedent.

Consistent with the Act, and the Commission's regulations, the Commission is providing the following direction for licensing uranium enrichment facilities:

1. Environmental Issues

(a) *General*: 10 CFR part 51 governs the preparation of an environmental report and an EIS for a materials license. AES's environmental report and the NRC staff's associated EIS are to include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative.

(b) Treatment of depleted uranium hexafluoride tails: As to the treatment of

the disposition of depleted uranium hexafluoride tails (depleted tails) in these environmental documents, unless AES demonstrates a use for uranium in the depleted tails as a potential resource, the depleted tails will be considered waste. The Commission has previously concluded that depleted uranium from an enrichment facility is appropriately classified as a low-level radioactive waste. See *Louisiana Energy Services* (National Enrichment Facility), CLI-05-05, 61 NRC 22, 36 (2005). An approach for disposition of tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a "plausible strategy" for disposition of the AES depleted tails. *Id.* The NRC staff may consider the Department of Energy's *Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride* (DOE/EIS-0269), 64 FR 43358 (Aug. 10, 1999), in preparing the staff's EIS. Alternatives for the disposition of depleted uranium tails will need to be addressed in these documents. As part of the licensing process, AES must also address the health, safety, and security issues associated with the storage of depleted uranium tails on site pending removal of the tails from the site for disposal or DOE dispositioning.

2. Financial Qualifications

Review of financial qualifications for enrichment facility license applications is governed by 10 CFR part 70. In *Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-97-15, 46 NRC 294, 309 (1997) the Commission held that the 10 CFR part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition approved in that proceeding, which addressed a minimum equity contribution of 30% from the parents and affiliates of LES partners prior to construction of the associated capacity and having in place long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts prior to constructing or operating the facility, is one way to satisfy the requirements of 10 CFR part 70.

3. Antitrust Review

Section 105 of the Act conferred on the NRC certain antitrust responsibilities with respect to

applications for section 103 or 104b. licenses to construct or operate utilization or production facilities filed prior to August 8, 2005. The AES enrichment facility, the application for which was filed after August 8, 2005, is subject to sections 53 and 63 of the Act, and is not a production or utilization facility within the meaning of section 105. Consequently, the NRC does not have antitrust responsibilities for AES. The NRC will not entertain or consider antitrust issues in connection with the AES application in this proceeding.

4. Foreign Ownership

The AES application is governed by sections 53 and 63 of the Act, and consequently issues of foreign involvement shall be determined pursuant to sections 57 and 69, not sections 103, 104 or 193(f). Sections 57 and 69 of the Act require, among other things, an affirmative finding by the Commission that issuance of a license for the Eagle Rock Enrichment Facility will not be "inimical to the common defense and security." The requirements of sections 57 and 69 are incorporated in 10 CFR 70.31 and 10 CFR 40.32, respectively.

5. Creditor Requirements

Pursuant to section 184 of the Act, the creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235. In addition, the creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

6. Classified Information

All matters of classification of information related to the design, construction, operation, and safeguarding of the Eagle Rock Enrichment Facility shall be governed by classification guidance in "DOE Classification Guide for Isotope Separation by the Gas Centrifuge Process," (June 2002); Change 1 (Sept. 2005); Change 2 (May 2007) (CG-ICG-1); "Joint NRC/DOE Classification Guide for Louisiana Energy Services Gas Centrifuge Plant (U)," Confidential RD (Jan 2008) (CG-LCP-3A); and "Joint NRC/DOE Class. Guide for Louisiana

Energy Services Gas Centrifuge Plant Safeguards & Security (U)," OOU (Jan 2008) (CG-LCP-3B), and any later versions thereof. Any person producing such information must adhere to the criteria in CG-ICG-1, CG-LCP-3A and CG-LCP-3B. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to *de novo* review in this proceeding.

7. Access to Classified Information

Portions of AES's application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified information for the purpose of this licensing proceeding, including the hearing, should immediately contact the NRC, Division of Fuel Cycle Safety and Safeguards, Washington, DC, 20555, for information on the clearance process. Telephone calls may be made to Breeda Reilly, Senior Project Manager, Advanced Fuel Cycle, Enrichment, and Uranium Conversion Branch. Telephone: (301) 492-3110.

8. Obtaining NRC Security Facility Approval for Safeguarding Classified Information Received or Developed Pursuant to 10 CFR part 95

Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Security Operations (NSIR), Washington, DC, 20555. Telephone calls may be made to A. Lynn Silvious, Chief, Information Security Branch. Telephone: (301) 415-2214.

B. Reconsideration

The above guidance does not foreclose the applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.315(c) from litigating material factual issues necessary for resolution of contentions in this proceeding. Persons permitted to intervene and entities participating under 10 CFR 2.315(c) as of the date of the order on intervention

may also move the Commission to reconsider any portion of section VI of this Notice and Commission Order where there is no clear Commission precedent or unambiguously governing statutes or regulations. Any motion to reconsider must be filed within 10 days after the order on intervention. The motion must contain all technical or other arguments to support the motion. Other persons granted intervention and entities participating under 10 CFR 2.315(c), including the applicant and the NRC staff, may respond to motions for reconsideration within 20 days of the order on intervention. Motions will be ruled upon by the Commission. A motion for reconsideration does not stay the schedule set out above in section III.D.(4). However, if the Commission grants a motion for reconsideration, it will, as necessary, provide direction on adjusting the hearing schedule.

VII. Notice of Intent Regarding Classified Information

As noted above, a hearing on this application will be governed by 10 CFR part 2, subparts A, C, G, and to the extent classified material becomes involved, subpart I. Subpart I requires in accordance with 10 CFR 2.907 that the NRC staff file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding. The applicant has submitted portions of its application that are classified. The Commission notes that, since the entire application may become part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding.

VIII. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. The intent of this Order is to make those requirements more specific to this proceeding; however, nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to

petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are HearingDocket@nrc.gov and OGCmailcenter@nrc.gov, respectively.⁴ The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice of hearing and opportunity to petition for leave to intervene;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (C.1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will

⁴ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

aid the requester in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;⁵ and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requester to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-492-3524.⁶

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD-258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0011, by calling (301) 415-7232 or (301) 492-7311, or by e-mail to

⁵ Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

⁶ The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

Forms.Resource@nrc.gov. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of \$ 200.00⁷ to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requestor should also provide a statement specifically stating which exemption the requestor is invoking, and explaining the requestor's basis for believing that the exemption is applicable. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the stated exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258, however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs (C.4)(b), (c), and (d) of this Order must be sent to the following address:

Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB-05-B32M, Washington, DC 20555-0012.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs (C.3) or (C.4) above, as applicable, the

NRC staff will determine within 10 days of receipt of the written access request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both (E.1) and (E.2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order⁸ setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both (E.1) and (E.2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order⁹ by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22.

⁸ Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

⁹ Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and need to know, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination

⁷ This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.¹⁰

The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 23rd day of July 2009.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Chairman Gregory B. Jaczko, offering a separate statement:

I support issuance of this Order in large part. I welcome the important and statutorily protected opportunity for interested members of the public to participate in our hearing process and to have their concerns heard. This notice begins that public process and is,

therefore, an important milestone in that respect.

I am, however, troubled by the tight schedule outlined in the Order. The timeframes outlined in the schedule are dependent upon reduced timeframes for the applicant to respond to staff's requests for additional information. While that may appear advantageous to the applicant, it actually disadvantages everyone—the applicant, the staff and the public—because we lose predictability. The agency has no control over either the timeliness or quality of the applicant's responses to requests for additional information. Moreover, I believe the numerous specific timeframes provided in the order are also unnecessary. With the milestones and specific timeframes already provided in part 2 of our regulations, the agency currently has the structure in place to ensure an efficient and effective hearing process, while still providing flexibility to adapt to the dynamic environment of adjudicatory hearings.

Finally, I believe the order should be revised to reflect that the Commission, rather than the licensing board, should preside over the mandatory hearing. Gaining experience through this mandatory proceeding will aid the Commission in handling the mandatory hearings on new reactor proceedings required for licensing decisions which are on the horizon.

Commissioners Dale E. Klein and Kristine L. Svinicki, offering a further statement:

We support issuance of this order, in its entirety. As noted in the U.S. NRC Strategic Plan, initiatives such as the Government Performance and Results Act challenge Federal agencies to become more effective and efficient and to justify their budget requests with demonstrated program results. The

drive to improve performance in government, coupled with increasing licensing workload, clearly indicates a need for the agency to become more effective and efficient in light of these demands. With this in mind, the NRC has formally adopted strategic goals in the area of organizational excellence, including the following: "NRC actions are high quality, efficient, timely, and realistic, to enable the safe and beneficial use of radioactive materials."

The NRC has recognized, in setting its strategic goals and through its performance and accountability reporting, that the efficiency of the agency's regulatory processes is important to the regulated community and other stakeholders, including Federal, State, local, and Tribal authorities and the public. The NRC has committed itself to improving the timeliness of its application reviews without compromising safety and security, and acknowledges that this is possible provided industry submits complete, high-quality applications. Quoting again from the NRC Strategic Plan: "While the NRC will never compromise safety and security for increased efficiency, the agency works to improve the efficiency of its regulatory processes wherever possible."

