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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, 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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Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-1272; **Airspace**
Docket No. 08-ACE-4]

Amendment of Class E Airspace; Iowa Falls, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Iowa Falls, IA. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Iowa Falls Municipal Airport, Iowa Falls, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Iowa Falls Municipal 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 Iowa Falls, IA, adding additional controlled airspace at Iowa Falls Municipal Airport, Iowa Falls, IA. (74 FR 23371, Docket No. FAA-2008-

1272.) 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 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 Iowa Falls, IA, adding additional controlled airspace at Iowa Falls Municipal Airport, Iowa Falls, IA, for the safety and management of IFR operations.

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 Iowa Falls Municipal Airport, Iowa Falls, IA.

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 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.

* * * * *

ACE IA E5 Iowa Falls, IA [Amended]

Iowa Falls Municipal Airport, IA

(Lat. 42°28'15" N., long. 93°16'12" W.)

Iowa Falls NDB

(Lat. 42°28'36" N., long. 93°15'56" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Iowa Falls Municipal Airport and within 2.6 miles each side of the 154° bearing from the Iowa Falls NDB extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

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

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-18242 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 101****Technical Amendments Concerning Amateur Rocket Activities**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is making several editorial changes to the amateur rocket regulations. The intent of this action is to ensure the regulations are clear and accurate.

DATES: This amendment is effective July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Charles P. Brinkman, Licensing and Safety Division (AST-200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267-7715, e-mail Phil.Brinkman@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

On Monday, July 6, 2009 (74 FR 31842), the FAA published a correction document to the final rule "Requirements for Amateur Rocket Activities". The final rule published December 4, 2008 (73 FR 73768). During the review process, we determined that additional minor amendments are needed in part 101 that could not be addressed in a correction document.

The 2008 final rule added §§ 101.25 and 101.26 relating to Class 2 and Class 3 Rockets, respectively. However, to avoid redundancy, the FAA is now moving the requirements of § 101.26 into § 101.25, and revising the section title to reflect the change. Combining the two sections provides the reader easy access to all information relating to both Class 2 and Class 3 Rockets operating limitations.

Additionally, the words "unmanned rockets" are changed to "amateur rockets" in the titles of part 101 and subpart C and in §§ 101.1(a)(3), 101.5, and 101.7 for accuracy and clarity.

Technical Amendment

This technical amendment merely moves an existing section to clarify regulations and revises the part, subpart, and section headings for clarity. There are no other changes to the existing regulatory text.

Justification for Immediate Adoption

Because this action moves an existing section to an existing subpart, the FAA finds that notice and public comment under 5 U.S.C. 553(d) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 101

Aircraft, Aviation safety.

The Amendment

■ In consideration of the foregoing, the FAA amends 14 CFR part 101 as follows:

PART 101—MOORED BALLOONS, KITES, AMATEUR ROCKETS AND UNMANNED FREE BALLOONS

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113-40114, 45302, 44502, 44514, 44701-44702, 44721, 46308.

■ 2. Revise the heading of Part 101 to read as set forth above.

§ 101.1 [Amended]

■ 3. Amend § 101.1, paragraph (a)(3) by removing the words "unmanned rocket" and adding the words "amateur rocket" in their place.

§ 101.5 [Amended]

■ 4. Amend § 101.5 by removing the words "unmanned rocket" and adding the words "amateur rocket" in their place.

§ 101.7 [Amended]

■ 5. Amend § 101.7, paragraphs (a) and (b) by removing the words "unmanned rocket" and adding the words "amateur rocket" in their place in both places.

Subpart C—Amateur Rockets

■ 6. Revise the heading of subpart C to read as set forth above.

■ 7. Revise § 101.25 to read as follows:

§ 101.25 Operating limitations for Class 2-High Power Rockets and Class 3-Advanced High Power Rockets.

When operating *Class 2-High Power Rockets* or *Class 3-Advanced High Power Rockets*, you must comply with the General Operating Limitations of § 101.23. In addition, you must not operate *Class 2-High Power Rockets* or *Class 3-Advanced High Power Rockets*—

(a) At any altitude where clouds or obscuring phenomena of more than five-tenths coverage prevails;

(b) At any altitude where the horizontal visibility is less than five miles;

(c) Into any cloud;

(d) Between sunset and sunrise without prior authorization from the FAA;

(e) Within 8 kilometers (5 statute miles) of any airport boundary without prior authorization from the FAA;

(f) In controlled airspace without prior authorization from the FAA;

(g) Unless you observe the greater of the following separation distances from any person or property that is not associated with the operations:

(1) Not less than one-quarter the maximum expected altitude;

(2) 457 meters (1,500 ft.);

(h) Unless a person at least eighteen years old is present, is charged with ensuring the safety of the operation, and has final approval authority for initiating high-power rocket flight; and

(i) Unless reasonable precautions are provided to report and control a fire caused by rocket activities.

§ 101.26 [Removed]

■ 8. Remove § 101.26.

Issued in Washington, DC, on July 26, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9-18278 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 0810241396-91118-02]

RIN 0648-AX34

Changes to the Florida Keys National Marine Sanctuary Regulations; Technical Corrections and Minor Substantive Changes

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: NOAA publishes this final rule for certain regulations for the Florida Keys National Marine Sanctuary. This final rule makes technical corrections and modifications to several areas in the regulations. As part of these modifications, NOAA amends the definition of coral to

specifically include the common sea fan, *Gorgonia ventalina* and Venus sea fan, *Gorgonia flabellum*, which are both important sanctuary resources and are currently managed under the category “live rock”; specifies that “touching” coral is an injury and therefore, a prohibited activity in the FKNMS; amends the minimum distance between vessels and “divers down” flags to be 100 yards instead of 100 feet; clarifies that the prohibitions listed for Sanctuary Preservation Areas and Ecological Reserves also apply in Research-only Areas; and corrects several citations that were currently out of date.

DATES: The effective date of these regulations is August 31, 2009.

ADDRESSES: Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040. This **Federal Register** document is also accessible via the Internet at http://sanctuaries.noaa.gov/management/fr_notices.html.

FOR FURTHER INFORMATION CONTACT: Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of its important ecological role as a rich and unique marine environment with seagrass meadows, mangrove islands, and extensive living coral reefs, Congress designated the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) in 1990 (Pub. L. 101–605). Through this designation, Congress directed NOAA and the State of Florida to jointly develop a comprehensive program to reduce the risk of damage to these living marine resources, reduce the pollution in the waters of the Florida Keys, and to protect and restore the water quality, coral reefs, and other living marine resources of the Florida Keys. As such, NOAA and the State of Florida worked together to create the management plan for the FKNMS. The FKNMS regulations implementing the designation were published on June 12, 1997 (62 FR 32154) and became effective on July 1, 1997.

In the 18 years since designation, several regulatory issues have arisen that were not clearly addressed when the FKNMS regulations were adopted. In addition, there have been several changes to the Florida state laws during the same period and several technical errors identified in the current FKNMS regulations. With this final rule, NOAA

updates the FKNMS regulations to make technical corrections and minor substantive clarifications; and codifies existing regulatory interpretation to address these issues and provide consistency with state law.

II. Summary of the Revisions

A. Changes to § 922.162 and § 922.163, Modification of Existing Regulations on Corals and Prohibited Activities

1. Definition of Coral (§ 922.162(a))

The FKNMS regulations to protect corals and live rock include a list of activities that are prohibited, and include a definition of “coral” and “live rock” to which these protections extend. NOAA now adds the common sea fan, *Gorgonia ventalina*, and Venus sea fan, *Gorgonia flabellum*, to the list of coral species in the definition of coral. These coral species were unintentionally omitted from the definition. NOAA also makes the list of corals non-exclusive in case additional coral species are identified in the future. NOAA also amends the definition of coral to correctly identify black corals as part of the subclass *Ceriantipatharia*. The subclass for black corals was incorrectly listed in the regulations as *Hexacorallia*.

2. Touching Coral (§ 922.163(a)(2))

Touching coral or live rock injures the resource and has been historically interpreted as such by NOAA, charter dive and snorkeling operations, and enforcement personnel. When corals are touched or handled, the organisms are injured and could suffer mortality. This final rule clarifies and codifies NOAA’s interpretation of injury to coral and live rock by adding “touching” coral to the list of prohibited activities. Clarifying that touching coral and live rock causes injury aids in sanctuary education and outreach efforts and helps public compliance with the prohibition.

B. Other Proposed Modifications and Technical Corrections to Section § 922.163

1. Permit Live Rock Aquaculture (§ 922.163(a)(2)(i))

Section 922.163(a)(2)(i) cited 50 CFR part 638 as the authority to permit certain types of live rock aquaculture under the Magnuson-Stevens Act (MSA). However, that part of the CFR no longer exists. The authority to permit certain types of live rock aquaculture under the MSA is located at 50 CFR part 622. Therefore, NOAA makes a correction to the regulations to reflect the updated citation.

2. Dive Areas (§ 922.163(a)(5)(iii)(C))

NOAA regulations regarding dive area restrictions are inconsistent with State of Florida regulations that specify the safe distance between vessels and “divers down” flags (Section 327.331 Florida Statutes: Divers; definitions; divers-down flag required). According to the State of Florida regulations, the safe distance between vessels and “divers down” flags is 100 yards. In contrast, the FKNMS regulations indicated that the safe distance between vessels and “divers down” flags was 100 feet. In order to be consistent with the regulations issued by the State of Florida, NOAA changes the distance in the regulations at § 922.163 (a)(5)(iii)(C) from “100 feet” to “100 yards.” Greater consistency allows for improved public education and compliance. The change to regulations improves safety and reduces conflict between divers and vessel operations.

3. Marine Life Rule (§ 922.163(a)(12))

NOAA makes a technical correction to its regulations to amend references to Florida’s Marine Life Rule (MLR). NOAA is editing the language at § 922.163(a)(12) to reference section 68B–42 of the Florida Administrative Code. NOAA is also removing Appendix VIII to Subpart P of Part 922 to eliminate the excerpts of the MLR from the FKNMS regulations.

4. Updating CFR References (§ 922.163)

Sections 922.163(c) and 922.168 allowed NOAA to “grandfather” certain activities taking place in the Sanctuary when the regulations were issued in 1997. These sections are no longer applicable because the affected entities were allowed only 90 days from the designation of the Sanctuary (July 1, 1997) to notify the Director and request certification of any pre-existing and otherwise prohibited activities being conducted pursuant to a valid authorization in the Sanctuary. These provisions are no longer needed because the certification period expired on September 29, 1997. Because the regulations expired over ten years ago, NOAA deletes these sections from the FKNMS regulations, and renumbers the remaining sections accordingly. Because § 922.168 is referenced in other sections of the FKNMS regulations, NOAA makes conforming changes to those affected sections. Finally, NOAA amends the language to the newly redesignated § 922.163(c) to reflect § 922.49, which is the appropriate citation for authorization of current activities

C. Special-Use (Research-Only) Areas (§ 922.164(e)(1))

Research-only Areas are a type of Special-use Area defined in the FKNMS regulations at § 922.164(e)(1)(iii). Except for passage without interruption or for law enforcement purposes, access to research-only areas is restricted to scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a sanctuary permit. Entities granted access to the research-only area by the permit may conduct only those activities described in the permit; all other activities within the research-only area are prohibited. However, the prohibition against conducting activities other than those allowed under the permit in research-only areas was not stated clearly in the FKNMS regulations. Therefore, NOAA amends § 922.164(d) to add a new paragraph (e)(5) to the section to specify that the prohibited activities listed for Sanctuary Preservation Areas (SPAs) and Ecological Reserves (ERs) as listed at § 922.164(d) also apply in Research-only Areas. This change provides better notice to the public and to permittees who receive access to conduct activities in Research-only Areas, and facilitates voluntary compliance as well as enforcement of sanctuary regulations.

III. Response to Comments

On December 19, 2008, NOAA published a proposed rule that solicited comments on the changes made by this rule (73 FR 77557). NOAA received only one comment during the 30-day public comment period from December 2008–January 2009. The comment expressed overwhelming support for the proposed regulatory changes anticipating benefits of increased resource protection, user safety and public awareness. The commentor specifically supported requiring a minimum distance of 100 yards between vessels and diver down flags because of improved safety to scuba divers. The commentor also supported the prohibition on touching coral due to it providing more documentation for diver operators to enforce this protection with their customers. On March 5, 2009, NOAA published an amendment to the proposed rule to correct an inaccurate reference to U.S. Coast Guard regulations, which served as a supporting basis for one of the proposed modifications. Due to this error, NOAA extended the comment period until March 26, 2009 (74 FR 9574). No additional comments were received during the 21-day comment period.

IV. Classification

A. National Environmental Policy Act

The technical corrections and minor substantive changes do not have significant environmental impacts and are categorically excluded from the need to prepare an environmental assessment pursuant to the National Environmental Policy Act (NAO 216–6 Section 6.03c.3(i)).

B. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The State of Florida was consulted during the promulgation of this rule.

D. Paperwork Reduction Act

This rule does not contain any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule does 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 the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required and none was prepared.

Dated: July 21, 2009.

William Corso,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental

relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas, Sanctuary preservation areas, Ecological reserves, Areas to be avoided, State of Florida, U.S. Coast Guard.

■ For the reasons above, amend title 15, part 922 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 15 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.162(a) by revising the definition for Coral to read as follows:

§ 922.162 Definitions.

(a) * * *

Coral means but is not limited to the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia, Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species *Gorgonia ventalina* and *Gorgonia flabellum* (sea fans).

* * * * *

■ 3. Amend § 922.163:

- a. By revising paragraph (a)(2)(i);
- b. By revising paragraph (a)(5)(iii)(C);
- c. By revising paragraph (a)(12);
- d. By removing paragraph (c) and redesignating paragraphs (d) through (h) as (c) through (g), respectively;
- e. And by revising newly redesignated paragraph (c).

The revisions read as follows:

§ 922.163 Prohibited activities—Sanctuary-wide.

(a) * * *

(2) * * *

(i) Moving, removing, taking, harvesting, damaging, disturbing, touching, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 622.

* * * * *

(5) * * *

(iii) * * *

(C) Within 100 yards of the red and white “divers down” flag (or the blue and white “alpha” flag in Federal waters);

* * * * *

(12) *Harvest or possession of marine life species.* Harvesting, possessing, or

landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 68B-42 of the Florida Administrative Code, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

* * * * *

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

* * * * *

■ 4. Amend § 922.164 in paragraph (d) by revising the heading and paragraph (d)(1) introductory text; and in paragraph (e) by adding paragraph (e)(5) to read as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(d) *Ecological Reserves, Sanctuary Preservation Areas, and Special Use (Research only) Areas.* (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, within the Sanctuary Preservation Areas described in Appendix V to this subpart, and within the Special Use (Research only Areas) described in Appendix VI to this subpart:

* * * * *

(e) * * *
(5) In addition to paragraph (e)(3) of this section no person shall conduct activities listed in paragraph (d) of this section in "Research-only Areas."

■ 5. Remove and reserve § 922.168.

§ 922.168 [Removed and reserved]

■ 6. Remove Appendix VIII to Subpart P of Part 922—Marine Life Rule [As Excerpted from Chapter 46-42 of the Florida Administrative Code].

[FR Doc. E9-17825 Filed 7-30-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9455]

RIN 1545-BC55

Suspension of Running of Period of Limitations During a Proceeding To Enforce or Quash a Designated or Related Summons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the use of designated summonses and related summonses and the effect on the period of limitations on assessment when a case is brought with respect to a designated or related summons. These final regulations reflect changes to section 6503 of the Internal Revenue Code of 1986 made by the Omnibus Budget Reconciliation Act of 1990 and the Small Business Job Protection Act of 1996. These final regulations affect corporate taxpayers that are examined under the coordinated industry case (CIC) program and are served with designated or related summonses. These final regulations also affect third parties that are served with designated or related summonses for information pertaining to the corporate examination. **DATES:** *Effective Date:* These regulations are effective on July 31, 2009.

Applicability Date: For the date of applicability, see § 301.6503(j)-1(e).

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration regulations (26 CFR part 301) under section 6503. Section 11311 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388) amended section 6503(k) to suspend the period of limitations on assessment when a case is brought with respect to a designated or related summons. Section 6503(k) was redesignated as section 6503(j) by section 1702(h)(17)(A) of the Small Business Job Protection Act of 1996 (Pub. L. 104-188, 110 Stat. 1874).

On April 28, 2008, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-208199-91; 73 FR 22879), interpreting section 6503(j) and withdrawing a prior notice

of proposed rulemaking, hereinafter referred to as the 2003 proposed regulations, published in the **Federal Register** on July 31, 2003 (68 FR 44905). Written comments from one commentator were received. No request for a public hearing was received, nor was one held. The proposed regulations are adopted as final regulations with one minor clarifying change.

As described more fully in the preamble to the proposed regulations, these regulations generally provide that the period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding to enforce or quash is instituted with respect to that summons. These final regulations define a designated summons, a related summons, and the period of suspension. The final regulations also provide guidance regarding the component concepts of judicial enforcement period, court proceeding, the date when the proceeding is no longer pending, final resolution, compliance, and the date when compliance occurs. These regulations also provide special rules on the number of designated and related summonses that may be issued, the time within which court proceedings must be brought to suspend the period of limitations on assessment, the computation of the suspension period if multiple court proceedings are instituted, the effect on the suspension provisions under section 7609(e), and the application of section 7503 when the last day of an assessment period falls on a Saturday, Sunday, or legal holiday.

Comments on the Proposed Regulations

§ 301.6503(j)-1(c)(5)(ii)—Date Compliance Occurs

Proposed § 301.6503(j)-1(c)(5)(ii) provides, in pertinent part, that "[c]ompliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date it is determined that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons." The commentator suggested that this provision be changed

to conform to the language appearing in the 2003 proposed regulation, which in pertinent part provides “[c]ompliance with a court order that grants enforcement * * * occurs on the date the Commissioner or his delegate (Commissioner) determines that * * * the summoned party fully satisf[ie]d the court order * * *. The determination whether there has been compliance will be made as soon as practicable after the testimony is given or the materials are produced.” In particular, the commentator recommended that the phrase “as soon as practicable,” used in the 2003 proposed regulations, be substituted for the phrase “within a reasonable time,” used in the 2008 proposed regulations. The commentator indicated this suggestion was intended to protect cooperative taxpayers from uncertainty about the suspension of their period of limitations.