High quality—on both the agency's and the applicant's parts—should be, and is, the NRC's goal. The proceeding at issue here is no exception. We believe that the schedule laid out in the order—while demanding the requisite quality in licensee submittals—has been demonstrated for similar applications, is achievable with no compromise to the agency's safety and security missions, and is representative of the performance expectations the NRC should set for itself.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

¹⁰ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the

filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI

requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) Need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. E9-18012 Filed 7-29-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-35114; License No. 12-16559-02; EA-08-334; (NRC-2009-0332)]

In the Matter of MISTRAS Holding Group, d/b/a: Conam Inspection and Engineering Services, Quality Services Laboratories, Inc., Burr Ridge, IL; Order Imposing Civil Monetary Penalty

I

MISTRAS Holding Group, doing business as Conam Inspection and Engineering Services, Inc. and Quality Services Laboratories, Inc. (MISTRAS or Licensee) is the holder of Materials License No. 12-16559-02 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on August 31, 1999. The license authorizes MISTRAS to conduct radiography operations in locations within the NRC's jurisdiction.

II

An inspection of the Licensee's activities was conducted on September 22 and 23, 2008, at its Noblesville, Indiana office. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 9, 2009 (the letter is Not Publicly Available). The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice in a letter dated March 24, 2009 (also Not Publicly Available). In its response, the Licensee, although neither admitting nor denying the violations, requested mitigation for the civil penalty associated with one of the violations.

III

After consideration of the Licensee's response and the statements of fact,

and argument for mitigation contained therein, the NRC staff determined that the violation occurred as stated and that the penalty proposed for the violation should be imposed. The results of the NRC's review of the information contained in the Licensee's letter and the basis for the NRC taking the actions described in this Order are set forth in the non-Public Appendix to this Order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee shall pay, within 20 days from the date this Order is published in the **Federal Register**, a civil penalty in the amount of \$6,500, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White

Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with 10 CFR 2.205, the Licensee may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a hearing is requested by the Licensee, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, an Order will be issued after the hearing by the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. If the Licensee fails to request a hearing within 20 days from the date this Order is published in the **Federal Register**, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (August 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding

(even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, if the licensee chooses to request a hearing, the licensee (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MHSD.Resource@nrc.gov.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to

submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

For the Nuclear Regulatory Commission.

Dated this 23rd day of July, 2009.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9-18212 Filed 7-29-09; 8:45 am]

BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11818 and #11819]

Pennsylvania Disaster #PA-00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of PENNSYLVANIA dated 07/21/2009.

Incident: Apartment Building Fire.
Incident Period: 07/08/2009.

DATES: *Effective Date:* 07/21/2009.

Physical Loan Application Deadline Date: 09/21/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/21/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, 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: York.

Contiguous Counties:

Pennsylvania: Adams, Cumberland, Dauphin, Lancaster.

Maryland: Baltimore, Carroll, Harford.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.875
Homeowners without Credit Available Elsewhere	2.437
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11818 5 and for economic injury is 11819 0.

The States which received an EIDL Declaration # are Pennsylvania, Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 21, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-18237 Filed 7-29-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration #11787 and #11788]

Arkansas Disaster #AR-00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA-1845-DR), dated 06/16/2009.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/27/2009 through 05/23/2009.

Effective Date: 07/24/2009.

Physical Loan Application Deadline Date: 08/17/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 03/16/2010.

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 Arkansas, dated 06/16/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Pope.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-18231 Filed 7-29-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11820 and #11821]

North Carolina Disaster #NC-00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 07/24/2009.

Incident: Severe Storms and Flooding.

Incident Period: 07/06/2009.

Effective Date: 07/24/2009.

Physical Loan Application Deadline Date: 09/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/26/2010.

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 disaster declaration, 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: New Hanover.

Contiguous Counties:

North Carolina: Brunswick, Pender.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.875
Homeowners without Credit Available Elsewhere	2.437
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11820 6 and for economic injury is 11821 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 24, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-18247 Filed 7-29-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 15c3-1, OMB Control No. 3235-0200, SEC File No. 270-197.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that the active broker-dealer respondents registered with the Commission incur an aggregate burden of 73,300 hours per year to comply with this rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: July 24, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-18171 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 30e-1; SEC File No. 270-21; OMB Control No. 3235-0025.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is: "Rule 30e-1 (CFR 270.30e-1) under the Investment Company Act of 1940, Reports to Stockholders of Management Companies." Section 30(e) (15 U.S.C. 80a-29(e)) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-1 *et seq.*) requires a registered investment company ("fund") to transmit to its shareholders, at least semi-annually, reports containing information and financial statements as the Commission may prescribe. Among other requirements, Rule 30e-1 (17 CFR 270.30e-1) under the Investment Company Act directs funds to include in the shareholder reports the information that is required by the fund's registration statement form under the Investment Company Act. Failure to require the collection of this information would seriously impede the amount of current information available to shareholders and the public about funds and would prevent the Commission from implementing the regulatory program required by statute. The estimated annual number of respondents providing shareholder reports under Rule 30e-1 is approximately 2800. The proposed frequency of response is semi-annual. The estimate of the total annual reporting burden of the collection of information is approximately 145.8 hours per shareholder report and the total estimated annual burden for the industry is 816,480 hours (145.8 hours per report \times 2 reports \times 2,800 funds). Providing the information required by Rule 30e-1 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: July 24, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-18172 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60383; File No. SR-BX-2009-042]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Optional Anti-Internalization Functionality

July 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 22, 2009, NASDAQ OMX BX, Inc. ("NASDAQ OMX BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 filing with the Commission a proposed rule change to modify its optional anti-internalization functionality.

The text of the proposed rule change is below. Proposed new language is italic and proposed deletions are in brackets.

* * * * *

4757. Book Processing

System orders shall be executed through the Book Process set forth below:

(a) Execution Algorithm—Price/Time—The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:

(1)–(2) No Change.

(3) Exception: Anti-Internalization—Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. [In such a case, the later entered of the quote/orders will be cancelled back to the entering party.] *In such a case, if the interacting orders from the same MPID are equivalent in size, both orders will be cancelled back to their entering parties. If the interacting orders from the same MPID are not equivalent in size, share amounts equal to size of the smaller of the two orders will be cancelled back to their originating parties with the remainder of the larger order being retained by the System for potential execution.*

(b)–(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Nasdaq OMX BX is proposing to modify its voluntary anti-internalization functionality. Under the proposal, market participants entering quotes/orders under a specific market participant identifier ("MPID") may voluntarily direct that they not execute against other quotes/orders entered into the System under the same MPID. In such a case, if the orders from the same MPID are equivalent in size, both orders will be cancelled back to their entering parties. If the orders from the same MPID are not equivalent in size, share amounts equal to [sic] size of the smaller of the two orders will be cancelled back to their respective originating parties with the remainder of the larger order being retained by the System for potential execution.

The above replaces NASDAQ OMX BX's 's [sic] currently approved, but not yet operational, anti-internalization functionality that would cancel the later entered of interacting orders from the same MPID. NASDAQ OMX BX is modifying its anti-internalization functionality based on additional input from system users as well as the Commission's recent approval of various versions of anti-internalization functionality for the BATS and NYSE Arca exchanges.⁴

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. NASDAQ OMX BX notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they

would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

Nasdaq OMX BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections [sic] 6(b)(5) of the Act,⁶ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq OMX BX notes that similar functionality has previously [sic] approved for other trading systems.⁷

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 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 this 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, Rule 19b-

⁴ See SR-BATS-2009-022 and SR-NYSEArca-2009-058. Nasdaq's proposed anti-internalization functionality is similar to BAT's MMTP Decrement and Cancel and NYSE Arca's STP Decrement and Cancel.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ See SR-NASD-2003-039.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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. 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 requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the benefits of this functionality to NASDAQ OMX BX market participants expected from the rule change can be implemented on August 3, 2009, when the Exchange expects to have the technological changes in place to support the proposed rule change. The Commission believes that waiving the 30-day operative delay¹⁰ to make this functionality available without delay is consistent with the protection of investors and the public interest.¹¹ The Commission notes that the proposal is similar to rules of other exchanges and thus does not raise any novel regulatory issues.¹² The Commission designates the proposal operative upon filing to allow the Exchange to implement the functionality without delay.

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

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ The Commission is also waiving the five business-day pre-filing requirement.

¹² See BATS Exchange Rule 11.9(f) and NYSE Arca Equities Rule 7.31(qq).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-042 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-2009-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2009-042 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18170 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60381; File No. SR-CBOE-2009-038]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to the Complex Order Book

July 24, 2009.