This suggestion has not been adopted. The 2008 proposed regulations identify the facts and circumstances to which the phrase “within a reasonable time” is intended to relate, including whether a determination is “practicable,” by adding the phrase “given the volume and complexity of the records produced.” Moreover, the term “reasonable” is a term that is routinely interpreted by the courts.

The commentator also expressed concern over the 2008 proposed regulatory phrase “it is determined,” appearing in the phrase “occurs on the date it is determined that the testimony given * * * or other data produced * * * by the summoned party fully satisfy the court order.” Although the commentator did not expressly suggest other language, the commentator did note that the 2003 proposed regulations had provided “the Commissioner or his delegate determines” and expressed the view that the 2008 phrase “it is determined” is ambiguous and will leave the taxpayer without guidance as to who will actually make the determination.

CIC corporate taxpayers and their tax advisors are aware that the first point of inquiry for any matter involving the examination is the examination team conducting the audit and the team’s management and supervisory chain of command. These are the persons who will examine the summoned information and, under Internal Revenue Manual (IRM) procedures that will be issued based on these regulations, will decide whether the summoned person’s production satisfies the court’s order. The final regulations amend the proposed regulations to clarify this understanding and practice.

Section 301.6503(j)–1(d)—Special Rules

Proposed § 301.6503(j)–1(d)(1) through (5) provides several special rules that apply to designated and related summonses, such as the rule limiting the number of designated summonses that may be issued. Proposed § 301.6503(j)–1(d) does not include provisions appearing in the 2003 proposed regulations as § 301.6503(j)–1(d)(6) and (7), containing a procedure whereby a summoned person could request from the IRS a determination that the summoned person had fully complied with a designated or related summons to the extent required by court order. According to this 2003 proposed regulatory procedure, unless the taxpayer’s request was responded to timely, the summons would be treated as having been fully complied with as of the 180th day. This proposed procedure was not included in the 2008 proposed regulations.

The commentator suggested that this provision be revised to include 2003 proposed § 301.6503(j)–1(d)(6) and (7), with one modification. The commentator suggested that the “fully complied with” procedure be reinstated and that a new provision be added to permit the taxpayer to request a “fully complied with” determination in cases where the summons was served on a third party. The commentator suggested that reinserting the procedure would protect cooperative CIC taxpayers from receiving unnecessary designated summonses, assist CIC taxpayers in knowing the date on which the suspension terminates, and avoid unnecessary litigation.

This commentator’s suggestion has not been adopted. The final regulations and existing extensive safeguard protect cooperative CIC taxpayers from receiving unnecessary designated summonses. For example, pursuant to section 1003 of the Taxpayer Bill of Rights 2 of 1996 (Pub. L. 104–168, 110 Stat. 1468), Congress requires the Treasury Department to report on an annual basis the number of designated summonses issued in the preceding year. Also, pursuant to section 6503(j)(2)(A)(i), Congress requires preissuance review by a high ranking executive of the Office of Chief Counsel. The IRS and these regulations require preissuance review by both the Division Counsel of the Office of Chief Counsel and the Division Commissioner for the organizations that have jurisdiction over the corporate taxpayer. Additionally, the Office of Chief Counsel requires that the National Office provide preissuance review of all designated summonses.

IRM 34.6.3.1(6)c. The public may access the IRM at <http://www.irs.gov/irm/index.html>. To obtain approval for the issuance of a designated summons, the issuing office must explain why the corporate taxpayer refused to extend the period of limitations on assessment, and if the summons is to be issued near the end of the period permitted by section 6503(j), the issuing office must explain why the summons was not issued at an earlier date. IRM 25.5.3.3(3)b. The effectiveness of these safeguards is evidenced by the IRS’s circumspect use of the designated summons authority.

The IRS also will issue IRM provisions that will include procedures whereby the CIC taxpayer will be promptly informed of whether the production of summoned information fully complies with the summons. The IRM procedures depend on the issuance of the interpretative rules in these regulations, particularly the definition of final resolution and compliance, and cannot be published until these final regulations are effective. Once these regulations are effective, the IRM procedures will be published. Moreover, even without such IRM procedures, a CIC taxpayer may ascertain when the IRS determined full compliance and when the suspension terminated by contacting the examining agent.

The final regulations also effectively prevent unnecessary litigation. In addition to the extensive safeguards discussed above, the IRS is committed to examining the summoned information and determining whether the production satisfies the enforcement order within a reasonable time given the volume and complexity of the information produced. The CIC taxpayer may contact the IRS at any time to inquire about the status of the suspension.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), the notice of proposed rulemaking preceding this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Elizabeth Rawlins of the Office of the Associate Chief Counsel, Procedure and Administration, Internal Revenue Service.

Lists of Subjects in 26 CFR Part 301

■ Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 301.6503(j)–1 is added to read as follows:

§ 301.6503(j)–1 Suspension of running of period of limitations; extension in case of designated and related summonses.

(a) *General rule.* The running of the applicable period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding is instituted with respect to that summons.

(b) *Period of suspension.* The period of suspension is the time during which the running of the applicable period of limitations on assessment provided for in section 6501 is suspended under section 6503(j). If a court requires any compliance with a designated or related summons by ordering that any record, document, paper, object, or items be produced, or the testimony of any person be given, the period of suspension consists of the judicial enforcement period plus 120 days. If a court does not require any compliance with a designated or related summons, the period of suspension consists of the judicial enforcement period, and the period of limitations on assessment provided in section 6501 shall not expire before the 60th day after the close of the judicial enforcement period.

(c) *Definitions*—(1) A *designated summons* is a summons issued to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable period for which such corporation is being examined under the coordinated industry case program or any other

successor to the coordinated examination program if—

(i) The Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations that have jurisdiction over the corporation whose tax liability is the subject of the summons have reviewed the summons before it is issued;

(ii) The Internal Revenue Service (IRS) issues the summons at least 60 days before the day the period prescribed in section 6501 for the assessment of tax expires (determined with regard to extensions); and

(iii) The summons states that it is a designated summons for purposes of section 6503(j).

(2) A *related summons* is any summons issued that—

(i) Relates to the same return of the corporation under examination as the designated summons; and

(ii) Is issued to any person, including the person to whom the designated summons was issued, during the 30-day period that begins on the day the designated summons is issued.

(3) The *judicial enforcement period* is the period that begins on the day on which a court proceeding is instituted with respect to a designated or related summons and ends on the day on which there is a final resolution as to the summoned person's response to that summons.

(4) *Court proceeding*—(i) *In general.* For purposes of this section, a *court proceeding* is a proceeding filed in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604. A court proceeding includes any collateral proceeding, such as a civil contempt proceeding.

(ii) *Date proceeding is no longer pending.* A proceeding to quash or to enforce a designated or related summons is no longer pending when all appeals (including review by the Supreme Court) are disposed of or after the expiration of the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made. If, however, following an enforcement order, a collateral proceeding is brought challenging whether the testimony given or production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to so testify or produce, the proceeding to quash or to enforce the summons shall include the time from which the proceeding to quash or to enforce the

summons was brought until the decision in the collateral proceeding becomes final. The decision becomes final on the date when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire. A decision in a collateral proceeding becomes final when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire.

(5) *Compliance*—(i) *In general.*

Compliance is the giving of testimony or the performance of an act or acts of production, or both, in response to a court order concerning the designated or related summons and the determination that the terms of the court order have been satisfied.

(ii) *Date compliance occurs.*

Compliance with a court order that wholly denies enforcement of a designated or related summons is deemed to occur on the date when all appeals (including review by the Supreme Court) are disposed of or when the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made expires.

Compliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date the IRS determines that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The IRS will determine whether there has been full compliance within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request

for further review may be made has expired.

(6) *Final resolution* occurs when the designated or related summons or any order enforcing any part of the designated or related summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(d) *Special rules*—(1) *Number of summonses that may be issued*—(i) *Designated summons*. Only one designated summons may be issued in connection with the examination of a specific taxable year or other period of a corporation. A designated summons may cover more than one year or other period of a corporation. The designated summons may require production of information that was previously sought in a summons (other than a designated summons) issued in the course of the examination of that particular corporation if that information was not previously produced.

(ii) *Related summonses*. There is no restriction on the number of related summonses that may be issued in connection with the examination of a corporation. As provided in paragraph (c)(2) of this section, however, a related summons must be issued within the 30-day period that begins on the date on which the designated summons to which it relates is issued and must relate to the same return as the designated summons. A related summons may request the same information as the designated summons.

(2) *Time within which court proceedings must be brought*. In order for the period of limitations on assessment to be suspended under section 6503(j), a court proceeding to enforce or to quash a designated or related summons must be instituted within the period of limitations on assessment provided in section 6501 that is otherwise applicable to the tax return.

(3) *Computation of suspension period if multiple court proceedings are instituted*. If multiple court proceedings are instituted to enforce or to quash a designated or one or more related summonses concerning the same tax return, the period of limitations on assessment is suspended beginning on the date the first court proceeding is brought. The suspension shall end on the date that is the latest date on which the judicial enforcement period, plus the 120 day or 60 day period (depending on whether the court requires any compliance) as provided in paragraph

(b) of this section, expires with respect to each summons.

(4) *Effect on other suspension periods*—(i) *In general*. Suspensions of the period of limitations under section 6501 provided for under subsections 7609(e)(1) and (e)(2) do not apply to any summons that is issued pursuant to section 6503(j). The suspension under section 6503(j) of the running of the period of limitations on assessment under section 6501 is independent of, and may run concurrent with, any other suspension of the period of limitations on assessment that applies to the tax return to which the designated or related summons relates.

(ii) *Examples*. The rules of paragraph (d)(4)(i) of this section are illustrated by the following examples:

Example 1. The period of limitations on assessment against Corporation P, a calendar year taxpayer, for its 2007 return is scheduled to end on March 17, 2011. (Ordinarily, Corporation P's returns are filed on March 15th of the following year, but March 15, 2008, was a Saturday, and Corporation P timely filed its return on the subsequent Monday, March 17, 2008, making March 17, 2011 the last day of the period of limitations on assessment for Corporation P's 2007 tax year.) On January 4, 2011, a designated summons is issued to Corporation P concerning its 2007 return. On March 3, 2011 (14 days before the period of limitations on assessment would otherwise expire with respect to Corporation P's 2007 return), a court proceeding is brought to enforce the designated summons issued to Corporation P. On June 6, 2011, the court orders Corporation P to comply with the designated summons. Corporation P does not appeal the court's order. On September 6, 2011, agents for Corporation P deliver material that they state are the records requested by the designated summons. On October 13, 2011, a final resolution to Corporation P's response to the designated summons occurs when it is determined that Corporation P has fully complied with the court's order. The suspension period applicable with respect to the designated summons issued to Corporation P consists of the judicial enforcement period (March 3, 2011, through October 13, 2011) and an additional 120-day period under section 6503(j)(1)(B), because the court required Corporation P to comply with the designated summons. Thus, the suspension period applicable with respect to the designated summons issued to Corporation P begins on March 3, 2011, and ends on February 10, 2012. Under the facts of this *Example 1*, the period of limitations on assessment against Corporation P further extends to February 24, 2012, to account for the additional 14 days that remained on the period of limitations on assessment under section 6501 when the suspension period under section 6503(j) began.

Example 2. Assume the same facts set forth in *Example 1*, except that in addition to the issuance of the designated summons and related enforcement proceedings, on April 5, 2011, a summons concerning Corporation P's

2007 return is issued and served on individual A, a third party. This summons is not a related summons because it was not issued during the 30-day period that began on the date the designated summons was issued. The third-party summons served on individual A is subject to the notice requirements of section 7609(a). Final resolution of individual A's response to this summons does not occur until February 15, 2012. Because there is no final resolution of individual A's response to this summons by October 5, 2011, which is six months from the date of service of the summons, the period of limitations on assessment against Corporation P is suspended under section 7609(e)(2) to the date on which there is a final resolution to that response for the purposes of section 7609(e)(2). Moreover, because final resolution to the summons served on individual A does not occur until after February 10, 2012, the end of the suspension period for the designated summons, the period of limitations on assessment against Corporation P expires 14 days after the date that the final resolution as provided for in section 7609(e)(2) occurs with respect to the summons served on individual A.

(5) *Computation of 60-day period when last day of assessment period falls on a weekend or holiday*. For purposes of paragraph (c)(1)(ii) of this section, in determining whether a designated summons has been issued at least 60 days before the date on which the period of limitations on assessment prescribed in section 6501 expires, the provisions of section 7503 apply when the last day of the assessment period falls on a Saturday, Sunday, or legal holiday.

(e) *Effective/applicability date*. This section is applicable on July 31, 2009.

Approved: July 15, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9-18380 Filed 7-30-09; 8:45 am]

BILLING CODE 4830-01-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-30 and CP2009-40; Order No. 247]

New Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: This document informs the public that the Commission has reviewed and approved the Postal Service's recent request to add a new Priority Mail product to the Competitive

Product List, along with a related contract. It also addresses related procedural and legal matters.

DATES: Effective July 31, 2009 and is applicable beginning July 14, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 33482 (July 13, 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 14 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 29, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 14 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 14 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. MC2009-30.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-40.

In support of its 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 1 day after the Commission issues all regulatory approvals;² (2) requested changes in the Mail Classification Schedule product list;³ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁴ and (4) certification of compliance with 39 U.S.C. 3633(a).⁵ The Postal Service also references Governors’ Decision 09-6, filed in Docket No. MC2009-25, as authorization of the new product. *Id.*

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 C, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal.⁶ In its Request, the Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 234, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷ On July 1, 2009, Chairman’s Information Request No. 1 (CHIR No. 1) was issued.⁸ The Postal Service filed its response to Question No. 4 on July 1, 2009, and its responses to Question Nos. 1 through 3 (under seal) on July 8, 2009.⁹

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 satisfies the procedural requirements for proposing a new product and concludes that the Priority Mail Contract 14 agreement meets the pertinent elements of title 39. *Id.* at 1, 3-4. He further states that the

⁶ The Postal Service also filed an errata of its supporting data on July 2, 2009. *See* Notice of the United States Postal Service of Filing Under Seal of Corrected Workbook Containing Cost and Revenue Data (Errata), July 2, 2009.

⁷ PRC Order No. 234, Notice and Order Concerning Priority Mail Contract 14 Negotiated Service Agreement, July 1, 2009 (Order No. 234).

⁸ Chairman’s Information Request No. 1 and Notice of Filing of Question Under Seal, July 1, 2009.

⁹ Response of the United States Postal Service to Chairman’s Information Request No. 1, Question 4, July 1, 2009; Notice of the United States Postal Service of Filing Under Seal of Responses to Chairman’s Information Request No. 1, Questions 1-3, July 8, 2009.

¹⁰ Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Contract 14), July 10, 2009 (Public Representative Comments).

agreement appears to be beneficial to the general public. *Id.* at 4.

The Public Representative believes that “[f]or the sake of the general public, some mention in the text of the Notice, or a copy of the Governors’ Decision (albeit already filed with the Commission), would be helpful.” *Id.* at 4. In support of this contention, he notes that the “general public may only access (absent a qualified [and granted] request to the Commission for access to confidential material) the public materials in this docket posted online.” *Id.*

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, the responses to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 14 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 14 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

¹ Request of the United States Postal Service to Add Priority Mail Contract 14 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, June 29, 2009 (Request).

² Attachment A to the Request.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

risk of losing volume to private companies. Request, Attachment C, 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 14 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 14 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 14 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 14 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 14 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.

Furthermore, the Commission agrees with the Public Representative's suggestion that due to confidentiality concerns, each docket should be self-

contained. In the future, the Postal Service should not cross-reference to other dockets (where documents in that referenced docket are filed under seal) in support of a different docket. This ensures that participants will have complete access to all information upon which the Postal Service proposes to rely.

In conclusion, the Commission approves Priority Mail Contract 14 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 14 (MC2009-30 and CP2009-40) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

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

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

Issued: July 14, 2009.

By the Commission.

Judith M. Grady,
Acting Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

■ 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

Single-Piece Letters/Postcards

Bulk Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail

International

Inbound Single-Piece First-Class Mail

International

Standard Mail (Regular and Nonprofit)

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Not Flat-Machinables (NFM)/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Negotiated Service Agreements

HSBC North America Holdings Inc.

Negotiated Services Agreement

Bookspan Negotiated Service Agreement

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]

Single-Piece Letters/Postcards

[Reserved for Product Description]

Bulk Letters/Postcards

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Parcels

[Reserved for Product Description]

Outbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Inbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]

High Density and Saturation Letters

[Reserved for Product Description]

High Density and Saturation Flats/Parcels

[Reserved for Product Description]

Carrier Route

[Reserved for Product Description]

Letters

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Not Flat-Machinables (NFM)/Parcels

[Reserved for Product Description]

Periodicals

[Reserved for Class Description]

Within County Periodicals

[Reserved for Product Description]	Caller Service	Express Mail & Priority Mail Contract 3
Outside County Periodicals	[Reserved for Product Description]	(MC2009–13 and CP2009–17)
[Reserved for Product Description]	Change-of-Address Credit Card	Express Mail & Priority Mail Contract 4
Package Services	Authentication	(MC2009–17 and CP2009–24)
[Reserved for Class Description]	[Reserved for Product Description]	Express Mail & Priority Mail Contract 5
Single-Piece Parcel Post	Confirm	(MC2009–18 and CP2009–25)
[Reserved for Product Description]	[Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009–
Inbound Surface Parcel Post (at UPU rates)	International Reply Coupon Service	1 and CP2009–2)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 1 (MC2008–8 and
Bound Printed Matter Flats	International Business Reply Mail Service	CP2008–26)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 2 (MC2009–2 and
Bound Printed Matter Parcels	Money Orders	CP2009–3)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 3 (MC2009–4 and
Media Mail/Library Mail	Post Office Box Service	CP2009–5)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 4 (MC2009–5 and
Special Services	Negotiated Service Agreements	CP2009–6)
[Reserved for Class Description]	[Reserved for Class Description]	Priority Mail Contract 5 (MC2009–21 and
Ancillary Services	HSBC North America Holdings Inc.	CP2009–26)
[Reserved for Product Description]	Negotiated Service Agreement	Priority Mail Contract 6 (MC2009–25 and
Address Correction Service	[Reserved for Product Description]	CP2009–30)
[Reserved for Product Description]	Bookspan Negotiated Service Agreement	Priority Mail Contract 7 (MC2009–25 and
Applications and Mailing Permits	[Reserved for Product Description]	CP2009–31)
[Reserved for Product Description]	Bank of America Corporation Negotiated	Priority Mail Contract 8 (MC2009–25 and
Business Reply Mail	Service Agreement	CP2009–32)
[Reserved for Product Description]	The Bradford Group Negotiated Service	Priority Mail Contract 9 (MC2009–25 and
Bulk Parcel Return Service	Agreement	CP2009–33)
[Reserved for Product Description]	Part B—Competitive Products	Priority Mail Contract 10 (MC2009–25 and
Certified Mail	Competitive Product List	CP2009–34)
[Reserved for Product Description]	Express Mail	Priority Mail Contract 11 (MC2009–27 and
Certificate of Mailing	Express Mail	CP2009–37)
[Reserved for Product Description]	Outbound International Expedited Services	Priority Mail Contract 12 (MC2009–28 and
Collect on Delivery	Inbound International Expedited Services	CP2009–38)
[Reserved for Product Description]	Inbound International Expedited Services 1	Priority Mail Contract 13 (MC2009–29 and
Delivery Confirmation	(CP2008–7)	CP2009–39)
[Reserved for Product Description]	Inbound International Expedited Services 2	Priority Mail Contract 14 (MC2009–30 and
Insurance	(MC2009–10 and CP2009–12)	CP2009–40)
[Reserved for Product Description]	Priority Mail	Outbound International
Merchandise Return Service	Priority Mail	Global Direct Contracts (MC2009–9,
[Reserved for Product Description]	Outbound Priority Mail International	CP2009–10, and CP2009–11)
Parcel Airlift (PAL)	Inbound Air Parcel Post	Global Expedited Package Services (GEPS)
[Reserved for Product Description]	Royal Mail Group Inbound Air Parcel Post	Contracts
Registered Mail	Agreement	GEPS 1 (CP2008–5, CP2008–11, CP2008–
[Reserved for Product Description]	Parcel Select	12, and CP2008–13, CP2008–18,
Return Receipt	Parcel Return Service	CP2008–19, CP2008–20, CP2008–21,
[Reserved for Product Description]	International	CP2008–22, CP2008–23, and CP2008–24)
Return Receipt for Merchandise	International Priority Airlift (IPA)	Global Plus Contracts
[Reserved for Product Description]	International Surface Airlift (ISAL)	Global Plus 1 (CP2008–9 and CP2008–10)
Restricted Delivery	International Direct Sacks—M-Bags	Global Plus 2 (MC2008–7, CP2008–16 and
[Reserved for Product Description]	Global Customized Shipping Services	CP2008–17)
Shipper-Paid Forwarding	Inbound Surface Parcel Post (at non-UPU	Inbound International
[Reserved for Product Description]	rates)	Inbound Direct Entry Contracts with
Signature Confirmation	Canada Post—United States Postal Service	Foreign Postal Administrations
[Reserved for Product Description]	Contractual Bilateral Agreement for	(MC2008–6, CP2008–14 and CP2008–15)
Special Handling	Inbound Competitive Services (MC2009–	International Business Reply Service
[Reserved for Product Description]	8 and CP2009–9)	Competitive Contract 1 (MC2009–14 and
Stamped Envelopes	International Money Transfer Service	CP2009–20)
[Reserved for Product Description]	International Ancillary Services	Competitive Product Descriptions
Stamped Cards	Special Services	Express Mail
[Reserved for Product Description]	Premium Forwarding Service	[Reserved for Group Description]
Premium Stamped Stationery	Negotiated Service Agreements	Express Mail
[Reserved for Product Description]	Domestic	[Reserved for Product Description]
Premium Stamped Cards	Express Mail Contract 1 (MC2008–5)	Outbound International Expedited Services
[Reserved for Product Description]	Express Mail Contract 2 (MC2009–3 and	[Reserved for Product Description]
International Ancillary Services	CP2009–4)	Inbound International Expedited Services
[Reserved for Product Description]	Express Mail Contract 3 (MC2009–15 and	[Reserved for Product Description]
International Certificate of Mailing	CP2009–21)	Priority
[Reserved for Product Description]	Express Mail & Priority Mail Contract 1	[Reserved for Product Description]
International Registered Mail	(MC2009–6 and CP2009–7)	Priority Mail
[Reserved for Product Description]	Express Mail & Priority Mail Contract 2	[Reserved for Product Description]
International Return Receipt	(MC2009–12 and CP2009–14)	Outbound Priority Mail International
[Reserved for Product Description]		[Reserved for Product Description]
International Restricted Delivery		Inbound Air Parcel Post
[Reserved for Product Description]		[Reserved for Product Description]
Address List Services		Parcel Select
[Reserved for Product Description]		[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. E9-18243 Filed 7-30-09; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0214; FRL-8939-4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides (NO_x)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking a direct final action to approve revisions to the Texas State Implementation Plan (SIP). We are approving revisions to 30 TAC Chapter 117, “Control of Air Pollution from Nitrogen Compounds,” that the State submitted on March 10, 2009. These revisions amend the Beaumont-Port Arthur (BPA) 8-Hour Ozone Nonattainment Area Major Source rules, the Houston-Galveston-Brazoria (HGB) 8-Hour Ozone Nonattainment Area Major Source rules, and the HGB 8-Hour Ozone Nonattainment Area Minor Source rules. These revisions add

flexibility and consistency to the current stationary reciprocating internal combustion engine and gas turbine monitoring specifications found in Chapter 117 by allowing for an additional option for monitoring nitrogen oxides (NO_x) emissions. These revisions are consistent with the Clean Air Act (CAA). Therefore, EPA is approving these revisions pursuant to section 110 of the CAA.

DATES: This direct final rule will be effective September 29, 2009 without further notice unless EPA receives relevant adverse comments by August 31, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2009-0214, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Please follow the online instructions for submitting comments.
- *EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on “6PD (Multimedia)” and select “Air” before submitting comments.
- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA-R06-OAR-2009-0214. 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.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Dayana Medina, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7241; fax number 214-665-7263; e-mail address medina.dayana@epa.gov.

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

Outline

- I. Background
 - A. What Action Is EPA Taking?
 - B. What Are NO_x?
 - C. What Is Ozone, and Why Do We Regulate It?
 - D. What Is a SIP?
 - E. What Did the State Submit?
 - 1. Beaumont-Port Arthur 8-Hour Ozone Nonattainment Area Major Sources
 - 2. Houston-Galveston-Brazoria 8-Hour Ozone Nonattainment Area Major Sources
 - 3. Houston-Galveston-Brazoria 8-Hour Ozone Nonattainment Area Minor Sources
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Background

A. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP that amend 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds. These revisions amend the BPA 8-Hour Ozone Nonattainment Area Major Source rules, the HGB 8-Hour Ozone Nonattainment Area Major Source rules, and the HGB 8-Hour Ozone Nonattainment Area Minor Source rules, as submitted by the TCEQ to EPA on March 10, 2009. These revisions are substantive in nature, allowing for an additional option for monitoring nitrogen oxides (NO_x) emissions. This will result in additional flexibility and consistency in the current stationary reciprocating internal combustion engine and gas turbine monitoring specifications found in Chapter 117. This additional option is expected to be equally effective as totalizing fuel flow meters in the monitoring of NO_x emissions at major stationary sources in the BPA 8-hour ozone nonattainment area and at both major and minor stationary sources in

the HGB 8-hour ozone nonattainment area. We are approving these revisions in accordance with section 110 of the CAA.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if relevant adverse comments are received. This rule will be effective on September 29, 2009 without further notice unless we receive relevant adverse comment by August 31, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

B. What Are NO_x?

Nitrogen oxides (NO_x) belong to the group of criteria air pollutants. NO_x are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ground-level ozone or smog, and are also major components of acid rain. For more information on NO_x see <http://www.epa.gov/air/urbanair/nox/>.

C. What Is Ozone, and Why Do We Regulate It?

Ozone is a gas composed of three oxygen atoms. Ground-level ozone is generally not emitted directly from a vehicle’s exhaust or an industrial smokestack, but is created by a chemical reaction between NO_x and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. NO_x and VOCs are precursors of ozone.

Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_x and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

D. What Is a SIP?

Section 110 of the CAA requires States to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the State, to ensure that air quality in the State meets the NAAQS. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing State regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each State must submit regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP.

E. What Did the State Submit?

Table A below contains a summary list of sections in 30 TAC Chapter 117 that we are approving into the Texas SIP with this rulemaking action.

TABLE A—30 TAC CHAPTER 117—SECTION NUMBERS AND SECTION DESCRIPTIONS AFFECTED BY THIS RULEMAKING

Section No.	Description
Section 117.140	Continuous Demonstration of Compliance.
Section 117.145	Notification, Recordkeeping, and Reporting Requirements.
Section 117.340	Continuous Demonstration of Compliance.
Section 117.345	Notification, Recordkeeping, and Reporting Requirements.
Section 117.2035	Monitoring and Testing Requirements.
Section 117.2045	Recordkeeping and Reporting Requirements.

For more information, see sections E(1), E(2), and E(3) of this document.

1. Beaumont-Port Arthur 8-Hour Ozone Nonattainment Area Major Sources

The BPA 8-Hour Ozone Nonattainment Area Major Source rules are found in 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Division 1, Beaumont-Port Arthur Ozone Nonattainment Area Major Sources. Revisions to the BPA 8-Hour Ozone Nonattainment Area Major Source rules were adopted by the State on February 11, 2009, and submitted to EPA for approval into the SIP on March 10, 2009. We provided comments to TCEQ concerning the SIP revision in a letter dated September 15, 2008. Our comment letter to TCEQ is a part of the docket for this rulemaking action and available for public inspection.

Section 117.140 (*Continuous Demonstration of Compliance*) currently requires stationary reciprocating internal combustion engines and stationary gas turbines located at major sources of NO_x in the BPA 8-hour ozone nonattainment area to have a fuel flow meter installed. The totalizing fuel flow meter is used to measure the activity rate of the engine, and the activity rate is used as an indirect indication of NO_x emissions from these sources. The revision to section 117.140(a)(2) that we are approving adds new subparagraph (D), providing an output-based monitoring alternative to the totalizing fuel flow meter requirement and thereby adding monitoring flexibility for owners and operators of the affected units. New subparagraph (D) reads as follows: "Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures." The EPA is approving this revision because we consider continuous monitoring of horsepower output and hours of operation to be as effective as monitoring of fuel flow in the indirect indication of NO_x emissions. Both methods monitor the activity rate of the engine, and these measures are used to indirectly determine NO_x emissions. In addition, this revision is consistent with an option currently allowed under section 117.440(a)(2)(D) for engines in

the Dallas-Fort Worth (DFW) 8-hour ozone nonattainment area, which we approved on December 3, 2008 (73 FR 73562).

The revision to section 117.145 (*Notification, Recordkeeping, and Reporting Requirements*) adds a new paragraph (10) to subsection (f), specifying recordkeeping requirements. Existing section 117.145(f) consists of the recordkeeping requirements for units subject to Division 1 (*Beaumont-Port Arthur Ozone Nonattainment Area Major Sources*). Existing subsection (f) directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available upon request by authorized representatives of the executive director of the TCEQ, the EPA, or local air pollution control agencies having jurisdiction. New paragraph (10) in section 117.145(f), concerning the recordkeeping requirements of output-based monitoring data, reads that the records specified in subsection (f) must include "for each stationary reciprocating internal combustion engine and stationary gas turbine for which the owner or operator elects to use the alternative monitoring system allowed under section 117.140(a)(2)(D) of this title, records of the daily average horsepower and total daily hours of operation. Units that are monitored according to section 117.140(a)(2)(D) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection." New paragraph (10) in section 117.145(f) will ensure that recordkeeping requirements are consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision found in new subparagraph (D) of section 117.140(a)(2). The EPA is approving this revision because it will provide for appropriate/accurate recordkeeping and reporting of records for each affected stationary reciprocating internal combustion engine and stationary gas turbine utilizing the output-based alternative monitoring system provision.

2. Houston-Galveston-Brazoria 8-Hour Ozone Nonattainment Area Major Sources

The HGB 8-Hour Ozone Nonattainment Area Major Source rules are found in 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Division 3, Houston-Galveston-Brazoria Ozone

Nonattainment Area Major Sources. Revisions to the HGB 8-Hour Ozone Nonattainment Area Major Source rules were adopted by the State on February 11, 2009 and submitted to EPA for approval into the SIP on March 10, 2009. We provided comments to TCEQ concerning the SIP revision in a letter dated September 15, 2008. Our comment letter to TCEQ is a part of the docket for this rulemaking action and available for public inspection.

Section 117.340 (*Continuous Demonstration of Compliance*) currently requires stationary reciprocating internal combustion engines and stationary gas turbines located at major sources of NO_x in the HGB 8-hour ozone nonattainment area to have a fuel flow meter installed. The totalizing fuel flow meter is used to measure the activity rate of the engine, and the activity rate is used as an indirect indication of NO_x emissions from these sources. The revision to section 117.340(a)(2) that we are approving adds new subparagraph (D), providing an output-based monitoring alternative to the totalizing fuel flow meter requirement and thereby adding monitoring flexibility for owners and operators of the affected units. New subparagraph (D) reads as follows: "Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures." The EPA is approving this revision because we consider continuous monitoring of horsepower output and hours of operation to be as effective as a totalizing fuel flow meter in the indirect indication of NO_x emissions. Both methods monitor the activity rate of the engine, and these measures are used to indirectly determine NO_x emissions. The output-based monitoring alternative provides activity data equivalent with the existing monitoring specifications and can easily be converted into an annual mass emission rate for compliance with the MECT program.¹ In

¹During the comment period, we provided comments to TCEQ concerning the SIP revision in a letter dated September 15, 2008. In the letter, EPA noted that NO_x emitting facilities in the HGB area are subject to the Mass Emissions Cap and Trade (MECT) program. We asked the TCEQ to explain how a source in the HGB area which elects to use the output-based monitoring alternative option would be able to determine its mass emissions to show compliance with the MECT. Our letter and the TCEQ's response can be found in the State's

addition, this revision is consistent with an option currently allowed under section 117.440(a)(2)(D) for engines in the DFW 8-hour ozone nonattainment area, which we approved on December 3, 2008 (73 FR 73562).

The revision to Section 117.345 (*Notification, Recordkeeping, and Reporting Requirements*) adds a new paragraph (12) to subsection (f), specifying recordkeeping requirements. Existing section 117.345(f) consists of the recordkeeping requirements for units subject to Division 3 (*Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources*). Existing subsection (f) directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available upon request by authorized representatives of the executive director of the TCEQ, the EPA, or local air pollution control agencies having jurisdiction. New paragraph (12) in section 117.345(f), which specifies the recordkeeping requirements of output-based monitoring data, reads that the records specified in subsection (f) must include “for each stationary reciprocating internal combustion engine and stationary gas turbine for which the owner or operator elects to use the alternative monitoring system allowed under section 117.340(a)(2)(D) of this title, records of the daily average horsepower and total daily hours of operation. Units that are monitored according to section 117.340(a)(2)(D) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection.” New paragraph (12) in section 117.345(f) will ensure that recordkeeping requirements are consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision found in new subparagraph (D) of section 117.340(a)(2). The EPA is approving this revision because it will provide for appropriate/accurate recordkeeping and reporting of records for each affected stationary reciprocating internal combustion engine and stationary gas turbine utilizing the output-based alternative monitoring system provision.

3. Houston-Galveston-Brazoria 8-Hour Ozone Nonattainment Area Minor Sources

The HGB 8-Hour Ozone Nonattainment Area Minor Source rules are found in 30 TAC Chapter 117,

submittal, which is in the docket for this rulemaking action.

Control of Air Pollution from Nitrogen Compounds; Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas; Division 1, Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources. Revisions to the HGB 8-Hour Ozone Nonattainment Area Minor Source rules were adopted by the State on February 11, 2009 and submitted to EPA for approval into the SIP on March 10, 2009. We provided comments to TCEQ concerning the SIP revision in a letter dated September 15, 2008. Our comment letter to TCEQ is a part of the docket for this rulemaking action and available for public inspection.

Section 117.2035 (*Monitoring and Testing Requirements*) currently requires stationary reciprocating internal combustion engines and stationary gas turbines located at minor stationary sources of NO_x in the HGB 8-hour ozone nonattainment area to have a fuel flow meter installed. The totalizing fuel flow meter is used to measure the activity rate of the engine, which is used as an indirect indication of NO_x emissions from these sources. The revision to section 117.2035(a)(2) that we are approving adds a new subparagraph (G), providing an output-based monitoring alternative for stationary reciprocating internal combustion engines and stationary gas turbines and thereby adding monitoring flexibility for the owners and operators of the affected units. New subparagraph (G) reads as follows: “Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturer’s procedures.” The EPA is approving this revision because we consider continuous monitoring of horsepower output and hours of operation to be as effective as a totalizing fuel flow meter in the indirect indication of NO_x emissions. Both methods monitor the activity rate of the engine, and these measures are used to indirectly determine NO_x emissions. The output-based monitoring alternative provides activity data equivalent with the existing monitoring specifications and can easily be converted into an annual mass emission rate for compliance with the MECT program. In addition, this revision is consistent with an option currently allowed under section 117.440(a)(2)(D) for engines in the DFW 8-hour ozone nonattainment

area, which we approved on December 3, 2008 (73 FR 73562).