I. Introduction

On June 16, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposal to amend CBOE Rule 6.53C(c) to modify the order and quote types that market participants may enter to trade against orders resting in the complex order book ("COB"). The proposed rule change was published for comment in the **Federal Register** on June 24, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

A market participant, as defined in CBOE Rule 6.45A or CBOE Rule 6.45B, may submit orders or quotes to trade against orders in the COB.⁴ However, under CBOE Rule 6.53C(c)(i), the CBOE may determine the options classes and the complex order origin types (*i.e.*, non-broker-dealer public customer, broker-dealers that are not Market Makers or specialists on an options exchange, and/or Market Makers or specialists on an options exchange) that are eligible to be entered into (*i.e.*, rest in) the COB, and whether such orders may route directly to the COB and/or from PAR to the COB.

Currently, a market participant whose quotes or orders are not eligible to rest in the COB, but that wishes to trade against orders resting in the COB, may enter limit orders using an immediate-or-cancel ("IOC") contingency to avoid resting its orders in the COB. If such a market participant does not use an IOC contingency, it must cancel the unexecuted balance of its limit order or quote if the limit order or quote is partially filled by trading against an order resting in the COB.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60130 (June 17, 2009), 74 FR 30194.

⁴ See CBOE Rule 6.53C(c)(ii)(3).

The CBOE proposes to amend CBOE Rule 6.53C(c)(ii)(3) to require market participants whose quotes or orders are not eligible to rest in the COB to enter only IOC orders and such other order or quote types as the CBOE may determine on a class-by-class basis. Quote types that are not eligible to rest in or trade against the COB will be cancelled automatically.⁵ According to the CBOE, Market Makers whose quotes are not eligible to rest in or trade against the COB would be able, at a minimum, to submit IOC orders to trade against the COB.⁶

Finally, the CBOE proposes to amend CBOE Rule 6.53C(c)(i) to clarify that an order entry firm whose complex orders are not eligible to route to the COB could route its orders to the firm's booth, as well as to PAR.

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.⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. CBOE Rule 6.53C(c)(i) currently allows the Exchange to determine the class of entities that may enter orders to rest in the COB. By requiring market participants who are not eligible to rest orders or quotes in the COB to enter only IOC orders and such other order or quote types as the CBOE determines, and by providing for the automatic cancellation of quote types that are not eligible to rest in or trade against the COB, the proposal could help to prevent the entry of ineligible orders and quote types in the COB. The Commission notes that Market Makers that are not eligible to enter quotes to rest in or trade against the COB would be permitted, at a minimum, to enter IOC orders to trade against orders in the COB. Finally, the Commission believes that the

amendment to CBOE Rule 6.53C(c)(i) to indicate that an order entry firm may route its orders to the firm's booth, as well as to PAR, should clarify the operation of CBOE Rule 6.53C.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-CBOE-2009-038) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18168 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60382; File No. SR-ISE-2009-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to Rule 312 in Connection With the Purchase of Equity Interests by International Securities Exchange Holdings, Inc. in Optifreeze, LLC

July 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 23, 2009, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this proposed rule change (the "Proposed Rule Change") to the Commission to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) in connection with the capital contribution by its parent company, International Securities Exchange Holdings, Inc. ("ISE Holdings"), in Optifreeze LLC, a Delaware Limited

Liability Company ("Optifreeze"). The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 5, 2009, ISE Holdings entered into a Membership Purchase Agreement ("Purchase Agreement") with Optifreeze. Pursuant to the Purchase Agreement, ISE Holdings contributed cash to the capital of Optifreeze in exchange for membership interests representing on the date of such issuance 8.57% of the aggregate membership interests in Optifreeze ("Purchased Interests"). ISE Holdings and its subsidiaries and affiliates do not have any voting or other "control" arrangements with any of the other members of Optifreeze relating to its investment in Optifreeze. The purchase by ISE Holdings of the Purchased Interests (the "Transaction") was consummated on June 5, 2009. As a result of such purchase, ISE Holdings became a member of Optifreeze pursuant to the Third Amended and Restated Operating Agreement of Optifreeze dated June 5, 2009, and is entitled to appoint one representative to the Optifreeze Board of Directors. Ballista Securities LLC ("Ballista Securities"), a wholly-owned subsidiary of Optifreeze, is an electronic access member ("EAM") of the Exchange.

In connection with the capital contribution by ISE Holdings in Optifreeze, the Exchange proposes to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) to reflect ISE Holdings' ownership interest in Ballista Securities, and to set forth certain limitations and obligations relating to such relationship.

⁵ See CBOE Rule 6.53C(c)(ii)(3).

⁶ Only Market Makers may enter quotes.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

In particular, the Exchange proposes that there be an exemption from Rule 312 of the Exchange with respect to the investment by ISE Holdings in Optifreeze. In relevant part, Rule 312 provides that, without prior SEC approval, the Exchange, or any entity with which the Exchange is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member or non-member owner. In addition, the Rule 312 provides that nothing in that rule shall prohibit a member or non-member owner from being or becoming an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange solely by reason of any officer, director or partner of such member becoming an Exchange Director (as defined in the Amended and Restated Constitution of the ISE). As a result of the Transaction, the Exchange, through ISE Holdings, will maintain an ownership interest in an ISE member, Ballista Securities, which, without Commission approval, would be prohibited by Rule 312. The Commission has also as previously noted its concern regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members, and (2) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis the other non-affiliated members. The Commission has also noted its concerns about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members. As such, ISE proposes to amend Rule 312 to permit the proposed relationship subject to several conditions and limitations.

Accordingly, the Exchange is proposing to adopt subsection (c) to Rule 312 to require that, for so long as (i) ISE Holdings maintains an ownership interest in Ballista Securities; and (ii) Ballista Securities remains a member of the Exchange: (1) Financial Industry Regulatory Authority ("FINRA"), a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Exchange Act with the responsibility for examining Ballista Securities for compliance with applicable financial responsibility rules; (2) the Exchange shall (a) enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-

regulatory organization ("SRO") to relieve the Exchange of regulatory responsibilities for Ballista Securities with respect to rules that are common rules between the Exchange and the SRO, and (b) enter into a regulatory services contract with a non-affiliated SRO to perform certain regulatory responsibilities for Ballista Securities for unique Exchange rules;³ (3) the regulatory services contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, "Exceptions") in which Ballista Securities is identified as a participant that has potentially violated Exchange or SEC rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying Exceptions on not less than a quarterly basis; (4) the Exchange shall establish and maintain procedures and internal controls reasonably designed to ensure that Ballista Securities and its affiliates do not have access to nonpublic information obtained as a result of ISE Holdings' ownership interest in Ballista Securities, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange; and (5) the ownership interest of ISE Holdings, Inc. in Ballista Securities is subject to the conditions set forth above and is granted on a temporary basis, for not longer than one year from the date of Commission approval of this filing.

In addition, the Exchange notes that ISE Holdings owns less than 9% of the equity in Optifreeze and therefore does not own a controlling interest in Optifreeze or otherwise have any veto or other special voting rights with respect to the management or operation of Optifreeze. The Exchange acknowledges that if the Exchange or any of its affiliates were to directly or indirectly increase the equity ownership of Optifreeze, such increase would require prior Commission approval. The Exchange believes that the foregoing measures and factors minimize the concerns identified by the Commission regarding potential conflicts of interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the

³ The non-affiliated SRO will perform certain regulatory responsibilities for Ballista Securities other than market surveillance, including, but not limited to, investigative and disciplinary services.

Exchange Act,⁴ in general, and with Sections 6(b)(1) and (b)(5) of the Exchange Act,⁵ in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Exchange Act, the rules and regulations thereunder, and SRO rules, and 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. In particular, this rule change will address any potential regulatory issues that could arise with ISE Holdings' investment in, and providing capital to, an innovative brokerage operation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(3), (5).

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2009-45 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-ISE-2009-45. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-ISE-2009-45 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18169 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60376; File No. SR-CBOE-2009-044]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Chicago Board Options Exchange Stock Exchange Fees Schedule To Establish Facility Fees

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 2, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its CBOE Stock Exchange ("CBSX") Fees Schedule to establish facility fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CBSX Fees Schedule to adopt a facility fee for the use of a perimeter booth by CBSX Trading Permit Holders that are not CBSX Market-Makers at a cost of \$350 per month.³ This fee is applicable to CBSX Trading Permit Holders seeking perimeter booth space, as opposed to a regular CBOE member (who is eligible to trade on CBSX) who pays for perimeter booth space pursuant to the CBOE fee schedule.

The Exchange also proposes to amend the CBSX Fees Schedule to adopt a facility fee for the use of a CBSX Floor Post booth by CBSX Market Makers at a cost of \$350 per month. CBSX Market-Makers that are not CBSX DPMs may not use the Floor Post until a change to Rule 51.12 allowing such use is approved. The proposed fee changes will take effect on July 2, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

³ Perimeter booths are located in rows that are situated around the perimeter of the trading floor. These booths are typically utilized by Floor Brokers.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-044. 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-CBOE-2009-044 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18167 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60375; File No. SR-CBOE-2009-047]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Regarding the CBSX Floor Post

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 2, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 23, 2009, the Exchange filed Amendment No. 1, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to modify the CBOE Stock Exchange ("CBSX") Rules to allow all CBSX Market-Maker types to operate from the Floor Post. The text of the proposed rule change is available

on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX is an all electronic stock marketplace. One of the reasons CBOE created CBSX was to try to capture some of the sizable stock trading done by CBOE options traders. CBOE members trade stock both as a hedging vehicle for option trades done on CBOE and in connection with trading complex orders that contain stock and option components (e.g. a buy-write). Thus, it was always envisioned that traders on CBOE's trading floor would trade stock on CBSX. All CBOE members are eligible to trade on CBSX without incurring any extra costs or completing lengthy "membership" applications. CBOE also created a limited number of CBSX Trading Permits to allow potential non-CBOE member users that do not want to incur the significant costs associated with buying or leasing a CBOE membership to trade on CBSX.³ These Permit Holders are not allowed to trade options on CBOE.

To help generate interest in CBSX with the CBOE trading floor community, the Exchange established the CBSX Floor Post. The Floor Post is a location on the CBOE trading floor where CBSX Designated Primary Market-Maker ("DPM") personnel can be stationed to respond to stock price discovery requests from CBOE's trading floor community. As part of CBSX's approval, the Exchange was asked to physically separate the CBSX Floor Post from the options trading posts (i.e. eliminate sightlines between the Floor Post and

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Rel. No. 34-54987 (December 20, 2006), 71 FR 78481 (December 29, 2006) (SR-CBOE-2006-107).

any equity option trading posts). This request was made to avoid any potential issues related to “side-by-side trading” which involves a stock trading location situated in close and open physical proximity to a location where a derivative on that stock (e.g., an option) is traded.⁴ The Rule governing the CBSX Floor Post is Rule 51.12.

The Exchange now proposes to modify Rule 51.12 to permit *all* CBSX Market-Makers types to utilize the Floor Post. Currently, the Rule provides that only CBSX DPMs may operate from the Floor Post (brokers are also permitted to enter the Floor Post area).⁵ Recently, however, CBSX has received requests from CBSX Market-Makers seeking to operate from the Floor Post. This filing would allow them to do so. The Floor Post continues to restrict any sightlines to the equity option trading posts. Also, the CBSX Fees Schedule has been amended to include a fee for CBSX Market-Makers using the CBSX Floor Post.

The Exchange has also received inquiries from CBSX Trading Permit Holders that act in the capacity of CBSX Brokers to operate from CBOE’s trading floor. Many current CBOE members (including Floor Brokers) execute stock orders on CBSX from the trading floor. Trading Permit Holders on the CBOE trading floor would enter orders on CBSX just like any other user on the CBOE trading floor. The only difference is that CBSX Trading Permit holders are not allowed to trade options (and have not incurred the costs associated with CBOE membership). The Exchange has established a fee for Trading Permit Holders that operate on CBOE’s trading floor from a perimeter booth (these booths, which are typically occupied by CBOE Floor Brokers, are located around the perimeter of the trading floor).⁶

It is possible that no CBSX Trading Permit Holders (whether they are CBSX Market-Maker or CBSX Brokers) ultimately decide to establish a physical operation on the CBOE trading floor. However, to the extent that they do, any CBSX Market-Making would be limited to operating from the CBSX Floor Post, while CBSX Brokers would be allowed to establish operations at perimeter booths.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

⁴ Side-by-side trading concerns originated in connection with open outcry trading on exchange trading floors (i.e., they pre-date the advent of all-electronic exchanges).

⁵ No CBSX DPMs are situating personnel at the Floor Post at this time. It is empty.

⁶ See SR-CBOE-2009-044.

Securities Exchange Act of 1934 (the “Act”)⁷ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Permitting CBSX Market Makers to use the CBSX Floor Post along with Floor Brokers and CBSX DPM personnel promotes just and equitable principles of trade and removes impediments to and perfects the mechanism for a free and open market.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NYSE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁷ 15 U.S.C. 78s(b)(1).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2009-047 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18166 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60374; File No. SR-NASDAQ-2009-069]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares for Listing on the Nasdaq Stock Market Through July 31, 2009

July 23, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 13, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend the temporary suspension of the application of the continued inclusion bid price and market value of publicly held shares requirements for listing on the Nasdaq Stock Market through Friday, July 31, 2009.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 16, 2008, Nasdaq filed a proposed rule change, which was immediately effective, to temporarily suspend the bid price⁵ and market value of publicly held shares⁶ continued listing requirements otherwise applicable to issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents.⁷ This suspension was designed to provide temporary relief to companies from the application of these requirements during a period in which the financial markets face almost unprecedented turmoil, resulting in a crisis in investor confidence and concerns about the proper functioning of the securities markets.⁸ On December

⁵ Nasdaq’s continued listing requirements relating to bid price are set forth in Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1) and the related compliance periods are set forth in Rule 5810(c)(3)(A). Under these rules, a security is considered deficient if it fails to achieve at least a \$1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a \$1 closing bid price for a minimum of ten consecutive business days.

⁶ Nasdaq’s continued listing requirements relating to market value of publicly held shares are set forth in Rules 5450(b)(1)(C), 5450(b)(2)(C), 5450(b)(3)(C), 5460(a)(2), 5550(a)(5) and 5555(a)(4) and the related compliance periods are set forth in Rule 5810(c)(3)(D). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

⁷ Securities Exchange Act Release No. 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR-NASDAQ-2008-082). One comment was submitted on this proposal by Alan F. Eisenberg, Executive Vice President, the Biotechnology Industry Organization. This comment supported the suspension and “any efforts by the Commission and NASDAQ to extend [the suspension], as necessary, beyond the termination date of January 16, 2009.”

⁸ See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (“The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could

18, 2008 and March 18, 2009, Nasdaq filed proposed rule changes to extend this suspension until April 19, 2009 and July 19, 2009, respectively.⁹

Nasdaq believes that a further extension of the suspension is appropriate to allow some additional time for market conditions to return to normal and for deficient companies to develop a plan to regain compliance with the continued listing requirements. Therefore, Nasdaq has determined to continue the temporary suspension of the bid price and market value of publicly held shares requirements for approximately two additional weeks, until Friday, July 31, 2009. Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would remain suspended with respect to those requirements.¹⁰ Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on Monday, August 3, 2009.¹¹ When the suspension expires, companies that were in a compliance period as of October 16, 2008, when the suspension first began, would receive the balance of any pending compliance periods in effect at the time of the initial suspension.¹² Similarly, companies that

threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.”)

⁹ Securities Exchange Act Release No. 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009) (SR-NASDAQ-2008-099). Securities Exchange Act Release No. 59661 (March 31, 2009), 74 FR 15561 (April 6, 2009) (SR-NASDAQ-2009-026).

¹⁰ Nasdaq would continue to identify on its Web site and in its daily data feed to vendors those companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

¹¹ Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that was not yet non-compliant with those requirements at the start of the suspension.

¹² For example, if a company was 120 days into its first 180-day compliance period for a bid price deficiency when the suspension first started and the company does not regain compliance during the suspension, the company would have sixty days

Continued

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(6).

were in the Hearings process prior to October 16, 2008, would resume in that process at the same stage they were in when the suspension first went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Based on discussions with the Commission Staff, Nasdaq does not expect a further extension of the suspension beyond July 31, 2009.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general and with Section 6(b)(5) of the Act,¹⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to allow some additional time for market conditions to return to normal and for deficient companies to develop a plan to regain compliance with the continued listing requirements, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While written comments were not solicited about the proposed extension, there was one comment submitted by the Biotechnology Industry Organization on the original suspension of the bid price and market value of publicly held shares requirements, which supported the extension. That

remaining, starting on Monday, August 3, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

comment is described in footnote 7, above.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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 Nasdaq to extend, through July 31, 2009, the temporary suspension of its bid price and market value of publicly held shares continued listing requirements. The Commission notes that the extension of the temporary suspension will continue to provide certain companies with temporary relief from receiving a deficiency or delisting notification, or from being delisted, and will provide some additional time to allow companies to regain compliance after the market volatility and conditions experienced earlier this year and last fall. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of its compliance period if they remain non-compliant with these standards. For these reasons,

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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 Commission has determined to waive this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

the Commission designates that the proposed rule change become operative immediately upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-069. 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

¹⁹ 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).

office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–069 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18165 Filed 7–29–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60371; File No. SR–NASDAQ–2009–070]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NASDAQ Rule 4751 To Provide System Functionality That Will Cancel Any Portion of Most Types of Unpriced Orders

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 20, 2009, The NASDAQ Stock Market LLC (the “NASDAQ 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 NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The NASDAQ Exchange is proposing a rule change with the Securities and

Exchange Commission [sic] to amend NASDAQ Rule 4751 to provide system functionality that will cancel any portion of most types of unpriced orders (also known as market orders) submitted to the Exchange that would execute at a price that is more than \$0.25 or 5 percent worse than the national best bid and offer at the time the order initially reaches the Exchange, whichever is greater. This would apply both to orders executing on NASDAQ and the portion of any order routed to another market center.

(a) The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.[sic]⁵

* * * * *

Rule 4751. Definitions

(a)–(e) No change.

(f)(1)–(11) No change.