Section 117.2045 concerns *Recordkeeping and Reporting Requirements*. The revision to subsection (a) in section 117.2045 adds new paragraph (7), specifying recordkeeping requirements. Existing section 117.2045(a) consists of the recordkeeping requirements for units subject to Division 1 (*Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources*). Existing subsection (a) directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available upon request by authorized representatives of the executive director of the TCEQ, the EPA, or local air pollution control agencies having jurisdiction. New paragraph (7) in section 117.2045(a), which specifies the recordkeeping requirements of output-based monitoring data, reads that the records specified in subsection (a) must include “records of daily average horsepower and total daily hours of operation for each stationary reciprocating internal combustion engine or stationary gas turbine that the owner or operator elects to use the alternative monitoring system allowed under section 117.2035(a)(2)(G) of this title. Units that are monitored according to section 117.2035(a)(2)(G) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection.” New paragraph (7) in section 117.2045(a) ensures that recordkeeping requirements are consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision found in new subparagraph (G) of section 117.2035(a)(2). The EPA is approving this revision because it is necessary to ensure the accurate recordkeeping and reporting for each stationary reciprocating internal combustion engine and stationary gas turbine for which the owner or operator elects to use the output-based alternative monitoring system allowed under section 117.2035(a)(2)(G). Accurate recordkeeping is essential for the proper monitoring and control of NO_x emissions, which in turn assists in the improvement of air quality.

II. Final Action

Today we are approving revisions to 30 TAC Chapter 117 into the Texas SIP. We are approving revisions to the BPA 8-Hour Ozone Nonattainment Area Major Source rules, the HGB 8-Hour Ozone Nonattainment Area Major Source rules, and the HGB 8-Hour

Ozone Nonattainment Area Minor Source rules. We are approving these SIP revisions, which add flexibility and consistency to the current stationary reciprocating internal combustion engine and gas turbine monitoring specifications found in Chapter 117 by allowing for an additional option for monitoring NO_x emissions. We are approving these revisions pursuant to section 110 of the CAA because the revisions provide an additional effective monitoring method that will provide flexibility while maintaining the enforceability of the rules.

V. 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;
- 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); and
- 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 29, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: July 21, 2009.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

■ 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 SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under "Chapter 117—Control of Air Pollution From Nitrogen Compounds" as follows:

- a. Under Subchapter B, Division 1, by revising the entries for Sections 117.140 and 117.145;
- b. Under Subchapter B, Division 3, by revising the entries for Sections 117.340 and 117.345;
- c. Under Subchapter D, Division 1, by revising the entries for Sections 117.2035 and 117.2045.

The revisions read as follows:

§ 52.2270 Identification of plan

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*

Chapter 117—Control of Air Pollution From Nitrogen Compounds

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter B—Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas				
Division 1—Beaumont-Port Arthur Ozone Nonattainment Area Major Sources				
*	*	*	*	*
Section 117.140	Continuous Demonstration of Compliance.	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
Section 117.145	Notification, Recordkeeping, and Reporting Requirements.	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
*	*	*	*	*
Division 3—Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources				
*	*	*	*	*
Section 117.340	Continuous Demonstration of Compliance.	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
Section 117.345	Notification, Recordkeeping, and Reporting Requirements.	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
*	*	*	*	*
Subchapter D—Combustion Control at Minor Sources in Ozone Nonattainment Areas				
Division 1—Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources				
*	*	*	*	*
Section 117.2035	Monitoring and Testing Requirements ...	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
Section 117.2045	Recordkeeping and Reporting Requirements.	2/11/2009	7/31/2009	[Insert <i>FR</i> page number where document begins].
*	*	*	*	*

[FR Doc. E9-18345 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-8937-9]

Autoliv ASP Inc. Facility in Promontory, UT, Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a final rule published on May 9, 2001 which modified the regulations under the Resource, Conservation and Recovery Act (RCRA) to enable the implementation of the Autoliv XL project that was developed under EPA's Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed State and local governments, businesses

and Federal facilities to work with EPA to develop more cost-effective ways of achieving environmental and public health protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments.

DATES: The final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sandra Panetta, Mail Code 1870T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Panetta's telephone number is (202) 566-2184 and her e-mail address is panetta.sandra@epa.gov. Further information on today's action may also be obtained on the Internet at <http://www.epa.gov/projectxl/autoliv/index.htm>.

SUPPLEMENTARY INFORMATION: EPA is withdrawing the final rule which was published on May 9, 2001 (66 FR 23617) in response to Autoliv's request in a letter to the State of Utah dated October 7, 2003 to withdraw the XL project. The

final rule granted Autoliv an exemption under Project XL from the definition of hazardous waste for treatment of waste in an on-site Metals Recovery Furnace (MFR) at the Promontory Facility instead of sending the materials off-site to be treated. Prior to implementation of the project, new criteria were set forth by the Utah Division of Air Quality in the MACT standard for dioxins. The project became economically impracticable given the added cost to upgrade Autoliv's facility to meet the new requirement and the project was not implemented. Discontinuing the XL project will have no environmental impact. All reporting requirements in 40 CFR 261.4(b)(18) are discontinued.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause

for making today's rule final without prior proposal and opportunity for comment because EPA is withdrawing a rule that no longer applies to the company and the company has notified us that the project was not implemented. The removal of the rule has no legal effect. Notice and public procedure would serve no useful purpose and is thus unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. This rule is of particular applicability because it applies to one facility and therefore it falls outside the scope of Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because it is withdrawing a rule that was not implemented and does not impose any new requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant

economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it withdraws a rule that applied to only one facility and does not impose any new requirements. In addition, the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (*see SUPPLEMENTARY INFORMATION* section), therefore it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (*see SUPPLEMENTARY INFORMATION* section), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action withdraws a rule that was not implemented.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule withdraws a rule that was specific to one facility. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule withdraws a rule that was not implemented. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

(62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule applies to one facility and withdraws a rule that was not implemented.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency

parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because it is a rule of particular applicability and does not impose any new requirements.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: July 24, 2009.

Lisa P. Jackson,
Administrator.

■ For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Section 261.4 paragraph (b)(18) is removed.

[FR Doc. E9–18390 Filed 7–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0418; SW–FRL–8933–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by WRB Refining, LLC Company to exclude (or delist) the sludge from its wastewater treatment plant generated by WRB Refining, LLC Company in Borger, Texas from the lists of hazardous wastes. This direct final rule responds to the petition submitted by WRB Refining, LLC Company to delist the thermal desorber residual solids with Hazardous Waste Numbers: F037, F038, K048, K049, K050, and K051.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 5,000 cubic yards per year of the thermal desorber residual solids with Hazardous Waste

Numbers: F037, F038, K048, K049, K050, and K051. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: This direct final rule will be effective September 29, 2009 without further notice, unless EPA receives relevant adverse comments by August 31, 2009. If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0418 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the online instructions for submitting comments.

2. *E-mail:* peace.michelle@epa.gov.

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0418. 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.

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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this rule, EPA-R06-RCRA-2008-0418, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at \$0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 at (214) 665-7324. For technical information concerning this rule, contact Young Moo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD-C), Dallas, Texas 75202, at (214) 665-6788, or kim.youngmoo@epa.gov.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

- A. What action is EPA taking?
- B. Why is EPA approving this action?
- C. What are the limits of this exclusion?
- D. How will WRB Refining, LLC Company manage the waste if it is delisted?
- E. When is the final delisting exclusion effective?
- F. How does this direct final rule affect states?

II. Background

- A. What is a delisting?
 - B. What regulations allow facilities to delist a waste?
 - C. What information must the generator supply?
- III. EPA's Evaluation of the Waste Information and Data
- A. What waste did WRB Refining, LLC Company petition EPA to delist?
 - B. How much waste did WRB Refining, LLC Company propose to delist?
 - C. How did WRB Refining, LLC Company sample and analyze the waste data in this petition?
- IV. Public comments received on the proposed exclusion
- A. Who submitted comments on the proposed rule?
- V. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA taking?

After evaluating the petition, EPA proposed, on May 19, 2008, to exclude the thermal desorber residual solids from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 28768). After the comment period ended for the proposed rule, EPA received a request from WRB Refining to increase the volume of waste that may be disposed of by the facility. The original petition requested that 1,500 cubic yards of the residual solids be delisted. On September 19, 2008, a request was made to increase this volume to 5,000 cubic yards. The risk assessment has been run to insure that the waste does not exceed any delisting limits. The waste meets the criteria for 5,000 cubic yards. Therefore, EPA conditionally grants WRB Refining, LLC Company's delisting petition to have its thermal desorber residual solids managed and disposed as non-hazardous waste. EPA is opening a 30-day comment period to allow comment on the decision to grant the change in waste volume. If there are no adverse comments regarding this change, EPA's decision will become effective in 60 days.

B. Why is EPA approving this action?

WRB Refining, LLC Company's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. WRB Refining, LLC Company does not believe that the petitioned waste meets the criteria for which EPA listed it. WRB Refining, LLC Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4) (hereinafter all

sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from WRB Refining, LLC Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Borger, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will WRB Refining, LLC Company manage the waste if it is delisted?

The sludge from WRB Refining, LLC Company will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This direct final rule will be effective September 29, 2009 without further notice, unless EPA receives relevant adverse comments by August 31, 2009.

F. How does this direct final rule affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from

EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If WRB Refining, LLC Company transports the petitioned waste to or manages the waste in any state with delisting authorization, WRB Refining, LLC Company must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a

hazardous waste. Based on the information supplied by the generator, the Administrator must determine whether factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did WRB Refining, LLC Company petition EPA to delist?

On August 26, 2005, WRB Refining LLC (formerly ConocoPhillips Company) petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, thermal desorber residual solids from processing oil-bearing hazardous secondary materials including F037, F038, K048, K049, K050 and K051 generated by its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to §§ 261.31 and 261.32.

B. How much waste did WRB Refining, LLC Company propose to delist?

Specifically, in its petition, WRB Refining LLC requested that EPA grant a conditional exclusion for 1500 cubic yards per year of thermal desorber residual solids for a period of 10 years. On September 19, 2008, the facility requested that the amount of waste delisted be increased from 1,500 to 5,000 cubic yards of waste a year.

C. How did WRB Refining, LLC Company sample and analyze the waste data in this petition?

To support its petition, WRB Refining, LLC Company submitted:

- Historical information on waste generation and management practices;
- Results of the total constituents list for 40 CFR part 264, Appendix IX volatile and semi-volatile organic compounds and metals. These wastes are also analyzed for cyanide, and sulfide.
- Results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals.
- Results from total oil and grease analyses and multiple pH measurements, and
- Results from a total of ten composite samples including two duplicates, representing 60 discrete thermal desorber residual solid samples.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received on the Proposed Rule during the comment period. However after the comment period closed, the facility requested an increase in the volume of waste excluded by the delisting petition. Based on the application of the DRAS model with the requested increase, the Agency has decided to allow the increase in volume requested by WRB Refining. The sample results provided by the petitioner meet the maximum allowable waste concentrations at 1,500 cubic yards and at the increased volume of 5,000 cubic yards. The delisting limits in the final exclusion will be revised to cover the additional waste volume. The delisting concentration limits are lower than the values originally proposed in the May 19, 2008 proposed rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion.</p> <p>(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements.</p> <p>(iii) Within thirty (30) days after taking its first quarterly sample, WRB Refining LLC will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, WRB Refining LLC can manage and dispose the non-hazardous thermal desorber residual solids according to all applicable solid waste regulations.</p> <p>(B) Annual Testing: (i) If WRB Refining LLC completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), WRB Refining LLC may begin annual testing as follows: WRB Refining LLC must test two representative composite samples of the thermal desorber residual solids for all constituents listed in paragraph (1) at least once per calendar year.</p> <p>(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the WRB Refining thermal desorber residual solids are representative for all constituents listed in paragraph (1).</p> <p>(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.</p> <p>(iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed as non-hazardous waste during the calendar year.</p> <p>(4) Changes in Operating Conditions: If WRB Refining LLC significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.</p> <p>WRB Refining LLC must submit a modification to the petition, complete with full sampling and analysis, for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream, if it wishes to dispose of the material as non-hazardous.</p> <p>(5) Data Submittals: WRB Refining LLC must submit the information described below. If WRB Refining LLC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). WRB Refining LLC must:</p> <p>(A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD-ROM or comparable electronic media.</p> <p>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.</p> <p>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: “Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company’s RCRA and CERCLA obligations premised upon the company’s reliance on the void exclusion.”</p> <p>(6) Re-opener</p>

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	<p>(A) If, anytime after disposal of the delisted waste WRB Refining LLC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, WRB Refining LLC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If WRB Refining LLC fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(7) Notification Requirements WRB Refining LLC must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>
*	*	*
*	*	

[FR Doc. E9-18389 Filed 7-30-09; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 09-04]

RIN 3072-AC36

Inflation Adjustment of Civil Monetary Penalties

July 28, 2009.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts for inflation the maximum amount of each statutory civil penalty subject to Federal Maritime Commission ("Commission")

jurisdiction in accordance with the requirements of that Act.

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

FOR FURTHER INFORMATION CONTACT:

Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Room 900, Washington, DC 20573, (202) 523-5783.

SUPPLEMENTARY INFORMATION: This rule implements the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104-134, Title III, section 31001(s)(1), April 26, 1996, 110 Stat. 1321-373. The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 ("FCPIAA"), Public Law 101-410, Oct. 5, 1990, 104 Stat. 890, 28 U.S.C. 2461 note, to require the head of each executive agency to adopt regulations that adjust the maximum civil monetary penalties ("CMPs") assessable under its agency's jurisdiction at least every four years to ensure that they continue to maintain

their deterrent value.¹ The Commission last adjusted each CMP subject to its jurisdiction effective August 15, 2000. (65 FR 49741).

The inflation adjustment under the FCPIAA is to be determined by increasing the maximum CMP by the cost-of-living, rounded off as set forth in section 5(a) of that Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index ("CPI")² for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law.

¹ Increased CMPs are applicable only to violations occurring after the increase takes effect.

² The CPI defined in the FCPIAA is the U.S. Department of Labor's Consumer Price Index for all-urban consumers ("CPI-U"). 28 U.S.C. 2461 note (3)(3).

One example of an inflation adjustment is as follows. Section 13 of the Shipping Act of 1984 (“1984 Act”), 46 U.S.C. 41107, imposes a maximum \$25,000 penalty for a knowing and willful violation of the 1984 Act which was inflation adjusted in 2000 to \$30,000. First, to calculate the new CMP amounts under the amendment, we determine the appropriate CPI-U for June of the calendar year preceding the adjustment. Given that we are adjusting the CMPs in 2009, we use the CPI-U for June of 2008, which was 218.815. The CPI-U for June of the year the CMP was last adjusted for inflation must also be determined. The Commission last adjusted this CMP in 2000, therefore we use the CPI-U for June of 2000, which was 172.4. Using those figures, we calculate the cost-of-living adjustment by dividing the CPI-U for June of 2008 (218.815) by the CPI-U for June of 2000 (172.4). Our result is 1.2692.

Second, we calculate the raw inflation adjustment (the inflation adjustment prior to rounding) by multiplying the maximum penalty amount by the cost-of-living adjustment. In our example, \$30,000 multiplied by the cost-of-living adjustment of 1.2692 equals \$38,076.85

Third, we use the rounding rules set forth in Section 5(a) of the FCIPAA. In order to round only the increase amount, we subtract the current maximum penalty amount (\$30,000) from the raw maximum inflation adjustment (\$38,319), equaling \$8,076.85. Under Section 5(a), if the penalty is greater than \$10,000 but less than or equal to \$100,000, we round the increase to the nearest multiple of \$5,000. Therefore, the maximum penalty increase in our example is \$10,000.

Finally, the rounded increase is added to the maximum penalty amount last set or adjusted. Here, \$30,000 plus \$10,000 equals a maximum inflation adjustment penalty amount of \$40,000.

A similar calculation was done with respect to each CMP subject to the jurisdiction of the Commission. In compliance with the FCPIAA, as amended, the Commission is hereby amending 46 CFR 506.4(d) of its

regulations which sets forth the newly adjusted maximum penalty amounts.

This final rule has been issued without prior public notice or opportunity for public comment. Under the Administrative Procedures Act (“APA”), 5 U.S.C. 553(b)(B), a final rule may be issued without that process “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, the Commission finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical.

Specifically, the Congress has mandated that the agency periodically make the inflation adjustments and does not allow for the exercise of Commission discretion regarding the substance of the adjustments. The Commission, under the DCIA, is required to make the adjustment to the civil monetary penalties according to a formula specified in the statute. The regulation requires ministerial, technical computations that are noncontroversial. Moreover, the conduct underlying the penalties is already illegal under existing law, and there is no need to provide thirty days prior to the effectiveness of the regulation and amendments to allow for affected parties to correct their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Chairman of the Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely increases the maximum statutory civil monetary penalty for those entities that commit violations after the effective date of this rule. The Commission

recognizes that the rule can impact certain regulated parties that qualify as small entities under the guidelines of the Small Business Administration. However, the assessment of civil penalties affects only those regulated parties that have been found to be in violation of the shipping statutes and/or regulations, which is not likely to be substantial in number. The Commission rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers the ability of a respondent to pay a civil monetary penalty in determining its amount. The size of a company necessarily enters into a determination of its ability to pay. Further, the adjustment of civil penalties deters regulated parties from engaging in harmful activities that violate the shipping statutes and regulations, which serves to protect the public and the system of ocean liner transportation.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

This regulatory action is not a major rule as defined under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

■ Part 506 of title 46 of the Code of Federal Regulations is amended as follows:

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

■ 2. In § 506.4, revise paragraph (d) to read as follows:

§ 506.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code citation	Civil Monetary Penalty description	Current maximum penalty amount	New adjusted maximum penalty amount
46 U.S.C. 42304	Adverse impact on U.S. carriers by foreign shipping practices	\$1,175,000	\$1,500,000
46 U.S.C. 41107(a)	Knowing and Willful violation/Shipping Act of 1984, or Commission regulation or order.	30,000	40,000
46 U.S.C. 41107(b)	Violation of Shipping Act of 1984, Commission regulation or order, not knowing or willful.	6,000	8,000
46 U.S.C. 41108(b)	Operating in foreign commerce after tariff suspension	60,000	75,000

United States Code citation	Civil Monetary Penalty description	Current maximum penalty amount	New adjusted maximum penalty amount
46 U.S.C. 42104	Failure to provide required reports, etc./Merchant Marine Act of 1920	6,000	8,000
46 U.S.C. 42106	Adverse shipping conditions/Merchant Marine Act of 1920	1,175,000	1,500,000
46 U.S.C. 42108	Operating after tariff or service contract suspension/Merchant Marine Act of 1920	60,000	75,000
46 U.S.C. 44102	Failure to establish financial responsibility for non-performance of transportation	6,000	8,000
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	220	300
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	6,000	8,000
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act/makes false claim	220	300
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	6,000	8,000
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	6,000	8,000

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9-18351 Filed 7-30-09; 8:45 am]

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Proposed Rules

Federal Register

Vol. 74, No. 146

Friday, July 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-A142

[NRC-2008-0608]

Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its environmental protection regulations by updating the Commission's 1996 findings on the environmental impacts related to the renewal of a nuclear power plant's operating license. The Commission stated that it intends to review the assessment of impacts and update it on a 10-year cycle, if necessary. The proposed rule redefines the number and scope of the environmental impact issues which must be addressed by the Commission in conjunction with the review of applications for license renewal. As part of this 10-year update, the NRC revised the 1996 *Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants*. Concurrent with the amendments described in this proposed rule, the NRC is publishing for comment the revised GEIS, a revised Regulatory Guide 4.2, Supplement 1, *Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications*, and a revised Environmental Standard Review Plan, *Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal*.

DATES: Comments on this proposed rule, its information collection aspects and its draft regulatory analysis should be submitted by October 14, 2009. Comments on the revised GEIS (NUREG-1437, Revision 1); Regulatory

Guide (RG) 4.2, Supplement 1, Revision 1; and Environmental Standard Review Plan (ESRP), Supplement 1, Revision 1 (NUREG-1555), should be submitted by October 14, 2009.

ADDRESSES: Comments may be submitted by letter or electronic mail and will be made available for public inspection. Because comments will not be edited to remove any identification or contact information, such as name, addresses, telephone number, e-mail address, *etc.*, the NRC cautions against including any personal information in your submissions that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform these persons that the NRC will not edit their comments to remove any identifying or comment information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0608]. Address questions about NRC dockets to Carol Gallagher, (301) 492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be accessed using the following methods:

NRC's Public Document Room (PDR): Publicly available documents may be examined at the NRC's PDR, Public File Area O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this link,

the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If problems are encountered accessing documents in ADAMS, contact the NRC's PDR reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to PDR.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Lising, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-3220; e-mail: Jason.Lising@nrc.gov; or Ms. Jennifer Davis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-3835; e-mail: Jennifer.Davis@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background
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- VI. Section-by-Section Analysis
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I. Introduction

The NRC is proposing to amend Title 10, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the *Code of Federal Regulations* (10 CFR Part 51) by updating Table B-1 in Appendix B to Subpart A of "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," and other related provisions in Part 51 (*e.g.*, § 51.53(c)(3)), which describes the requirements for the license renewal applicant's environmental report. These amendments are based on comments received from the public on NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996), referred to as the "1996 GEIS," and its Addendum 1 (August 1999), a review of plant-specific supplemental environmental impact statements (SEISs) completed

since the GEIS was issued in 1996, lessons learned, and knowledge gained from the preparation of these SEISs. The NRC staff has prepared a draft revision to the 1996 GEIS, referred to as the "revised GEIS," which updates the 1996 GEIS based upon consideration of the above described factors. The revised GEIS provides the technical basis for this proposed rule.

In the 1996 GEIS and final rule (61 FR 28467, June 5, 1996), which promulgated Table B-1 and related provisions in Part 51, the Commission determined that certain environmental impacts associated with the renewal of a nuclear power plant operating license were the same or similar for all plants and as such, could be treated on a generic basis. In this way, repetitive reviews of these environmental impacts could be avoided. The Commission based its generic assessment of certain environmental impacts on the following factors:

(1) License renewal will involve nuclear power plants for which the environmental impacts of operation are well understood as a result of lessons learned and knowledge gained from operating experience and completed license renewals.

(2) Activities associated with license renewal are expected to be within this range of operating experience; thus, environmental impacts can be reasonably predicted.

(3) Changes in the environment around nuclear power plants are gradual and predictable.

The 1996 GEIS improved the efficiency of the license renewal process by (1) providing an evaluation of the types of environmental impacts that may occur from renewing commercial nuclear power plant operating licenses; (2) identifying and assessing impacts that are expected to be generic (*i.e.*, the same or similar) at all nuclear plants or plants with specified plant or site characteristics; and (3) defining the number and scope of environmental impacts that need to be addressed in plant-specific SEISs.

As stated in the 1996 final rule that incorporated the findings of the GEIS in Part 51, the NRC recognized that the assessment of the environmental impact issues might change over time, and that additional issues may be identified for consideration. This proposed rule is the result of the 10-year review conducted by the NRC on the information and findings currently presented in Table B-1 of Appendix B to Part 51.

II. Background

Rulemaking History

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in anticipation of applications for the renewal of nuclear power plant operating licenses. A solicitation for comments on the development of a policy statement was published in the **Federal Register** on November 6, 1986 (51 FR 40334). However, the Commission decided to forgo the development of a policy statement and to proceed directly to rulemaking. An advance notice of proposed rulemaking was published on August 29, 1988 (53 FR 32919). Subsequently, in addition to a decision to proceed with the development of license renewal regulations focused on the protection of health and safety, the NRC decided to amend its environmental protection regulations in Part 51.

On October 13, 1989 (54 FR 41980), the NRC published a notice of its intent to hold a public workshop on license renewal on November 13 and 14, 1989. One of the workshop sessions was devoted to the environmental issues associated with license renewal and the possible merit of amending 10 CFR Part 51. The workshop is summarized in NUREG/CP-0108, "Proceedings of the Public Workshop on Nuclear Power Plant License Renewal" (April 1990). Responses to the public comments submitted after the workshop are summarized in NUREG-1411, "Response to Public Comments Resulting from the Public Workshop on Nuclear Power Plant License Renewal" (July 1990).

On July 23, 1990, the NRC published an advance notice of proposed rulemaking (55 FR 29964) and a notice of intent to prepare a generic environmental impact statement (55 FR 29967). The proposed rule published on September 17, 1991 (56 FR 47016), described the supporting documents that were available and announced a public workshop to be held on November 4 and 5, 1991. The supporting documents for the proposed rule included:

(1) NUREG-1437, "Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (August 1991);

(2) NUREG-1440, "Regulatory Analysis of Proposed Amendments to Regulations Concerning the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses: Draft Report for Comment" (August 1991);

(3) Draft Regulatory Guide DG-4002, Proposed Supplement 1 to Regulatory Guide 4.2, "Guidance for the Preparation of Supplemental Environmental Reports in Support of an Application To Renew a Nuclear Power Station Operating License" (August 1991); and

(4) NUREG-1429, "Environmental Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants: Draft Report for Comment" (August 1991).

After the comment period, the Commission directed the NRC staff to discuss concerns raised by a number of States that certain features of the proposed rule conflicted with State regulatory authority over the need for power and utility economics. To facilitate these discussions, the NRC developed an options paper entitled, "Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper." A **Federal Register** document published on January 18, 1994 (59 FR 2542), announced the scheduling of three regional workshops in February 1994 and the availability of the options paper. A fourth public meeting was held in May 1994 to address proposals that had been submitted after the regional workshops. After consideration of all comments, the NRC issued a supplement to the proposed rule on July 25, 1994 (59 FR 37724), to resolve concerns about the need for power and utility economics.

The NRC published the final rule, "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," on June 5, 1996 (61 FR 28467). The final rule identified and assessed license renewal environmental impact issues for which a generic analysis had been performed and therefore, did not have to be addressed by a licensee in its environmental report or by the NRC staff in its SEIS. Similarly, the final rule identified and assessed those environmental impacts for which a site-specific analysis was required, both by the licensee in its environmental report and by the NRC staff in its SEIS. The final rule, amongst other amendments to Part 51, added Appendix B to Subpart A of Part 51. Appendix B included Table B-1, which summarizes the findings of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," May 1996 (1996 GEIS).

On December 18, 1996 (61 FR 66537), the NRC amended the final rule

published in June 1996 to incorporate minor clarifying and conforming changes and add language omitted from Table B-1. This amendment also analyzed comments received specific to the treatment of low-level waste storage and disposal impacts, the cumulative radiological effects from the uranium fuel cycle, and the effects from the disposal of high-level waste and spent fuel requested in the June 1996 final rule.

On September 3, 1999 (64 FR 48496), the NRC amended the December 1996 final rule to expand the generic findings about the environmental impacts resulting from transportation of fuel and waste to and from a single nuclear power plant. This amendment permitted the NRC to make a generic finding regarding these environmental impacts so that an analysis would not have to be repeated for each license renewal application. The amendment also incorporated rule language consistent with the findings in the 1996 GEIS, which addressed local traffic impacts attributable to continued operations of the nuclear power plant during the license renewal term. The *Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3—“Transportation,” Table 9.1, “Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,” Final Report* (NUREG-1437, Volume 1, Addendum 1), published in August 1999, provides the analysis supporting the amendment.

The current proposed rulemaking began in June 2003 when the NRC issued a notice of intent to update the 1996 GEIS in the **Federal Register** (68 FR 33209). The original comment period began in June 2003 and ended in September 2003. In October 2005 the scoping period was reopened until December 30, 2005 (70 FR 57628).

III. Public Comments

Scoping Process

On June 3, 2003 (68 FR 33209), the NRC solicited public comments which provided the public with an opportunity to participate in the environmental scoping process, as defined in § 51.26. In this notice, the NRC announced the intent to update the 1996 GEIS. The NRC conducted scoping meetings in each of the four NRC regions for the GEIS update. The scoping meetings were held in Atlanta, Georgia (July 8, 2003), Oak Lawn, Illinois (July 10, 2003), Anaheim, California (July 15, 2003), and Boston, Massachusetts (July 17, 2003). The public comment period closed in September 2003 and the

project was inactive for the next two years due to limited staff resources and competing demands. On October 3, 2005 (70 FR 57628), the NRC reopened the public comment period and extended it until December 30, 2005. All comments submitted in response to the 2003 scoping request have been considered in preparing the revised GEIS and are publicly available. No comments were received during the 2005 public comment period.

The official transcripts, written comments, and meeting summaries are available electronically for public inspection in the NRC Public Document Room (PDR) or from the Publicly Available Records (PARS) component of NRC's document system under ADAMS Accession Nos. ML032170942, ML032260339, ML032260715, and ML032170934. All comments and suggestions received orally or in writing during the scoping process were considered.

The NRC has prepared a scoping summary report that is available electronically for public inspection in the NRC PDR or from the PARS component of ADAMS under Accession No. ML073450750. Additionally, the scoping summary is located in Appendix A in the revised GEIS.

IV. Discussion

1996 GEIS

Under the NRC's environmental protection regulations in Part 51, which implements Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), renewal of a nuclear power plant operating license requires the preparation of an environmental impact statement (EIS). To help in the preparation of individual operating license renewal EISs, the NRC prepared the 1996 GEIS.

In 1996 and 1999, the Commission amended its environmental protection regulations in Part 51, to improve the efficiency of the environmental review process for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. These amendments were based on the analyses reported in the 1996 GEIS.

The 1996 GEIS summarizes the findings of a systematic inquiry into the environmental impacts of continued operations and refurbishment activities associated with license renewal. The NRC identified 92 environmental impact issues. Of the 92 environmental issues analyzed, 69 issues were resolved generically (*i.e.*, Category 1), 21 would require a further plant-specific analysis (*i.e.*, Category 2), and 2 would require a site-specific assessment by the NRC

prior to issuance of a renewed license (*i.e.*, unclassified). As part of a license renewal application, an applicant submits an environmental report to the NRC, and the NRC prepares a plant-specific SEIS to the 1996 GEIS.

The GEIS assigns one of three impact levels (small, moderate, or large) to a given environmental resource (*e.g.*, air, water, or soil). A small impact means that the environmental effects are not detectable, or are so minor that they will neither destabilize, nor noticeably alter, any important attribute of the resource. A moderate impact means that the environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource. A large impact means that the environmental effects are clearly noticeable, and are sufficient to destabilize important attributes of the resource.

Table B-1 in Appendix B to Part 51, summarizes the findings of the analyses conducted for the 1996 GEIS. Issues and processes common to all nuclear power plants having generic (*i.e.*, the same or similar) environmental impacts are considered Category 1 issues. Category 2 issues are those issues that cannot be generically dispositioned and would require a plant-specific analysis to determine the level of impact.

The 1996 GEIS has been effective in focusing NRC resources on important environmental issues and increased the efficiency of the environmental review process. Currently, 51 nuclear units at 29 plant sites have received renewed licenses.

Revised GEIS

The GEIS revision evaluates the environmental issues and findings of the 1996 GEIS. Lessons learned and knowledge gained during previous license renewal reviews provided a significant source of new information for this assessment. Public comments on previous plant-specific license renewal reviews were analyzed to assess the existing environmental issues and identify new ones. The purpose of this evaluation was to determine if the findings presented in the 1996 GEIS remain valid. In doing so, the NRC considered the need to modify, add to, or delete any of the 92 environmental issues in the 1996 GEIS. After this evaluation, the staff carried forward 78 impact issues for detailed consideration in this GEIS revision. Fifty-eight of these issues were determined to be Category 1 and would not require additional plant-specific analysis. Of the remaining twenty issues, nineteen were determined to be Category 2 and one remained unclassified. No

environmental issues identified in Table B-1 and in the 1996 GEIS were eliminated, but several were combined or regrouped according to similarities.

Environmental issues in the revised GEIS are arranged by resource area. This perspective is a change from the 1996 GEIS in which environmental issues were arranged by power plant systems (e.g., cooling systems, transmission lines) and activities (e.g., refurbishment). The structure of the revised GEIS adopts the NRC's standard format for EISs as established in Part 51, Appendix A to Subpart A of Part 51—"Format for Presentation of Material in Environmental Impact Statements." The environmental impacts of license renewal activities, including plant operations and refurbishment along with replacement power alternatives, are addressed in each resource area. The revised GEIS summarizes environmental impact issues under the following resource areas: (1) Land use and visual resources; (2) meteorology, air quality, and noise; (3) geology, seismology, and soils; (4) hydrology (surface water and groundwater); (5) ecology (terrestrial ecology, aquatic ecology, threatened, endangered, and protected species and essential fish habitat); (6) historic and cultural resources; (7) socioeconomic; (8) human health (radiological and nonradiological hazards); (9) environmental justice; and (10) waste management and pollution prevention. The proposed rule revises Table B-1 in Appendix B to Subpart A of Part 51 to follow the organizational format of the revised GEIS.

Environmental impacts of license renewal and the resources that could be affected were identified in the revised GEIS. The general analytical approach for identifying environmental impacts was to (1) describe the nuclear power plant activity that could affect the resource, (2) identify the resource that is affected, (3) evaluate past license renewal reviews and other available information, (4) assess the nature and magnitude of the environmental impact on the affected resource, (5) characterize the significance of the effects, (6) determine whether the results of the analysis apply to all nuclear power plants (whether the impact issue is Category 1 or Category 2), and (7) consider additional mitigation measures for adverse impacts. Identification of environmental impacts (or issues) was conducted in an iterative rather than a stepwise manner. For example, after information was collected and levels of significance were reviewed, impacts were reexamined to determine if any should be removed, added, recombined, or divided.

The Commission would like to emphasize that in complying with the NRC's environmental regulations under § 51.53(c)(3)(iv) applicants are required to provide any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware, even on Category 1 issues. The proposed amendments would not change this requirement.

The revised GEIS retains the 1996 GEIS definitions of a Category 1 and Category 2 issue. The revised GEIS discusses four major types of changes:

(1) *New Category 1 Issue*: These issues would include Category 1 issues not previously listed in the 1996 GEIS or multiple Category 1 issues from the 1996 GEIS that have been combined into a Category 1 issue in the revised GEIS. The applicant does not need to assess this issue in its environmental report. Under § 51.53(c)(3)(iv), however, the applicant is responsible for reporting in the environmental report any "new and significant information" of which the applicant is aware. If the applicant is not aware of any new and significant information that would change the conclusion in the revised GEIS, the applicant would be required to state this determination in the environmental report. The NRC has addressed the environmental impacts of these Category 1 issues generically for all plants in the revised GEIS.

(2) *New Category 2 Issue*: These issues would include Category 2 issues not previously listed in the 1996 GEIS or multiple Category 2 issues from the 1996 GEIS that have been combined into a Category 2 issue in the revised GEIS. For each new Category 2 issue, the applicant would have to conduct an assessment of the potential environmental impacts related to that issue and include it in the environmental report. The assessment must include a discussion of (i) the possible actions to mitigate any adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

(3) *Existing Issue Category Change from Category 2 to Category 1*: These would include issues that were considered as Category 2 in the 1996 GEIS and would now be considered as Category 1 in the revised GEIS. An applicant would no longer be required to conduct an assessment on the environmental impacts associated with these issues. Consistent with the requirements of § 51.53(c)(3)(iv), an applicant would only be required to describe in its environmental report any "new and significant information" of which it is aware.

(4) *Existing Issue Category Change from Category 1 to Category 2*: These would include issues that were considered as Category 1 in the 1996 GEIS and would now be considered as Category 2 in the revised GEIS. An applicant that previously did not have to provide an analysis on the environmental impacts associated with these issues would now be required to conduct an assessment of the environmental impacts and include it in the environmental report.