(12) “*Unpriced Orders*” are any order types permitted by the System to buy or sell shares of a security at the national best bid (best offer) (“NBBO”) at the time when the order reaches the System.

(13) “*Collared Orders*” are all Unpriced Orders except: (1) Market On Open Orders as defined in Rule 4752; (2) Market On Close Orders as defined in Rule 4754; (3) Unpriced Orders included by the System in any Nasdaq Halt Cross or Nasdaq Imbalance Cross, each as defined in Rule 4753; or (4) Unpriced Orders that are Reference Price Cross Orders as defined in Rule 4770. Any portion of a Collared Order that would execute (either on NASDAQ or when routed to another market center) at a price more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(g)–(i) No change.

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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 NASDAQ 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 NASDAQ Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁵ Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com/>.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to protect market participants by reducing the risk that unpriced orders, also known as market orders, will execute at prices that are significantly worse than the national best bid and offer (“NBBO”) at the time the Exchange receives the order. NASDAQ believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities. These unpriced orders can disrupt both on [sic] NASDAQ and other markets to which all or a portion of these orders are routed.

NASDAQ is proposing to implement new functionality in its trading and routing systems that would cancel any portion of most unpriced orders that would execute either on NASDAQ or when routed to another market center at a price that is the greater of \$0.25 or 5 percent worse than the NBBO at the time NASDAQ receives the order. Unpriced orders that would be subject to this calculation and potential cancellation are defined as “Collared Orders.”

The following example illustrates how the Collared Order process would work. A market participant submits a SCAN Order (routable order) to buy 500 shares.⁶ A SCAN order executes within NASDAQ to the extent liquidity is available at the NBBO and then routes to other market centers. The NBBO is \$6.00 bid by \$6.05 offer, with 100 shares available on each side. Both sides of the NBBO are set by another market center (“Away Market”), but NASDAQ has 100 shares available at the \$6.05 to sell at the offer price and also has reserve orders to sell 100 shares at \$6.32 and 400 shares at \$6.40. No other market center is publishing offers to sell the security in between \$6.05 and \$6.40.

In this example, the Collared Order would be executed in the following manner:

⁶ If the order were a NASDAQ-only unpriced order that is not eligible for routing, NASDAQ would execute against the liquidity available on NASDAQ up to the Collared Order thresholds and cancel the remainder of the order, provided, however, that a NASDAQ-only order will never trade through a protected quote on another market center.

²⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Commission notes that The NASDAQ Stock Market LLC refers to itself in a variety of ways throughout this notice.

⁴ 17 CFR 240.19b–4(f)(6).

- 100 shares would be executed by NASDAQ at the \$6.05;
- 400 shares would be routed to the Away Market as an immediate or cancel order with a price of \$6.05;
- 100 shares executed by the Away Market;⁷
- 300 shares returned to NASDAQ;
- 100 shares executed by NASDAQ at \$6.32 (more than \$0.25 but less than 5 percent worse than the NBBO); and
- 200 shares, representing the remainder of the Collared Order, would be cancelled because the remaining liquidity available at \$6.40 is more than 5 percent worse than the NBBO.

The following unpriced orders would be excluded from the definition of *Collared Orders*:

- Market On Open Orders that are included in the NASDAQ Opening Cross;
- Market On Close Orders that are included in the NASDAQ Closing Cross;
- Unpriced orders that are included in NASDAQ Halt and Imbalance Crosses;⁸
- Unpriced orders that meet the definition of Reference Price Cross Orders for purposes of the NASDAQ Crossing Network.⁹

NASDAQ proposes to exclude these unpriced orders because in each case the crossing mechanism is designed to lessen or eliminate the impact that an individual unpriced order may have on price discovery. For example, the Crossing Network is designed to execute as many shares as can be paired at the midpoint of the NBBO at the time the cross is timed to occur. Therefore, an unpriced order in the Crossing Network, which can never itself impact the NBBO, would not affect the price at which the trades occur. Any portion of the unpriced order that was not executed in the Crossing Network would be cancelled or carried forward to the next Crossing Network if so instructed.

With respect to the Opening Crosses, Closing Crosses and Halt Crosses, the crosses are designed to aggregate orders input into the cross and to execute the most orders that can be matched at a single price. In addition, NASDAQ displays to the market both the size of any order imbalances and the likely price at which the cross will execute.

⁷ This assumes that the Away Market's offer was still available and that the Away Market had no additional non-displayed orders at this price.

⁸ The Halt Cross is used to resume trading in stocks that have been halted, such as in cases of regulatory halts, and for the release of initial public offerings for trading.

⁹ The Crossing Network occurs at four scheduled times during the trading day for orders designated for the network.

This transparency incentivizes firms to enter orders on the opposite side of a large imbalance, causing the execution price to move closer to the prior market price for the security. This process mitigates the impact of a large unpriced order. NASDAQ also notes that orders entered into crosses are not immediately executed, unlike unpriced orders in the continuous market. In many cases this gives a participant time to cancel an order before the crossing process begins.

NASDAQ believes that market participants who wish to trade at prices further away from the NBBO than the Collared Order thresholds would permit, may still accomplish their strategy by submitting a marketable limit order to NASDAQ. In the example above, a market participant with such a strategy could have input a limit order with a price of \$7.00, which would have executed up to its full size, either on NASDAQ or on other market centers if the order was routable.

NASDAQ's proposal is similar to a rule change recently implemented by BATS Exchange, Inc.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is 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, by avoiding execution of unpriced orders (either on NASDAQ or on other market centers as a result of orders routed by NASDAQ) at prices that are significantly worse than the NBBO at the time the order is initially received by NASDAQ. NASDAQ believes that the NBBO provides reasonable guidance of the current value of a given security and therefore that market participants should have confidence that their unpriced orders will not be executed at a significantly worse price than the NBBO. NASDAQ also believes that this proposal is similar to thresholds for

¹⁰ See Securities Exchange Act Release No. 59258 (Jan. 15, 2009), 74 FR 4788 (Jan. 27, 2009) (SR-BATS-2009-001) (Amendment to BATS Rule 11.9, entitled "Orders and Modifiers"). NASDAQ's proposed thresholds of the greater of \$0.25 or 5 percent are tighter than the BATS thresholds of the greater of \$0.50 or 5 percent. NASDAQ believes the tighter thresholds may reduce the impact of unpriced orders at lower prices, where \$0.50 constitutes a comparatively large percentage move.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

market orders recently implemented by BATS Exchange, Inc.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ 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 foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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.

NASDAQ has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6). The Commission notes (i) the proposal is similar to existing thresholds on market orders adopted by the BATS Exchange, Inc.; (ii) it presents no novel issues; and (iii) the functionality is voluntary, and it may provide a benefit to market participants. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-070. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-070 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18164 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60367; File No. SR-FINRA-2009-038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change to Repeal Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage) as Part of the Process To Develop the Consolidated FINRA Rulebook

July 22, 2009.

On June 1, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² Notice of the proposal was published for comment in the **Federal Register** on June 15, 2009.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),⁴ FINRA proposed not to transfer from the Transitional Rulebook to the FINRA Consolidated Rulebook two rules that are specific to the New York Stock Exchange LLC ("NYSE") marketplace and relate primarily to activities by floor brokers. Specifically, FINRA proposed not to include in the Consolidated FINRA Rulebook NYSE Incorporated Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Incorporated Rule 440I (Records of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Release No. 60070 (June 8, 2009), 74 FR 28302 ("Notice").

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Compensation Arrangements—Floor Brokerage).

As more fully described in the Notice, Incorporated NYSE Rule 134, sets forth procedures for clearing member firms to identify uncompleted transactions and resolve them by making any necessary additions, deletions or changes to their data through the facilities of the NYSE Correction System. Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all *bona fide* error transactions are processed and recorded.

Incorporated NYSE Rule 440I also applies to floor brokers. As more fully described in the Notice, NYSE Rule 440I requires each member and member organization that is "primarily engaged as an agent in executing transactions on the Floor of the Exchange" to maintain certain records of compensation arrangements in excess of \$5,000 per year.

In the Notice, FINRA noted that the NYSE may choose to retain NYSE Rule 134 and Rule 440I for its own purposes. In addition, FINRA stated that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

II. Discussion and Commission's Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.⁶ The Commission notes that Dual Members remain subject to both the Consolidated FINRA Rulebook and the NYSE Rulebook. Therefore, FINRA's proposal to repeal from the Transitional Rulebook two Incorporated NYSE Rules that are specific to the NYSE marketplace does not relieve Dual Members of their obligation to comply with rules retained by the NYSE.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-FINRA-

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 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).

⁷ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

2009-038) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-18163 Filed 7-29-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 6714]

Determination Pursuant to Section 451 of the Foreign Assistance Act Relating to the Guatemala and Dominican Republic Helicopter Programs

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (the "Act"), section 1-100 of Executive Order 12163, as amended, and Delegation of Authority 245-1, I hereby authorize, notwithstanding any other provision of law, the use of up to \$20,000,000 in FY 2008 funds appropriated for counternarcotics activities in the Andean region of South America under chapter 8 of part I of the Act, in order to provide assistance authorized by part I of the Act for the countries of Guatemala and the Dominican Republic.

This Determination shall be reported to the Congress promptly and published in the **Federal Register**.

Dated: July 15, 2009.

Jacob L. Lew,

Deputy Secretary of State, Department of State.

[FR Doc. E9-18224 Filed 7-29-09; 8:45 am]

BILLING CODE 4710-17-P

DEPARTMENT OF STATE

[Public Notice 6665]

U.S. Department of State Advisory Committee on Private International Law: Public Meeting on Revision of UNCITRAL Arbitration Rules

A Working Group of the United Nations Commission on International Trade Law (UNCITRAL) has for some time been considering revisions to the 1976 UNCITRAL Arbitration Rules, which are widely used internationally. The next meeting of the Working Group is scheduled for September 14-18, and it is possible that the Working Group may conclude its work at that session. Accordingly, prior to that session a public meeting will be held, under the auspices of the Advisory Committee on

Private International Law, to provide an update on the status of the Working Group discussions.

Time and Place: The public meeting will take place in Room 240, South Building, 2430 E Street, NW., Washington, DC on September 9, 2009. Visitors should appear at the gate at the southwest corner of 23rd and C Streets by 12:45 p.m. EDT. The meeting will begin at 1 p.m. and is expected to last no later than 4 p.m. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: It is requested that persons wishing to attend contact Trisha Smeltzer prior to September 2, 2009, at smeltzertk@state.gov or 202-776-8423 and provide their name, and date of birth for pre-clearance purposes, as well as e-mail address and affiliation. Members of the public who are not pre-cleared might encounter delays with security procedures. A member of the public requesting reasonable accommodation should make his or her request upon registering for the meeting. Such requests received after September 7th will be considered, but might not be possible to fulfill. Please contact Ms. Smeltzer for additional meeting information, including teleconferencing dial-in details.

Dated: July 24, 2009.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9-18232 Filed 7-29-09; 8:45 am]

BILLING CODE 7410-08-P

DEPARTMENT OF STATE

[Public Notice 6713]

Bureau of Oceans and International Environmental and Scientific Affairs; Preparation of Fifth U.S. Climate Action Report

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States is a Party to the United Nations Framework Convention on Climate Change (UNFCCC). The Convention sets forth requirements for UNFCCC Parties to provide a national communication that lists the steps they are taking to implement the Convention. In particular, Parties are to provide: An inventory of anthropogenic emissions by sources and removal by sinks of all greenhouse gases not controlled by the Montreal Protocol; a detailed

description of the policies and measures adopted to implement their commitments under the Convention; and estimates of the effects those policies and measures will have on emissions and sinks. Subsequent guidelines further elaborate the information that Parties are to submit periodically. The United States submitted the first U.S. Climate Action Report (USCAR) to the UNFCCC Secretariat in 1994, the second in 1997, the third in 2002, and the fourth in 2007. The U.S. Government is currently preparing its fifth national communication, which is due to the UNFCCC secretariat on January 1, 2010. The purpose of this announcement is to notify interested members of the public of this process and to solicit contributions and input on the issues covered in the national communication for the purpose of preparing the report. The State Department intends to make available for public review a draft national communication in fall of 2009.

DATES: Written comments should be received on or before noon, thirty (30) days from the date of publication of this notice.

ADDRESSES: To expedite their receipt, comments should be submitted via e-mail to: car5@state.gov. Comments may also be submitted in hard copy to, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Global Change (Room 2480), 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT:

Maurice N. LeFranc, Jr., U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Global Change at (202) 647-6738.

SUPPLEMENTARY INFORMATION:

The Fifth United States Climate Action Report (CAR5)

Articles 4.2 and 12 of the UNFCCC set forth initial requirements for national communications. Subsequently, Parties to the UNFCCC elaborated additional detailed guidelines relating to the content of the national communications. An overview of the reporting requirements is available from the UNFCCC Web site at: <http://unfccc.int/resource/docs/cop5/07.pdf>. Guidelines specify chapter headings and the type of information that should be included in the report. Chapters are identified below.

Table of Contents

- I. Executive Summary
- II. National Circumstances
- III. Greenhouse Gas Inventory
- IV. Policies and Measures

⁸ 17 CFR 200.30-3(a)(12).

- V. Projections and Effects of Policies and Measures
- VI. Vulnerability Assessment, Climate Change Impacts, and Adaptation Measures
- VII. Financial Resources and Transfer of Technology
- VIII. Research and Systematic Observation
- IX. Education, Training, and Public Awareness

In keeping with UNFCCC guidelines, the fifth CAR will provide an inventory of U.S. greenhouse gas emissions and sinks and an estimate of the effects of mitigation policies and measures on future emissions levels. It will describe domestic programs as well as U.S. involvement in international efforts, including technology programs and associated contributions and funding. In addition, the text will include a discussion of national circumstances that affect U.S. vulnerability and responses to climate change.

Public Input Process

This **Federal Register** notice solicits contributions and comments on all matters to be covered in the fifth U.S. CAR and in particular, on issues related to non-federal, state, regional, local, and private sector actions to address climate change. Comments may be submitted to using the e-mail address above or by mail to the contact listed above.

The U.S. will release the draft text of the fourth CAR for review and comment in the fall of 2009. Comments on that document will be due within 30 days of release. Because of the time constraints on completing and printing the final text, a longer review period will not be possible.

We invite input on all aspects of the document currently under development. Comments received in response to this **Federal Register** notice will be considered in the preparation of the draft of the fifth national communication.

You may view the fourth U.S. Climate Action Report on the Internet at: http://unfccc.int/national_reports/annex_i_natcom/submitted_natcom/items/3625.php.

Dated: July 23, 2009.

Trigg Talley,

*Office Director, Office of Global Change,
Bureau of Oceans and International,
Environmental and Scientific Affairs,
Department of State.*

[FR Doc. E9-18230 Filed 7-29-09; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2008-0038]

Agency Information Collection Activities; New Information Collection: Survey of Over-the-Road Bus Companies About Accessible Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Department of Transportation, Office of the Secretary, announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The new information collection is associated with a required review pursuant to the Americans with Disabilities Act of 1990 (ADA), implementing regulations for a Survey Over-the-Road Bus (OTRB) Companies located at subpart H of 49 CFR part 37. The collected information would assist DOT with any decision to modify or retain the requirements contained in the ADA regulations. On April 22, 2008, the Federal Motor Carrier Safety Administration (FMCSA) published a **Federal Register** notice (at 73 FR 21685) allowing for a 60-day comment period on a new ICR involving OTRBs. Two comments were received on this issue.

DATES: Please send your comments by August 31, 2009. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number DOT-OST-2008-0038. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the DOT FMCSA Desk Officer via electronic mail at oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Commercial Passenger Carrier Safety

Division, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-5763, or e-mail peter.chandler@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Survey of Over-the-Road Bus Companies About Accessible Transportation for Individuals With Disabilities.

Type of Information Collection

Request: New information collection.

Respondents: Private entities that operate over-the-road buses (OTRBs) are primarily in the business of transporting people, and whose operations affect commerce.

Estimated Number of Respondents: 3,800.

Estimated Time per Response: The estimated average burden per response is 15 minutes.

Estimated Total Annual Burden: 950 hours [(3,800 responses × 15 minutes per response)/60 minutes = 950 hours, or 1,900 if conducted twice a year].

Frequency of Response: This proposed information collection is planned to be conducted only once or twice a year. A decision to request the information for a second time would be based upon the number of responses and the content of such responses to the initial request.

Background: On September 28, 1998, DOT issued final regulations, in response to the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611), which required the accessibility of new OTRBs and accessible OTRB service. The regulations require commercial OTRB operators to ensure that passengers with disabilities can use OTRBs. DOT is required by 49 CFR 37.215 to review the various requirements within the ADA regulations for OTRB companies. As part of this review, DOT is required to consider certain factors including the percentage of accessible OTRBs in the fleets of OTRB companies, the success of such companies at meeting the requests of passengers with disabilities for accessible OTRBs in a timely manner, ridership of OTRBs by passengers with disabilities, volume of complaints by passengers with disabilities, and the cost and service impacts of these requirements. After the review, DOT is required to decide whether it is appropriate to somehow revise the ADA regulations for OTRB companies (*i.e.*, whether certain provisions of the ADA regulations should be removed, modified, or made more stringent).

DOT has an information collection to cover this paperwork burden under

OMB Control Number 2100-0019 to provide the Agency with data for use in its review of the ADA related requirements and to monitor compliance by OTRB companies. Such data are reported to FMCSA as the agency delegated by DOT for this purpose. DOT needs additional data from OTRB companies so that it can conduct an effective review and make an informed regulatory policy decision on whether there is a need to revise, modify or remove any of the ADA regulations involving OTRBs. Specifically, data about bus fleet accessibility, fulfillment of accessible bus requests, and ridership and volume of complaints by passengers with disabilities, are needed from OTRB companies.

DOT needs the new data to conduct the required review of the various requirements within the ADA regulations for OTRB companies. The Department, however, would need FMCSA to send letters to approximately 3,800 registered OTRB companies that will be asked to complete and submit an enclosed form or make an on-line data submission via a customized Web site.