V. Proposed Actions and Basis for Changes to Table B-1

The revised GEIS which is concurrently issued for public comment and publicly available (ADAMS Accession No. ML090220654) provides a summary change table comparing the ninety-two environmental issues in the 1996 GEIS with the seventy-eight environmental issues in the revised GEIS. The proposed rule amends Table B-1 in Appendix B to Subpart A, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," to reflect the changes made in the revised GEIS. The changes to Table B-1 are described below:

(i) Land Use

(1) *Onsite Land Use*—"Onsite land use" remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B-1 for this issue.

(2) *Offsite Land Use*—The proposed rule language combines two Category 2 issues, "Offsite land use (refurbishment)" and "Offsite land use (license renewal term)" reclassifies this combined issue as a Category 1 issue, and names it, "Offsite land use." The finding column of the current Table B-1 for "Offsite land use (refurbishment)" indicates that impacts may be of moderate significance at plants in low population areas. The finding column of the current Table B-1 for "Offsite land use (license renewal term)" indicates that significant changes in land use may be associated with population and tax revenue changes resulting from license renewal. As described in the 1996 GEIS, environmental impacts are considered to be small if refurbishment activities were to occur at plants located in high population areas and if population and tax revenues would not change.

Significant impacts on offsite land use are not anticipated. Previous plant-specific license renewal reviews conducted by the NRC have shown no requirement for a substantial number of additional workers during the license renewal term and that refurbishment

activities, such as steam generator and vessel head replacement, have not required the large numbers of workers and the months of time that was conservatively estimated in the 1996 GEIS. These reviews support a finding that offsite land use impacts during the license renewal term would be small for all nuclear power plants.

(3) *Offsite Land Use in Transmission Line Rights-of-Way (ROWs)*—The proposed rule renames “Powerline right of way” as “Offsite land use in transmission line rights-of-way (ROWs);” it remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(ii) *Visual Resources*

(4) *Aesthetic Impacts*—The proposed rule language combines three Category 1 issues, “Aesthetic impacts (refurbishment),” “aesthetic impacts (license renewal term),” and “aesthetic impacts of transmission lines (license renewal term)” into one new Category 1 issue, “Aesthetic impacts.” The 1996 GEIS concluded that renewal of operating licenses and the refurbishment activities would have no significant aesthetic impact during the license renewal term. Impacts are considered to be small if the visual appearance of plant and transmission line structures would not change. Previous license renewal reviews conducted by the NRC show that the appearance of nuclear plants and transmission line structures do not change significantly over time or because of refurbishment activities. Therefore, aesthetic impacts are not anticipated and the combined issue remains a Category 1 issue.

These three issues are combined into one Category 1 issue as they are similar and combining them would streamline the license renewal process.

(iii) *Air Quality*

(5) *Air Quality (Non-Attainment and Maintenance Areas)*—The proposed language renames “Air quality during refurbishment (non-attainment and maintenance areas)” as “Air quality (non-attainment and maintenance areas)” and expands it to include emissions from testing emergency diesel generators, boilers used for facility heating, and particulate emissions from cooling towers. The issue remains a Category 2 issue.

(6) *Air Quality Effects of Transmission Lines*—“Air quality effects of transmission lines” remains a Category 1 issue. There are no changes for this issue.

(iv) *Noise*

(7) *Noise Impacts*—The proposed rule renames “Noise” as “Noise impacts”; it remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(v) *Geology and Soils*

(8) *Impacts of Nuclear Plants on Geology and Soils*—The proposed language adds a new Category 1 issue, “Impacts of nuclear plants on geology and soils,” to the impacts of continued power plant operations and refurbishment activities on geology and soils (*i.e.*, prime farmland) and to determine if there is new or significant information in regard to regional or local seismology. New seismological conditions are limited to the identification of previously unknown geologic faults and are expected to be rare. Geology and soil conditions at all nuclear power plants and associated transmission lines have been well established during the current licensing term and are expected to remain unchanged during the 20-year license renewal term. The impact of continued operations and refurbishment activities during the license renewal term on geologic and soil resources would consist of soil disturbance for construction or renovation projects. Implementing best management practices would reduce soil erosion and subsequent impacts on surface water quality. Best management practices include: (1) Minimizing the amount of disturbed land, (2) stockpiling topsoil before ground disturbance, (3) mulching and seeding in disturbed areas, (4) covering loose materials with geotextiles, (5) using silt fences to reduce sediment loading to surface water, (6) using check dams to minimize the erosive power of drainages, and (7) installing proper culvert outlets to direct flows in streams or drainages.

No information in any plant-specific SEIS prepared to date, or in the referenced documents, has identified these impacts as being significant.

(vi) *Surface Water*

(9) *Surface-Water Use and Quality*—The proposed rule combines two Category 1 issues, “Impacts of refurbishment on surface water quality” and “Impacts of refurbishment on surface water use,” and names the combined issue “Surface-water use and quality.” These two issues were combined because the impacts of refurbishment on both surface water use and quality are negligible and the effects are closely related.

The NRC expects licensees to use best management practices during the license renewal term for both continuing operations and refurbishment activities. Use of best management practices will minimize soil erosion. In addition, implementation of spill prevention and control plans will reduce the likelihood of any liquid chemical spills. If refurbishment activities take place during a reactor shutdown, the overall water use by the facility will be reduced. Based on this conclusion, the impact on surface water use and quality during a license renewal term will continue to be small for all plants. The combined issue remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(10) *Altered Current Patterns at Intake and Discharge Structures*, (11) *Altered Salinity Gradients*, (12) *Altered Thermal Stratification of Lakes*, and (13) *Scouring Caused by Discharged Cooling Water*—“Altered current patterns at intake and discharge structures,” “Altered salinity gradients,” “Altered thermal stratification of lakes,” and “Scouring caused by discharged cooling water” remain Category 1 issues. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for each of these issues.

(14) *Discharge of Metals in Cooling System Effluent*—The proposed language renames “Discharge of other metals in waste water” as “Discharge of metals in cooling system effluent”; it remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(15) *Discharge of Biocides, Sanitary Wastes, and Minor Chemical Spills*—The proposed rule combines two Category 1 issues, “Discharge of chlorine or other biocides” and “Discharge of sanitary wastes and minor chemical spills” as “Discharge of biocides, sanitary wastes, and minor chemical spills.” The combined issue remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(16) *Water Use Conflicts (plants with once-through cooling systems)*—“Water use conflicts (plants with once-through cooling systems)” remains a Category 1 issue. The proposed rule makes a minor clarifying change to the finding column of Table B–1 for this issue.

(17) *Water Use Conflicts (plants with cooling ponds or cooling towers using make-up water from a river with low flow)*—“Water use conflicts (plants with cooling ponds or cooling towers using

make-up water from a river with low flow)” remains a Category 2 issue. The proposed rule makes minor clarifying changes to the finding column of Table B-1 for this issue.

(18) *Effects of Dredging on Water Quality*—The proposed rule adds a new Category 1 issue, “Effects of dredging on water quality,” that evaluates the impacts of dredging to maintain intake and discharge structures at nuclear power plant facilities. The impact of dredging on surface water quality was not considered in the 1996 GEIS and is not listed in the current Table B-1. Most plants have intake and discharge structures that must be maintained by periodic dredging of sediment accumulated in or on the structures.

This dredging, while temporarily increasing turbidity in the source water body, has been shown to have little effect on water quality. In addition to maintaining intake and discharge structures, dredging is often done to keep barge slips and channels open to service the plant. Dredged material is most often disposed on property owned by the applicant and usually contains no hazardous materials. Dredging is performed under a permit issued by the U.S. Army Corps of Engineers and consequently, each dredging action would be subject to a site-specific environmental review conducted by the Corps.

Temporary impacts of dredging are measurable in general water quality terms, but the impacts have been shown to be small.

(19) *Temperature Effects on Sediment Transport Capacity*—“Temperature effects on sediment transport capacity” remains a Category 1 issue. There are no changes to this issue.

(vii) *Groundwater*

(20) *Groundwater Use and Quality*—The proposed rule renames “Impacts of refurbishment on groundwater use and quality” as “Groundwater use and quality.” The issue remains a Category 1 issue. The NRC has concluded that use of best management practices would address any wastes or spills that could affect groundwater quality. The proposed rule updates the finding column of Table B-1 for this issue to include a statement identifying best management practices and makes other minor clarifying changes to the finding column.

(21) *Groundwater Use Conflicts (Plants that Withdraw Less Than 100 Gallons per Minute [gpm])*—The proposed rule renames “Ground-water use conflicts (potable and service water; plants that use <100 gpm)” as “Groundwater use conflicts (plants that

withdraw less than 100 gallons per minute [gpm]).” The issue remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B-1 for this issue.

(22) *Groundwater use conflicts (plants that withdraw more than 100 gpm including those using Ranney Wells)*—The proposed rule combines two Category 2 issues, “Groundwater use conflicts (potable and service water, and dewatering; plants that use >100 gpm)” and “Ground-water use conflicts (Ranney wells)” and names the combined issue “Groundwater use conflicts (plants that withdraw more than 100 gpm including those using Ranney wells).” The combined issue remains a Category 2 issue. Because Ranney wells produce significantly more than 100 gpm, the Ranney wells issue was combined with the general issue of groundwater use conflicts for plants using more than 100 gpm of groundwater. The proposed rule makes clarifying changes to the finding column of Table B-1 for this combined issue.

(23) *Groundwater Use Conflicts (Plants With Closed-Cycle Cooling Systems that Withdraw Makeup Water from a River)*—The proposed rule renames “Ground-water use conflicts (plants using cooling tower withdrawing make-up water from a small river” as “Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).” The combined issue remains a Category 2 issue. The proposed rule makes minor clarifying changes to the finding column of Table B-1 for this issue.

(24) *Groundwater Quality Degradation Resulting from Water Withdrawals*—The proposed rule combines two Category 1 issues, “Ground-water quality degradation (Ranney wells)” and “Ground-water quality degradation (saltwater intrusion)” and names the combined issue “Groundwater quality degradation resulting from water withdrawals.” The combined issue remains a Category 1 issue. The two issues were combined as they both consider the possibility of groundwater quality becoming degraded as a result of the plant drawing water of potentially lower quality into the aquifer. The proposed rule makes clarifying changes to the finding column of Table B-1 for this combined issue.

(25) *Groundwater Quality Degradation (Plants with Cooling Ponds in Salt Marshes)* and (26) *Groundwater Quality Degradation (Plants with Cooling Ponds at Inland Sites)*—“Groundwater quality degradation (plants with cooling ponds in salt marshes)” and “Groundwater quality

degradation (plants with cooling ponds at inland sites)” remain, respectively, Category 1 and Category 2 issues. The proposed rule makes clarifying changes to the finding column of Table B-1 for each of these issues.

(27) *Groundwater and Soil Contamination*—The proposed rule adds a new Category 2 issue, “Groundwater and Soil Contamination,” to evaluate the impacts of the industrial use of solvents, hydrocarbons, heavy metals, or other chemicals on groundwater, soil, and subsoil at nuclear power plant sites during the license renewal term. Review of license renewal applications has shown the existence of these non-radionuclide contaminants at some plants. This contamination is usually regulated by State environmental regulatory authorities or the Environmental Protection Agency (EPA). In addition, this new Category 2 issue has been added because each specific site has its own program for handling waste and hazardous materials, and no generic evaluation would apply to all nuclear power plants.

Industrial practices at all plants have the potential to contaminate site groundwater and soil through the use and spillage of solvents, hydrocarbons, heavy metals, or other chemicals, especially on sites with unlined wastewater lagoons and storm water lagoons. Any contamination by these substances is subject to characterization and clean-up by State and EPA regulated remediation and monitoring programs.

(28) *Radionuclides Released to Groundwater*—The proposed rule adds a new Category 2 issue, “Radionuclides released to groundwater,” to evaluate the potential impact of discharges of radionuclides, such as tritium, from plant systems into groundwater. The issue is relevant to license renewal because virtually all commercial nuclear power plants routinely release radioactive gaseous and liquid materials into the environment. A September 2006 NRC report, “Liquid Radioactive Release Lessons Learned Task Force Report,” documented instances of inadvertent releases of radionuclides into groundwater from nuclear power plants (ADAMS Accession No. ML062650312).

NRC regulations in Parts 20 and 50 limit the amount of radioactivity released into the environment to be “As Low As is Reasonably Achievable” (ALARA) to ensure that the impact on public health is very low. Most of the inadvertent liquid release events involved tritium, which is a radioactive isotope of hydrogen. However, other

radioactive isotopes have been inadvertently released into the environment. An example is leakage from spent fuel pools, where leakage from the stored fuel would allow fission products to be released into the pool water.

The most significant conclusion of the NRC report regards public health impacts. Although there have been a number of events where radionuclides were released inadvertently into groundwater, based on the data available, the NRC did not identify any instances where the health of the public was impacted. The NRC did identify that under the existing regulatory requirements, the potential exists for inadvertent radionuclide releases to migrate offsite into groundwater.

Another factor in adding this new Category 2 issue is the level of public concern associated with such inadvertent releases of radionuclides into groundwater. The NRC concludes that the impact of radionuclide releases to groundwater quality could be small or moderate, depending on the occurrence and frequency of leaks and the ability to respond to leaks in a timely fashion.

(viii) *Terrestrial Resources*

(29) *Impacts of Continued Plant Operations on Terrestrial Ecosystems*—The proposed rule renames “Refurbishment impacts” as “Impacts of continued plant operations on terrestrial ecosystems;” it remains a Category 2 issue. The analysis in the revised GEIS expands the scope of this issue to include the environmental impacts associated with continued plant operations and maintenance activities in addition to refurbishment. The proposed rule revises the finding column of Table B–1 for this issue accordingly.

(30) *Exposure of Terrestrial Organisms to Radionuclides*—The proposed rule adds a new Category 1 issue, “Exposure of terrestrial organisms to radionuclides,” to evaluate the issue of the potential impact of radionuclides on terrestrial organisms resulting from normal operations of a nuclear power plant during the license renewal term. This issue was not evaluated in the 1996 GEIS. However, the impact of radionuclides on terrestrial organisms has been raised by members of the public as well as Federal and State agencies during previous license renewal reviews.

The revised GEIS evaluates the potential impact of radionuclides on terrestrial biota at nuclear power plants from continued operations during the license renewal term. Site-specific

radionuclide concentrations in water, sediment, and soils were obtained from Radiological Environmental Monitoring Operating Reports from 15 nuclear power plants. These 15 plants were selected to represent sites with a range of radionuclide concentrations in the media, including plants with high annual worker dose exposure values for both boiling water reactors and pressurized water reactors. The calculated radiation dose rates to terrestrial biota were compared against radiation-acceptable radiation safety guidelines issued by the U.S. Department of Energy, the International Atomic Energy Agency, the National Council of Radiation Protection and Measurement, and the International Commission on Radiological Protection. The NRC concludes that the impact of radionuclides on terrestrial biota from past and current operations would be small for all nuclear power plants and would not be expected to change appreciably during the license renewal term.

(31) *Cooling System Impacts on Terrestrial Resources (Plants with Once-Through Cooling Systems or Cooling Ponds)*—The proposed rule renames “Cooling pond impacts on terrestrial resources” as “Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).” This issue remains a Category 1 issue. The analysis in the revised GEIS expands the scope of this issue to include plants with once-through cooling systems. This analysis concludes that the impacts on terrestrial resources from once-through cooling systems, as well as from cooling ponds, is of small significance at all plants. The proposed rule revises the finding column of Table B–1 for this issue accordingly.

(32) *Cooling Tower Impacts on Vegetation (Plants with Cooling Towers)*—The proposed rule combines two Category 1 issues, “Cooling tower impacts on crops and ornamental vegetation” and “Cooling tower impacts on native plants” and names the combined issue “Cooling tower impacts on vegetation (plants with cooling towers).” The combined issue remains a Category 1 issue. The two issues were combined to conform to the resource-based approach used in the revised GEIS and to simplify and streamline the analysis. With the recent trend of replacing lawns with native vegetation, some ornamental plants and crops are native plants, and the original separation into two issues is unnecessary and cumbersome. The proposed rule makes clarifying changes

to the finding column of Table B–1 for this combined issue.

(33) *Bird Collisions with Cooling Towers and Transmission Lines*—The proposed rule combines two Category 1 issues, “Bird collisions with cooling towers” and “Bird collision with power lines” and names the combined issue “Bird collisions with cooling towers and transmission lines.” The combined issue remains a Category 1 issue. The two issues were combined to conform to the resource-based approach used in the revised GEIS and to simplify and streamline the analysis. The proposed rule makes clarifying changes to the finding column of Table B–1 for this combined issue.

(34) *Water Use Conflicts with Terrestrial Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River with Low Flow)*—The proposed rule adds a new Category 2 issue, “Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using make-up water from a river with low flow)” to evaluate water use conflict impacts with terrestrial resources in riparian communities. Such impacts could occur when water that supports these resources is diminished either because of decreased availability due to droughts; increased water demand for agricultural, municipal, or industrial usage; or a combination of these factors. The potential range of impact levels at plants, subject to license renewal, with cooling ponds or cooling towers using makeup water from a small river with low flow cannot be generically determined at this time.

(35) *Transmission Line ROW Management Impacts on Terrestrial Resources*—The proposed rule combines two Category 1 issues, “Power line right-of-way management (cutting and herbicide application)” and “Floodplains and wetland on power line right-of-way” and names the combined issue “Transmission line ROW management impacts on terrestrial resources.” The combined issue remains a Category 1 issue. The two issues were combined to simplify and streamline the analysis.

The scope of the evaluation of transmission lines in the revised GEIS is reduced from that of the 1996 GEIS—only those transmission lines currently needed to connect the nuclear power plants to the regional electrical distribution grid are considered within the scope of license renewal. Thus, the number of and length of transmission lines being evaluated are greatly reduced. The revised GEIS analysis indicates that proper management of transmission line ROW areas does not

have significant adverse impacts on current wildlife populations, and ROW management can provide valuable wildlife habitats. The proposed rule makes clarifying changes to the finding column of Table B-1 for this combined issue.

(36) *Electromagnetic Fields on Flora and Fauna (Plants, Agricultural Crops, Honeybees, Wildlife, Livestock)*—“Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock)” remains a Category 1 issue. There are no changes to this issue.

(ix) *Aquatic Resources*

(37) *Impingement and Entrainment of Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—The proposed rule combines two Category 2 issues, “Entrainment of fish and shellfish in early life stages (for plants with once-through cooling and cooling pond heat dissipation systems)” and “Impingement of fish and shellfish (for plants with once-through cooling and cooling pond heat dissipation systems)” and one Category 1 issue, “Entrainment of phytoplankton and zooplankton (for all plants)” and names the combined issue “Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).” The combined issue is a Category 2 issue.

For the revised GEIS, these issues were combined to simplify the review process in keeping with the resource-based approach and to allow for a more complete analysis of the environmental impact. Nuclear power plants typically conduct separate sampling programs to estimate the numbers of organisms entrained and impinged, which explains the original separation of these issues. However, it is the combined effects of entrainment and impingement that reflect the total impact of the cooling system intake on the resource. Environmental conditions are different to each nuclear plant site and impacts cannot be determined generically. The proposed rule revises the finding column of Table B-1 for this issue accordingly.

(38) *Impingement and Entrainment of Aquatic Organisms (Plants with Cooling Towers)*—The proposed rule combines three Category 1 issues, “Entrainment of fish and shellfish in early life stages (for plants with cooling tower-based heat dissipation systems),” “Impingement of fish and shellfish (for plants with cooling tower-based heat dissipation systems),” and “Entrainment of phytoplankton and zooplankton (for all plants)” and names the combined issue “Impingement and entrainment of

aquatic organisms (plants with cooling towers).” The combined issue remains a Category 1 issue. The three issues are combined given their similar nature and to simplify and streamline the review process. The proposed rule revises the finding column of Table B-1 for this issue accordingly.

(39) *Thermal Impacts on Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—The proposed rule combines four Category 1 issues, “Cold shock (for all plants),” “Thermal plume barrier to migrating fish (for all plants),” “Distribution of aquatic organisms (for all plants),” and “Premature emergence of aquatic insects (for all plants),” and one Category 2 issue “Heat shock (for plants with once-through and cooling pond heat dissipation systems)” and names the combined issue “Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds).” The combined issue is a Category 2 issue.

The five issues are combined given their similar nature and to simplify and streamline the review process. With the exception of heat shock, previous license renewal reviews conducted by the NRC have shown that the thermal effects of once-through cooling and cooling pond systems have not been a problem at operating nuclear power plants and would not change during the license renewal term, so future impacts are not anticipated. However, it is difficult to differentiate the various thermal effects of once-through cooling and cooling pond systems in the field. Different populations may react differently due to changes in water temperature. For example, if a resident population avoided a heated effluent, the 1996 GEIS would have identified this issue as “distribution of aquatic organisms;” however, had this population been migrating, the issue would have been considered under “thermal plume barrier to migrating fish.” If individuals had remained in the heated effluent too long, the issue would have been considered under “heat shock;” or, if the individuals then left the warm water, the issue would have been considered under “cold shock.” Using the resource-based approach in the revised GEIS, each of these issues would be considered a thermal impact from once-through and cooling pond systems. Environmental conditions are different at each nuclear plant site and impacts cannot be determined generically. The proposed rule revises the finding column of Table B-1 for this issue accordingly.

(40) *Thermal Impacts on Aquatic Organisms (Plants with Cooling*

Towers)—The proposed rule combines five Category 1 issues, “Cold shock (for all plants),” “Thermal plume barrier to migrating fish (for all plants),” “Distribution of aquatic organisms (for all plants),” “Premature emergence of aquatic insects (for all plants),” and “Heat shock (for plants with cooling-tower-based heat dissipation systems)” and names the combined issue “Thermal impacts on aquatic organisms (plants with cooling towers).” The combined issue is a Category 1 issue.

The five issues are combined given their similar nature and to simplify and streamline the review process. The proposed rule revises the finding column of Table B-1 for this issue accordingly.

(41) *Effects of Cooling Water Discharge on Dissolved Oxygen, Gas Supersaturation, and Eutrophication*—The proposed rule combines three Category 1 issues, “Eutrophication,” “Gas supersaturation (gas bubble disease),” and “Low dissolved oxygen in the discharge,” and names the combined issue “Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.” The combined issue is a Category 1 issue.

The three issues are combined given their similar nature and to simplify and streamline the review process. The proposed rule revises the finding column of Table B-1 for this issue accordingly.

(42) *Effects of Non-Radiological Contaminants on Aquatic Organisms*—The proposed rule renames “Accumulation of contaminants in sediments or biota” as “Effects of non-radiological contaminants on aquatic organisms;” it remains a Category 1 issue. The proposed rule makes clarifying changes to the finding column of Table B-1 for this issue.

(43) *Exposure of Aquatic Organisms to Radionuclides*—The proposed rule adds a new Category 1 issue, “Exposure of Aquatic Organisms to Radionuclides,” to evaluate the potential impact of radionuclide discharges upon aquatic organisms. This issue has been raised by members of the public as well as Federal and State agencies during the license renewal process for various plants.

The revised GEIS evaluates the potential impact of radionuclides on aquatic organisms at nuclear power plants from continued operations during the license renewal term. A radiological assessment was performed using effluent release data from 15 NRC-licensed nuclear power plants chosen based on having a range of radionuclide concentrations in environmental media.

Site-specific radionuclide concentrations in water and sediments, as reported in the plant's radioactive effluent and environmental monitoring reports, were used in the calculations. The data is representative of boiling water reactors and pressurized water reactors. The calculated radiation dose rates to aquatic biota were compared against radiation acceptable radiation safety guidelines issued by the U.S. Department of Energy, the International Atomic Energy Agency, the National Council of Radiation Protection and Measurement, and the International Commission on Radiological Protection. The NRC concludes that the impact of radionuclides on aquatic biota from past and current operations would be small for all nuclear power plants, and would not be expected to change appreciably during the license renewal term.

(44) *Effects of Dredging on Aquatic Organisms*—The proposed rule adds a new Category 1 issue, “Effects of dredging on aquatic organisms,” to evaluate the impacts of dredging on aquatic organisms. Licensees conduct dredging to maintain intake and discharge structures at nuclear power plant facilities and in some cases, to maintain barge slips. Dredging may disturb or remove benthic communities. In general, maintenance dredging for nuclear power plant operations would occur infrequently, would be of relatively short duration, and would affect relatively small areas. Dredging is performed under a permit issued by the U.S. Army Corps of Engineers and consequently, each dredging action would be subject to a site-specific environmental review conducted by the Corps.

(45) *Water Use Conflicts with Aquatic Resources (Plants with Cooling Ponds or Cooling Towers using Make-Up Water from a River with Low Flow)*—The proposed rule adds a new Category 2 issue, “Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using make-up water from a river with low flow)” to evaluate water use conflict impacts with aquatic resources in instream communities. Such impacts could occur when water that supports these resources is diminished either because of decreased availability due to droughts; increased water demand for agricultural, municipal, or industrial usage; or a combination of these factors. The potential range of impact levels at plants, subject to license renewal, with cooling ponds or cooling towers using makeup water from a small river with low flow cannot be generically determined at this time.

(46) *Refurbishment Impacts on Aquatic Resources*—The proposed rule language renames “Refurbishment” as “Refurbishment impacts on aquatic resources;” it remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(47) *Impacts of Transmission Line ROW Management on Aquatic Resources*—The proposed rule adds a new Category 1 issue, “Impacts of transmission line ROW management on aquatic resources,” to evaluate the impact of transmission line ROW management on aquatic resources. Impacts on aquatic resources from transmission line ROW maintenance could occur as a result of the direct disturbance of aquatic habitats, soil erosion, changes in water quality (from sedimentation and thermal effects), or inadvertent releases of chemical contaminants from herbicide use. As described in the revised GEIS, any impact on aquatic resources resulting from transmission line ROW management is expected to be small, short term, and localized for all plants.

(48) *Losses from Predation, Parasitism, and Disease Among Organisms Exposed to Sublethal Stresses and (49) Stimulation of Aquatic Nuisance Species (e.g., Shipworms)*—“Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses” and “Stimulation of aquatic nuisance species (e.g., shipworms)” remain Category 1 issues. The proposed rule does not change the finding column entries of Table B–1 for these issues.

(x) *Threatened, Endangered, and Protected Species and Essential Fish Habitat*

(50) *Threatened, Endangered, and Protected Species and Essential Fish Habitat*—The proposed rule renames “Threatened or endangered species” as “Threatened, endangered, and protected species and essential fish habitat” and expands the scope of the issue to include essential fish habitats protected under the Magnuson-Stevens Fishery Conservation and Management Act. The issue remains a Category 2 issue. The proposed rule makes clarifying changes to the finding column entry of table B–1 for this issue.

(xi) *Historic and Cultural Resources*

(51) *Historic and Cultural Resources*—The proposed rule language renames “Historic and archaeological resources” as “Historic and cultural resources;” it remains a Category 2 issue. The proposed rule language more accurately reflects the National Historic

Preservation Act requirements that Federal agencies consult with State Historic Preservation Officer and appropriate Native American Tribes to determine the potential impacts and mitigation.

(xii) *Socioeconomics*

(52) *Employment and Income, Recreation and Tourism*—The proposed rule adds a new Category 1 issue, “Employment and income,” and combines it with the “tourism and recreation” portion of a current Table B–1 Category 1 issue, “Public services: public safety, social services, and tourism and recreation.” These issues are combined given the similar nature and to streamline the review process. The revised GEIS provides an analysis of this issue and concludes that the impacts are generic to all plants undergoing license renewal.

(53) *Tax Revenues*—The proposed rule adds a new Category 1 issue, “Tax revenues,” to evaluate the impacts of license renewal on tax revenues. Refurbishment activities, such as steam generator and vessel head replacement, have not had a noticeable effect on the value of nuclear plants, thus changes in tax revenues are not anticipated from future refurbishment activities. Refurbishment activities involve the one-for-one replacement of existing components and are generally not considered a taxable improvement. Also, new property tax assessments; proprietary payments in lieu of tax stipulations, settlements, and agreements; and State tax laws are continually changing the amounts paid to taxing jurisdictions by nuclear plant owners, and these occur independent of license renewal and refurbishment activities.

(54) *Community Services and Education*—The proposed rule language reclassifies two Category 2 issues, “Public services: Public utilities” and “Public services, education (refurbishment)” as Category 1 issues, and combines them with the Category 1 issue, “Public services, education (license renewal term),” and the “Public safety and social service” portion of the Category 1 issue, “Public services: Public safety, social services, and tourism and recreation.” The combined issue, “Community services and education,” is a Category 1 issue.

The four issues are combined as all public services are equally affected by changes in plant operations and refurbishment at nuclear plants. Any changes in the number of workers at a nuclear plant will affect demand for public services from local communities. Nevertheless, past environmental

reviews conducted by NRC have shown that the number of workers at relicensed nuclear plants has not changed significantly because of license renewal, so impacts on community services are not anticipated from future license renewals. In addition, refurbishment activities, such as steam generator and vessel head replacement, have not required the large numbers of workers and the months of time that was conservatively analyzed in the 1996 GEIS, so significant impacts on community services are no longer anticipated. Combining the four issues also simplifies and streamlines the NRC review process. The proposed rule revises the finding column of Table B-1 accordingly.

(55) *Population and Housing*—The proposed rule language combines a new Category 1 issue, “Population,” and a Category 2 issue, “Housing impacts,” and names the combined issue, “Population and housing.” The combined issue is a Category 1 issue. The two issues are combined as the availability and value of housing are directly affected by changes in population and to simplify and streamline the NRC review process.

As described in the revised GEIS, the NRC has determined that the impacts of continued operations and refurbishment activities on population and housing, during the license renewal term, would be small, are not dependent on the socioeconomic setting of the nuclear plant, and are generic to all plants. The proposed rule revises the finding column of Table B-1 accordingly.

(56) *Transportation*—The proposed rule reclassifies the Category 2 issue, “Public services, transportation,” as a Category 1 issue and renames it “Transportation.” As described in the revised GEIS, the NRC has determined that the numbers of workers have not changed significantly due to license renewal, so transportation impacts are no longer anticipated from future license renewals. The proposed rule revises the finding column entry of table B-1 for this issue accordingly.

(xiii) Human Health

(57) *Radiation Exposures to the Public*—The proposed rule combines two Category 1 issues, “Radiation exposures to the public during refurbishment” and “Radiation exposure to public (license renewal term)” and names the combined issue, “Radiation exposures to the public.” The combined issue is a Category 1 issue. These issues are combined given the similar nature and to streamline the review process. The proposed rule

revises the finding column of Table B-1 accordingly.

(58) *Radiation Exposures to Occupational Workers*—The proposed rule combines two Category 1 issues, “Occupational radiation exposures during refurbishment” and “Occupational radiation exposures (license renewal term)” and names the combined issue, “Radiation exposures to occupational workers.” The combined issue is a Category 1 issue. These issues are combined given their similar nature and to streamline the review process. The proposed rule revises the finding column of Table B-1 accordingly.

(59) *Human Health Impact from Chemicals*—The proposed rule adds a new Category 1 issue, “Human health impact from chemicals,” to evaluate the potential impacts of chemical hazards to workers and chemical releases to the environment.

The evaluation addresses the potential impact of chemicals on human health resulting from normal operations of a nuclear power plant during the license renewal term. Impacts of chemical discharges to human health are considered to be small if the discharges of chemicals to water bodies are within effluent limitations designed to ensure protection of water quality and if ongoing discharges have not resulted in adverse effects on aquatic biota.

The disposal of essentially all of the hazardous chemicals used at nuclear power plants is regulated by Resource Conservation and Recovery Act or National Pollutant Discharge Elimination System (NPDES) permits, thereby minimizing adverse impacts to the environment and on workers and the public. It is anticipated that all plants would continue to operate in compliance with all applicable permits and that no mitigation measures beyond those implemented during the current license term would be warranted as a result of license renewal.

A review of the documents, as referenced in the GEIS; operating monitoring reports; and consultations with utilities and regulatory agencies that were performed for the 1996 GEIS, indicated that the effects of the discharge of chlorine and other biocides on water quality would be of small significance for all power plants. Small quantities of biocides are readily dissipated and/or chemically altered in the body of water receiving them, so significant cumulative impacts to water quality would not be expected. Major changes in the operation of the cooling system are not expected during the license renewal term, so no change in

the effects of biocide discharges on the quality of the receiving water is anticipated. Discharges of sanitary wastes and heavy metals are regulated by NPDES. Discharges that do not violate the permit limits are considered to be of small significance. The effects of minor chemical discharges and spills on water quality would be of small significance and mitigated as needed.

(60) *Microbiological Hazards to the Public (Plants with Cooling Ponds or Canals or Cooling Towers that Discharge to a River)*—The proposed rule renames “Microbiological organisms (public health) (plants using lakes or canals, or cooling towers or cooling ponds that discharge to a small river)” as “Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river);” it remains a Category 2 issue. The proposed rule makes minor clarifying changes to the Table B-1 finding column entry for this issue.

(61) *Microbiological Hazards to Plant Workers*—The proposed rule renames “Microbiological organisms (occupational health)” as “Microbiological hazards to plant workers;” it remains a Category 1 issue. There are no changes to the Table B-1 finding column entry for this issue.

(62) *Chronic Effects of Electromagnetic Fields (EMFs)*—The proposed rule renames “Electromagnetic fields, chronic effects” as “Chronic effects of electromagnetic fields (EMFs);” it remains an unclassified issue. The proposed rule revises the Table B-1 finding column entry for this issue.

(63) *Physical Occupational Hazards*—The proposed rule adds a new Category 1 issue, “Physical occupational hazards,” to evaluate the potential impact of physical occupational hazards on human health resulting from normal nuclear power plant operations during the license renewal term. The impact of physical occupational hazards on human health has been raised by members of the public as well as Federal and State agencies during the license renewal process. Occupational hazards can be minimized when workers adhere to safety standards and use appropriate protective equipment; however, fatalities and injuries from accidents can still occur. Data for occupational injuries in 2005 obtained from the U.S. Bureau of Labor Statistics indicate that the rate of fatal injuries in the utility sector is less than the rate for many sectors (e.g., construction, transportation and warehousing, agriculture, forestry, fishing and hunting, wholesale trade, and mining) and that the incidence rate for nonfatal

occupational injuries and illnesses is the least for electric power generation, followed by electric power transmission control and distribution. It is expected that over the license renewal term, workers would continue to adhere to safety standards and use protective equipment, so adverse occupational impacts would be of small significance at all sites. No mitigation measures beyond those implemented during the current license term would be warranted.

(64) *Electric Shock Hazards*—The proposed rule renames “Electromagnetic fields, acute effects (electric shock)” as “Electric shock hazards;” it remains a Category 2 issue. The proposed rule revises the Table B–1 finding column entry for this issue by more accurately summarizing the discussion in the GEIS which focuses attention on the potential of electrical shock from transmission lines.

(xiv) *Postulated Accidents*

(65) *Design-Basis Accidents and (66) Severe Accidents*—“Design-basis accidents” and “Severe accidents” remain Category 1 and 2 issues, respectively. The proposed rule makes minor clarifying changes to the Table B–1 finding column entries for these issues.

(xv) *Environmental Justice*

(67) *Minority and Low-Income Populations*—The proposed rule adds a new Category 2 issue, “Minority and low-income populations,” to evaluate the impacts of nuclear plant operations and refurbishment during the license renewal term on minority and low-income populations living in the vicinity of the plant. This issue is listed in the current Table B–1, but it was not evaluated in the 1996 GEIS. The current Table B–1 finding column entry states that “[t]he need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.”