As noted above, FMCSA published inadvertently a notice in the **Federal Register** with a 60-day public comment period to announce this new proposed ICR on April 22, 2008. Two comments were received. Peter Pan Bus Lines, Inc. and the American Bus Association questioned FMCSA's authority to publish this new ICR when DOT had the authority to do so under OMB Control Number 2100-0019. While this new information collection request seeks different data from DOT's OMB Control Number 2100-0019 Information Collection, the initial 60-day **Federal Register** notice on this issue should have been published by DOT, rather than by FMCSA. It is true that FMCSA would administer this new information collection upon OMB approval, but the Department and FMCSA determined that the new information collection request should be issued by DOT since it has the statutory authority to conduct the required review under the ADA regulations.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of DOT's functions; (2) the accuracy of the estimated burden; (3) ways for the DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued in Washington, DC, on July 22, 2009.

Patricia Lawton,

DOT PRA Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E9-18013 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2009-0084]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection Titled: Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (ARRA)

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 27, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 31, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA-2009-0084, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen White, 202-366-9474, Office of Policy and Governmental Affairs, HPTS, Federal Highway Administration,

Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (ARRA), OMB Control #2125-0623.

Background: The American Recovery and Reinvestment Act of 2009 (ARRA), provides the State Departments of Transportation and Federal Lands Agencies with \$27.5 billion for highway infrastructure investment. With these funds also comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. According to President Obama "Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent." The Federal Highway Administration (FHWA) in concert with the Office of the Secretary of Transportation (OST) and the other modes within the U.S. Department of Transportation (DOT) will be taking the appropriate steps to ensure that this accountability and transparency is in place for all infrastructure investments.

The reporting requirements of the ARRA, are covered in Sections 1201, 1512 and 1609. Section 1201(c)(1) stipulates that "notwithstanding any other provision of law each grant recipient shall submit to the covered agency (FHWA) from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency (FHWA) and transmitted to Congress. Covered agencies (FHWA) may develop such reports on behalf of grant recipients (States) to ensure the accuracy and consistency of such reports."

Section 1512 of the ARRA requires "any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual," including States, to provide regular "Recipient Reports."

Section 1609 references the National Environmental Policy Act of January 1, 1970. The ARRA legislation requires that "The President shall report to the Senate Environment and Public Works Committee and the House National Resources Committee every 90 days * * * the status and progress of projects and activities funded by this Act with

respect to compliance with National Environmental Policy Act requirements and documentation.”

As the recipients or grantees for the majority of the ARRA funds, States and Federal Land Management Agencies (FLMA) are by statute responsible for the reporting to FHWA on the projects, use of ARRA funds, and jobs supported. States and FLMA that receive recovery fund apportionments directly from the Federal government are responsible for reporting to FHWA, which in turn is responsible for reporting periodically to Congress and quarterly to the *Recovery.gov* Web site. To achieve a high-quality, consistent basis for reporting, the FHWA has designed a system for obtaining and summarizing data for all purposes.

States and FLMA will be responsible for providing the data that are not currently available at the national level. Note every data element required to be reported by the ARRA needs to be specifically collected. To the maximum extent possible, FHWA will utilize existing data programs to meet the ARRA reporting requirements. For example, for the requirement to report aggregate expenditures of State funds, FHWA will use existing reports submitted by States and data collected in the Financial Management Information System (FMIS). While the reporting obligations in the ARRA are only applicable to the grant recipients, the States and FLMA may need to obtain certain information from their contractors, consultants, and other funding recipients in order to provide the FHWA with all of the required information. Additional information on the American Recovery and Reinvestment Act of 2009 is available at <http://www.fhwa.dot.gov/economicrecovery/index.htm>.

Respondents: In a reporting cycle, it is estimated that reports will be received from approximately 70 grant recipient respondents. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico, the U.S. territories, the following Federal Land Management Agencies; National Park Service, U.S. Fish and Wildlife, National Forest Service and the Bureau of Indian Affairs and several Native American Indian Governments who, by contract, manage their own transportation program. These reports will be submitted online and reviewed for accuracy by the FHWA Division Offices before being submitted to FHWA Headquarters for compilation and submission to OST for publication on *Recovery.gov*.

File Title: Initial Recovery Act Project Plan.

Background: This file is used to submit information concerning how each State and FLMA plans to invest its allotment of ARRA funding. The list needs to be consistent with the list of projects provided in the State's Section 1511 certification, as it may be amended. States and FLMA should provide their best estimates of a complete list of projects to be funded with ARRA grants as of the plan's due date. If a State has not programmed all ARRA funds by that time, that information should be provided as well. These data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609.

Frequency: Initial list was due March 31, 2009. Additional updates are due within 2 weeks of the State or FLMA issuing a new Section 1511 certification.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 210 hours.

70 respondents × 1 hour per response × 3 responses annually = 210 annual burden hours.

File Title: Initial Recovery Act Award File.

Background: This file is used to submit information concerning how each State and FLMA awards its allotment of ARRA funding. The list needs to be consistent with the list of projects provided in the State's Section 1511 certification, as it may be amended. States and FLMA should provide their best estimates of a complete list of awards to projects funded with ARRA grants as of the plan's due date. These data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609.

Frequency: Initial list was due March 31, 2009. Additional updates are due within 2 weeks of the State or FLMA issuing a new Section 1511 certification.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 210 hours.

70 respondents × 1 hour per response × 3 responses annually = 210 annual burden hours.

File Title: Monthly Employment and Project Status File.

Background: This file is submitted by States, FLMA and the FHWA to provide summary employment and project status for all active ARRA projects. These data will be used for meeting the reporting requirements of Sections 1201 and 1512.

Frequency: Monthly until September 2012.

Estimated Average Burden per Response: 1.5 hour.

Estimated Total Annual Burden Hours: 1,260 hours.

70 respondents × 1.5 hours per response × 12 responses annually = 1,260 annual burden hours.

File Title: Quarterly Status File.

Background: This file is submitted by States, FLMA and the FHWA to provide summary employment and funding status for all active ARRA projects. These data will be used for meeting the reporting requirements of Sections 1201 and 1512.

Frequency: Quarterly until September 2012.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 280 hours.

70 respondents × 1 hour per response × 4 responses annually = 280 annual burden hours.

File Title: Recipient File.

Background: This file will be submitted by the States to provide information concerning sub-recipients and vendors for all Recovery Act projects. This data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609. States and FLMA shall provide the required information as individual vendors or sub-recipients.

Frequency: Once per vendor or sub-recipient.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden Hours: 385 hours.

70 respondents × 10 minutes per response × 33 responses annually = 385 annual burden hours.

File Title: Top Paid Officers File.

Background: This file will be submitted by the States to provide information concerning vendors for all Recovery Act projects. This data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609. States and FLMA shall provide the required information as individual vendors.

Frequency: Once per vendor.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden Hours: 385 hours.

70 respondents × 10 minutes per response × 33 responses annually = 385 annual burden hours.

Estimated Total Annual Burden Hours: 2,730.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 24, 2009.

Judi Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9-18144 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2009-0114; Notice 1]

Bentley Motors, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Bentley Motors, Inc. (Bentley) has determined that certain passenger car headlamps manufactured for the 2005-2008 Bentley Arnage and Azure passenger cars do not fully comply with paragraph 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108 Lamps, Reflective Devices and Associated Equipment. Bentley has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Bentley has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bentley's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Bentley estimated that 1,115 model year 2005-2008 Bentley Arnage and Azure passenger cars manufactured between January 13, 2004 and November 9, 2007 are involved. Bentley also stated that based on its preliminary investigation it believes that only 50% of those vehicles have the subject noncompliance.

Paragraphs S7.8.5.3(b) of FMVSS No. 108 require in pertinent part:

S7.8.5.3 Visual/optical aiming. Each visually/optically aimable headlamp shall be designed to conform to the following requirements: * * *

(b) Horizontal aim, lower beam. There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

Bentley explained that the noncompliance with FMVSS No. 108 is that horizontal aim adjustment of the subject lower beams is possible due to

the absence of a blanking cap over the lower beam horizontal adjustment screw.

Bentley also stated that it discovered this noncompliance as a result of a special production line quality audit investigation.

Bentley further states that it believes that this noncompliance is inconsequential to motor vehicle safety for three reasons. First, the adjustment screw is always hidden by an engine cover when the vehicle's hood is open. Second, when the engine cover is removed the screw is still hidden down a small dark guide hole, so the screw is not immediately visible and it is not immediately obvious that a disabling cap is not present. Last, the workshop manual clearly identifies that this screw is not functional on North American specification vehicles so no vehicle repairer would ever need to try to search for and adjust the screw in question.

Bentley also has informed NHTSA that it has corrected the problem that caused this noncompliance.

In summation, Bentley states that it believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments.

Comments may also be faxed to 1-202-493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 31, 2009.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: July 23, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9-18145 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2009-31]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR 21.191(i)(1). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 19, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2009-0344 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nicanor Davidson, Aircraft Certification

Service—Airworthiness Certification Branch, AIR-230, Federal Aviation Administration, 950 L'Enfant Plaza, SW., 5th Floor, Washington, DC 20024; telephone (202) 385-6388, facsimile (202) 267-5580; e-mail nicanor.davidson@faa.gov.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 26, 2009.

Pamela Hamilton-Powell,
Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2009-0344.

Petitioner: Aero Sports Connections, Inc. (ASC)

Section of 14 CFR Affected: 14 CFR 21.191(i)(1).

Description of Relief Sought:

The petitioner requests relief to enable Aero Sports Connections, Inc. (ASC) members operating experimental light sport aircraft (ELSA) with limited airworthiness certificates to continue to convert these aircraft to airworthiness certificates of unlimited duration under § 21.191(i)(1) until January 31, 2012.

[FR Doc. E9-18173 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2009-32]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR 21.611(a) and (b), 21.607(c) and 21.613(a)(1). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 19, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2009-0344 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Risheim, Aircraft Certification Service—Technical Program & Cont. Airworthiness Branch, AIR-120, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98057; telephone (425) 227-2209, facsimile (425) 227-1181; e-mail jan.risheim@faa.gov.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 26, 2009.

Pamela Hamilton-Powell,
Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2009-0577.

Petitioner: Honeywell International, Inc.

Section of 14 CFR Affected: § 21.611 (a) and (b), 21.607 (c) and 21.613 (a) (1).

Description of Relief Sought: Honeywell seeks permanent relief from certain rules governing the model

designation and model number of Technical Standard Order authorized articles when a major or minor change is made to that article and subsequent data retention based on the model.

[FR Doc. E9-18174 Filed 7-29-09; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2009 0073]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GOOD TIMES.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2009-0073 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 31, 2009.

ADDRESSES: Comments should refer to docket number MARAD-2009-0073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GOOD TIMES is: *Intended use:* "day sails, vacation charters."

Geographic Region: "New York, New Jersey, Delaware, Maryland, Virginia."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: July 21, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.
[FR Doc. E9-18146 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2009-0074]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NA KALA O'KAI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build

requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2009-0074 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 31, 2009.

ADDRESSES: Comments should refer to docket number MARAD-2009-0074. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NA KALA O'KAI is:

Intended Use: "Commercial charter fishing."

Geographic Region: "Hawaii."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: July 21, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9-18147 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration (FAA)****Notice of Opportunity for Public Comment on Surplus Property Release at Jackson International Airport, Jackson, MS**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Jackson Municipal Airport Authority to waive the requirement that a 9.13-acre parcel, a 0.13-acre parcel, and a 20.54-acre parcel of surplus property, located at the Jackson International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before *August 31, 2009*.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dirk B. Vanderleest, Executive Director, Jackson Municipal Airport Authority, Jackson, MS, at the following address: P.O. Box 98109, Jackson, MS 39298-8109.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Jackson

Municipal Airport Authority to release 29.8 acres of airport property at the Jackson International Airport. The property will be purchased by the Mississippi Department of Transportation to construct the airport parkway corridor. The net proceeds from the sale of this property will be used for airport capital improvement projects.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Jackson International Airport, Jackson, Mississippi.

Issued in Jackson, Mississippi on July 17, 2009.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. E9-18141 Filed 7-29-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 1099-MISC**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-MISC, Miscellaneous Income.

DATES: Written comments should be received on or before September 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at (202) 622-3933, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Income.

OMB Number: 1545-0115.

Form Number: 1099-MISC.

Abstract: Form 1099-MISC is used by payers to report payments of \$600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, \$10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of \$5,000 or more.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Responses: 79,480,844.

Estimated Time per Response: 18 min.

Estimated Total Annual Burden Hours: 24,639,062.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-18127 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706-GS(T)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706-GS(T), Generation-Skipping Transfer Tax Return for Terminations.

DATES: Written comments should be received on or before *September 28, 2009* to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3933, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return for Terminations.

OMB Number: 1545-1145.

Form Number: 706-GS(T).

Abstract: Form 706-GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Number of Response: 1 hour, 22 minutes.

Estimated Total Annual Burden Hours: 684.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2009.

Allan Hopkins,

IRS Reports Clearance Office.

[FR Doc. E9-18134 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120S, Schedule D, Schedule K-1, and Schedule M-3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120S, U. S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, Schedule M-3 (Form 1120S), Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More, and Schedule K-1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before September 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-7381, or through the Internet at (Evelyn.J.Mack@irs.gov).

SUPPLEMENTARY INFORMATION:

Title: Form 1120S, U. S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-in Gains, Schedule K-1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc., Schedule M-3 (Form 1120S), Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More.

OMB Number: 1545-0130.

Form Number: Form 1120S, Schedule D, Schedule K-1, and Schedule M-3.

Abstract: Form 1120S, Schedule D (Form 1120S), Schedule K-1 (Form 1120S), and Schedule M-3 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule D is used to report gain or loss from sales or exchanges of capital assets and the computation of tax on certain capital gains imposed by Internal Revenue Code section 1374. Schedule K-1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. Schedule M-3 is used for S corporations with assets of \$10 million or more, to reconcile financial accounting net income and taxable income in a standardized and detailed format.

Current Actions: Ten additional lines added to Form 1120S Schedule M-3. Forms 1120S Schedule L and 1120S

Schedule M-1 are now incorporated into Form 1120S.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 15,077,000.

Estimated Time per Respondent: 25 hours, 44 minutes.

Estimated Total Annual Burden

Hours: 388,153,670.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 20, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9-18128 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706-GS(D-1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706-GS(D-1), Notification of Distribution From a Generation-Skipping Trust.

DATES: Written comments should be received on or before September 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, (202) 622-3933, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Notification of Distribution From a Generation-Skipping Trust.

OMB Number: 1545-1143.

Form Number: 706-GS(D-1).

Abstract: Form 706-GS(D-1) is used by trustees to provide information to the IRS and to distributees regarding generation-skipping distributions from trusts. The information is needed by distributees to compute the generation-skipping tax imposed by Internal Revenue Code section 2601. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time per Respondent: 4 hours, 22 minutes.

Estimated Total Annual Burden

Hours: 348,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9-18130 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97-43 and Revenue Ruling 97-39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97-43, Procedures for Electing Out of Exemptions Under Section 1.475(c)-1, and Revenue Ruling 97-39, Mark-to-Market Accounting Method for Dealers in Securities.

DATES: Written comments should be received on or before September 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure and revenue ruling should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3933, or through the internet at Dawn.E.Bidne@irs.gov

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97-43, Procedures for Electing Out of Exemptions Under Section 1.475(c)-1, and Revenue Ruling 97-39, Mark-to-Market Accounting Method for Dealers in Securities.

OMB Number: 1545-1558.

Revenue Procedure Number: Revenue Procedure 97-43.

Revenue Ruling Number: Revenue Ruling 97-39.

Abstract: Revenue Procedure 97-43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under regulation section 1.475(c)-1, subject to certain terms and conditions. Revenue Ruling 97-39 provides taxpayers additional mark-to-market guidance under section 475 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure or revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9-18133 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000-35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000-35, Automatic Enrollment in section 403(b) Plans.

DATES: Written comments should be received on or before September 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, (202) 622-3933, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Automatic Enrollment in Section 403(b) Plans.

OMB Number: 1545-1694.

Form Number: Revenue Ruling 2000-35.

Abstract: Revenue Ruling 2000-35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employee's section 403(b) plan in the absence of an affirmative election by the employee.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour, 45 minutes.

Estimated Total Annual Burden Hours: 175.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9-18131 Filed 7-29-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (eBenefits)]

Agency Information Collection: Emergency Submission for OMB (eBenefits) Review; Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to allow VA to allow claimants to find information about benefits and other services online.

DATES: Comments must be submitted on or before August 6, 2009.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov> or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900–New (eBenefits)" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7485, FAX (202) 273-0443 or e-mail denise.mclamb@va.gov. Please refer to "OMB Control No. 2900–New (eBenefits)."

SUPPLEMENTARY INFORMATION:

Title: eBenefits Portal.

OMB Control Number: 2900–New (eBenefits).

Type of Review: New collection.

Abstract: The eBenefits portal, a joint project between the VA and DoD, is intended to serve as a single point of entry for benefits information. Users include members of the armed forces, veterans, wounded warriors, and family members. Users wishing to access the full functionality of the eBenefits portal

will register for a single sign-on credential that will ultimately be shared by other VA and DoD portals. The eBenefits portal will allow these authenticated users to create profiles for themselves so they can see a customized view of their homepage, receive personalized alerts, view a calendar of appointments, view content related to their benefits, and opt into other individualized features. Profiles will initially be populated with data from the existing Defense Enrollment Eligibility Reporting (DEERS) database, but will also offer users the option to indicate preferences and individual details that will enable the portal to deliver personalized information.

Affected Public: Individuals or households.

Estimated Annual Burden: 225,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 225,000.

Dated: July 27, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9-18202 Filed 7-29-09; 8:45 am]

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