Executive Order 12898 (59 FR 7629; February 16, 1994) initiated the Federal government’s environmental justice program. The NRC’s “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions” (69 FR 52040, August 24, 2004) states “the NRC is committed to the general goals of E.O. 12898, it will strive to meet those goals through its normal and traditional NEPA review process.” Guidance for implementing Executive Order 12898 was not available prior to the completion of the 1996 GEIS. To accomplish these goals, NRC requires the assistance of applicants in identifying minority and low-income

populations and communities residing in the vicinity of the nuclear power plant and determining whether there would be any disproportionately high and adverse human health and environmental impacts on these populations from continued power plant operations and refurbishment activities during the license renewal term.

(xvi) *Solid Waste Management*

(68) *Low-Level Waste Storage and Disposal*—“Low-level waste storage and disposal” remains a Category 1 issue. The proposed rule makes clarifying changes to the Table B–1 finding column entry for this issue.

(69) *Onsite Storage of Spent Nuclear Fuel*—The proposed rule renames “Onsite spent fuel” as “Onsite storage of spent nuclear fuel;” it remains a Category 1 issue. The proposed rule does not change the finding column entry of Table B–1 for this issue.

(70) *Offsite Radiological Impacts of Spent Nuclear Fuel and High-Level Waste Disposal*—The proposed rule renames “Offsite radiological impacts (spent fuel and high level waste disposal)” as “Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.” It remains a Category 1 issue. The proposed rule summarizes the lengthy discussion in the finding column of Table B–1 for this issue, and incorporates specific dose limits obtained from the recent docketing by the NRC of the application for the proposed repository at Yucca Mountain, Nevada.

(71) *Mixed-Waste Storage and Disposal*—“Mixed-waste storage and disposal” remains a Category 1 issue. The proposed rule revises the Table B–1 finding column entry for this issue by more accurately summarizing the discussion in the GEIS.

(72) *Nonradioactive Waste Storage and Disposal*—The proposed language renames “Nonradiological waste” as “Nonradiological waste storage and disposal;” it remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(xvii) *Cumulative Impacts*

(73) *Cumulative Impacts*—The proposed rule adds a new Category 2 issue, “Cumulative impacts,” to evaluate the potential cumulative impacts of license renewal. The term “cumulative impacts” is defined in § 51.14(b) by reference to the Council on Environmental Quality (CEQ) regulations, 40 CFR 1508.7, as “the impact on the environment which results from the incremental impact of

the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”

For the purposes of analysis, past actions are considered to be when the nuclear power plant was licensed and constructed, present actions are related to current plant operations, and future actions are those that are reasonably foreseeable through the end of plant operations including the license renewal term. The geographic area over which past, present, and future actions are assessed depends on the affected resource.

The NRC requires the assistance of applicants in identifying other past, present, and reasonably foreseeable future actions, such as the construction and operation of other power plants and other industrial and commercial facilities in the vicinity of the nuclear power plant. Therefore, this environmental impact is considered a Category 2 issue.

(xviii) *Uranium Fuel Cycle*

(74) *Offsite Radiological Impacts—Individual Impacts from Other than the Disposal of Spent Fuel and High-Level Waste*—“Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste” remains a Category 1 issue. The proposed rule makes minor clarifying changes to the findings column of Table B–1 for this issue.

(75) *Offsite Radiological Impacts—Collective Impacts from Other than the Disposal of Spent Fuel and High-Level Waste*—The proposed rule renames “Offsite radiological impacts (collective effects)” as “Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste”; it remains a Category 1 issue. The proposed rule summarizes the discussion in the Table B–1 finding column entry for this issue.

(76) *Nonradiological Impacts of the Uranium Fuel Cycle—Nonradiological impacts of the uranium fuel cycle* remains a Category 1 issue. The proposed rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(77) *Transportation*—“Transportation” remains a Category 1 issue. The proposed rule revises the Table B–1 finding column entry for this issue by retaining the significance level assigned to this environmental issue as applicable to the uranium fuel cycle. The specific technical discussion supporting these findings is retained in the GEIS.

(xiv) Termination of Nuclear Power Plant Operations and Decommissioning

(78) *Termination of Nuclear Power Plant Operations and Decommissioning*—The proposed rule combines one new Category 1 issue, “Termination of nuclear power plant operations” with six other Category 1 issues, “Radiation doses,” “Waste management,” “Air quality,” “Water quality,” “Ecological resources,” and “Socioeconomic impacts,” listed in the 1996 GEIS under the resource area, “Decommissioning” and names the combined issue, “Termination of plant operations and decommissioning.” This combined issue is a Category 1 issue.

The 1996 GEIS analysis indicates that the six decommissioning issues are expected to be small at all nuclear power plant sites. The new issue addresses the impacts from terminating nuclear power plant operations prior to plant decommissioning. Termination of nuclear power plant operations results in the cessation of activities necessary to maintain the reactor, as well as a significant reduction in plant workforce. It is assumed that termination of plant operations would not lead to the immediate decommissioning and dismantlement of the reactor or other power plant infrastructure.

These environmental issues and the termination of nuclear power plant operations issue would be combined into one Category 1 issue to simplify and streamline the NRC review process. These issues are also addressed in the “2002 Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors,” NUREG-0586, which is incorporated by reference in the revised GEIS. The proposed rule revises the findings column of Table B-1 accordingly.

VI. Section-by-Section Analysis

The following section-by-section analysis discusses the proposed modifications to the Part 51 provisions.

Proposed § 51.14(a)

The proposed rule adds to § 51.14(a) a definition for the term “historic properties.” The term is intended to be an overarching term that includes those historic, archaeological, and Native American traditional religious and cultural properties (districts, sites, buildings, structures, objects, artifacts) that are covered by the various Federal preservation laws, including the National Historic Preservation Act, and where applicable, the Archaeological Resources Protection Act and the Native

American Graves Protection and Repatriation Act.

Proposed § 51.53(c)(2)

The NRC proposes to clarify the required contents of the license renewal environmental report which applicants must submit in accordance with § 54.21 by revising the second sentence in this subparagraph to read, “This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities.”

Proposed §§ 51.53(c)(3)(ii)(A), (B), and (E)

For those applicants seeking an initial license renewal and holding either an operating license, construction permit, or combined license as of June 30, 1995, the environmental report shall include the information required in § 51.53(c)(2), but is not required to contain analyses of the environmental impacts of certain license renewal issues identified as Category 1 (generically analyzed) issues in Appendix B to Subpart A of Part 51. The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 (plant specific analysis required) issues in Appendix B to Subpart A of Part 51 and must include consideration of alternatives for reducing adverse impacts of Category 2 issues. In addition, the environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware. The required analyses are listed in §§ 51.53(c)(3)(ii)(A)–(P).

The proposed language for §§ 51.53(c)(3)(ii)(A), (B), and (E) consists of changes to conform to the proposed changes in Table B-1, which in turn, reflects the revised GEIS. The NRC proposes to modify these paragraphs to more accurately reflect the specific information needed in the environmental report that will help the NRC conduct the environmental review of the proposed action.

Section 51.53(c)(3)(ii)(A) is revised to incorporate the findings of the revised GEIS and to require applicants to provide information in their environmental reports regarding water availability and competing water demands and related impacts on instream (aquatic) and riparian (terrestrial) communities.

Section 51.53(c)(3)(ii)(B) is revised to replace “heat shock” with “thermal changes” to reflect the proposed changes made in the revised Table B-1 as described earlier in this document under “(ix) Aquatic Resources,” environmental impact issue, “(39) Thermal Impacts on Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds).”

Section 51.53(c)(3)(ii)(E) is revised to expressly include power plant continued operations within the scope of the impacts to be assessed by license renewal applicants. The paragraph is further revised to expand the scope of the provision to include all Federal wildlife protection laws and essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act.

Proposed § 51.53(c)(3)(ii)(I)

The NRC proposes to remove the language in § 51.53(c)(3)(ii)(I) to conform with the proposed changes made in the revised Table B-1 and to reserve the paragraph. These Category 2 issues were changed to Category 1 because significant changes in housing availability, land-use, and increased population demand attributable to the proposed project on the public water supply have not occurred at relicensed nuclear plants. Therefore, impacts to these resources are no longer anticipated from future license renewals. In addition, refurbishment activities, such as steam generator and vessel head replacement, have not required the large numbers of workers and the months of time that was conservatively analyzed in the 1996 GEIS. As such, significant impacts on public schools are no longer anticipated from future refurbishment activities. Applicants would no longer need to assess the impacts of the proposed action on housing availability, land-use, and public schools (impacts from refurbishment activities only) within the vicinity of the plant. Additionally, applicants would no longer need to assess the impact of population increases attributable to the proposed action on the public water supply.

Proposed § 51.53(c)(3)(ii)(J)

The NRC proposes to remove the language in § 51.53(c)(3)(ii)(J) to conform with the proposed changes made in the revised Table B-1 and to reserve the paragraph. This Category 2 issue, “Public service, Transportation” was changed to Category 1, “Transportation,” and remains under resource area, “Socioeconomic” because refurbishment activities, such as steam generator and vessel head replacement,

have not required the large numbers of workers and the months of time that was conservatively analyzed in the 1996 GEIS; therefore significant transportation impacts are not anticipated from future refurbishment activities. Applicants would no longer need to assess the impact of the proposed action on local transportation during periods of license renewal refurbishment activities.

Proposed § 51.53(c)(3)(ii)(K)

The proposed language for § 51.53(c)(3)(ii)(K) deletes the phrase, “or archaeological.” This term is encompassed by the use of the term “historical,” as defined in the proposed rule language under § 51.14, “Definitions.”

Proposed § 51.53(c)(3)(ii)(N)

The NRC proposes to add a new paragraph (c)(3)(ii)(N) in § 51.53 to conform with the proposed changes made in the revised Table B–1. A new Category 2 issue, “Minority and low-income populations” under resource area, “Environmental Justice” addresses the issue of determining the effects of nuclear plant operations and refurbishment on minority and low-income populations living in the vicinity of the plant. This issue is listed in the current Table B–1, but was not evaluated in the 1996 GEIS. The finding stated that: “The need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.” Guidance for implementing E.O. No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” (Section 1–101) (59 FR 7629) and dated February 16, 1994 was not available before the completion of the 1996 GEIS.

In August 2004, the Commission issued a policy statement on implementation of E.O. 12898: NRC’s Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040). As stated therein, “the NRC is committed to the general goals of E.O. 12898, it will strive to meet those goals through its normal and traditional NEPA review process.” To accomplish these goals, NRC requires the assistance of applicants in identifying minority and low-income populations and communities residing in the vicinity of the nuclear power plant and determining if there would be any disproportionate and adverse human health and environmental impacts on these populations. The NRC will then assess the information provided by the applicant.

Proposed § 51.53(c)(3)(ii)(O)

The NRC proposes to add a new paragraph (c)(3)(ii)(O) in § 51.53 to conform with the proposed changes made in the revised Table B–1. A new Category 2 issue has been added to the GEIS to evaluate the potential contamination of soil and groundwater from industrial practices at nuclear plants. Industrial practices at all plants have the potential to contaminate site groundwater and soil through the use and spillage of solvents, hydrocarbons, heavy metals, or other chemicals, especially on sites with unlined wastewater lagoons and storm water lagoons. Any contamination by these substances is subject to characterization and clean-up by EPA and State remediation and monitoring programs. NRC requires the assistance of applicants to assess the impact of the industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals where there is a potential for contamination of site groundwater, soil, and subsoil.

Proposed § 51.53(c)(3)(ii)(P)

The NRC proposes to add a new paragraph (c)(3)(ii)(P) in § 51.53 to conform with the proposed changes made in the revised Table B–1. A new Category 2 issue has been added to the GEIS to evaluate the potential cumulative effects of license renewal and refurbishment at nuclear plants. Cumulative impacts was not addressed in the 1996 GEIS, but is currently being evaluated by the NRC in plant-specific supplements to the GEIS. The Council on Environmental Quality (CEQ), in 40 CFR 1508.7, defines cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” The NRC considers potential cumulative impacts on the environment resulting from the incremental impact of license renewal when added to other past, present, and reasonably foreseeable future actions.

The NRC requires the assistance of applicants in identifying other past, present, and reasonably foreseeable future actions, such as the construction and operation of other power plants and other industrial and commercial facilities in the vicinity of the nuclear power plant.

Proposed § 51.53(c)(3)(ii)(Q)

The NRC proposes to add a new paragraph (c)(3)(ii)(Q) in § 51.53 to

conform with the proposed changes made in the revised Table B–1. A new Category 2 issue has been added to the GEIS to evaluate the potential impact of discharges of radionuclides, such as tritium, from plant systems into groundwater. The issue is relevant to license renewal because virtually all commercial nuclear power plants have spent fuel pools, liquid storage tanks, and buried piping that contain liquids with radioactive material that have a potential over time to degrade and release radioactive liquid into the groundwater. The NRC has investigated several cases where radioactive liquids have been inadvertently released into the groundwater in an uncontrolled manner. Any residual activity from these inadvertent releases of radioactive material is subject to characterization and possible remediation by the licensee in order to comply with NRC requirements. NRC requires the assistance of applicants in assessing the impact of any inadvertent releases of radioactive liquids into the groundwater.

Proposed § 51.71(c)

The proposed language for § 51.71(c) deletes the term “entitlement” and “entitlements.” These terms are not applicable in a license renewal context.

Proposed § 51.71(d)

The proposed language for § 51.71(d) consists of minor conforming word changes to clarify the readability and to include the analysis of cumulative effects. Cumulative impacts were not addressed in the 1996 GEIS, but are currently being evaluated by the NRC in plant-specific supplements to the GEIS. The NRC proposes to modify this paragraph to more accurately reflect the cumulative impacts analysis conducted for environmental reviews of the proposed action.

Proposed § 51.95(c)

The proposed language changes for § 51.95(c) is administrative in nature, and replaces the reference to the 1996 GEIS for license renewal of nuclear plants with a reference to the revised GEIS.

Proposed § 51.95(c)(4)

The proposed language for § 51.95(c)(4) consists of minor grammatical word changes to enhance the readability of the regulation.

VII. Specific Request for Comments

The NRC seeks comments on the proposed Part 51 provisions described in this document and on the regulatory

analysis and the information collection aspects of this proposed rule.

The NRC also seeks voluntary information from industry about refurbishment activities and employment trends at nuclear power plants. Information on refurbishment would be used to evaluate the significance of impacts from this type of activity. Information on employment trends would be used to assess the significance of socioeconomic effects of ongoing plant operations on local economies.

Refurbishment

Table B.2 in the 1996 GEIS lists major refurbishment or replacement activities that the NRC used to estimate environmental impacts. The NRC recognizes that the refurbishment impact analysis in the 1996 GEIS may not accurately reflect industry experience performing the activities identified in Table B.2. Please provide (1) the estimated frequency for each activity (e.g., annually, once in the lifetime of a power reactor, as-needed based on inspections, etc.), (2) the duration (in weeks), (3) the peak number of project workers in full-time equivalents (FTEs), (4) the timing of these activities (e.g., during planned refueling or maintenance outages), and (5) whether the period of extended operation (i.e., license renewal term) has triggered a need for these activities.

Employment Trends

Please provide data on the annual average number of permanent operations workers (in FTEs by year) after commencement of nuclear plant operations. If possible, the information should include a short non-proprietary

discussion about general employment trends and include reasons for any significant changes in employment.

VIII. Guidance Documents

In addition to issuing the revised GEIS for public comment, the NRC is also issuing a revised RG 4.2, Supplement 1, Revision 1 and a revised ESRP, Supplement 1, Revision 1. Both documents are being published concurrently with these proposed amendments. Revised RG 4.2, Supplement 1, Revision 1, provides general procedures for the preparation of environmental reports, which are submitted as part of an application for the renewal of a nuclear power plant operating license in accordance with Title 10, Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," of the Code of Federal Regulations (10 CFR Part 54). More specifically, this revised regulatory guide explains the criteria on how Category 2 issues are to be addressed in the environmental report, as specified in the proposed amendments to Part 51.

The revised ESRP, Supplement 1, Revision 1 provides guidance for NRC staff on how to conduct a license renewal environmental review. The ESRP parallels the format in RG 4.2, Supplement 1, Revision 1. The primary purpose of the ESRP is to ensure that these reviews focus on those environmental concerns associated with license renewal as described in Part 51. Additionally, in order to enhance public openness, the NRC committed to issuing for public comment with the proposed rule, the RG 4.2, Supplement 1, Revision 1 and ESRP, Supplement 1, Revision 1.

IX. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility category "NRC." Agreement State Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

X. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852.

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal eRulemaking Portal <http://www.regulations.gov> Docket number NRC-2008-0608.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at <http://www.nrc.gov/reading-rm.html>.

Document	PDR	Regs.gov	Web	ERR (ADAMS)	NRC staff
Draft NUREG-1437, Vols. 1 and 2, Revision 1—"Generic Environmental Impact Statement for License Renewal of Nuclear Plants"	X	X	X	ML090220654	X
Draft Regulatory Guide (RG) 4.2 Supplement 1, Revision 1—"Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications"	X	X	X	ML091620409	X
Draft NUREG-1555, Supplement 1, Revision 1—"Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal"	X	X	X	ML090230497	X
Draft Regulatory Analysis for RIN 3150-A142 Proposed Rulemaking Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses	X	X	X	ML083460087	X
Draft OMB Supporting Statement for RIN 3150-A142 Proposed Rulemaking Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses	X	X	X	ML090260568	X
Summary of Public Scoping Meeting to Discuss Update to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Atlanta, GA	X	X	X	ML032170942	X
Summary of Public Scoping Meeting to Discuss Update to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437), Oak Lawn, IL	X	X	X	ML032260339	X
Summary of Public Scoping Meeting To Discuss Update to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437), Anaheim, CA	X	X	X	ML032260715	X

Document	PDR	Regs.gov	Web	ERR (ADAMS)	NRC staff
Summary of Public Scoping Meeting to Discuss Update to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437), Boston, MA	X	X	X	ML032170934	X
Liquid Radiation Release Lessons Learned Task	X	X	X	ML062650312	X
NUREG/CP-0108, "Proceedings of the Public Workshop on Nuclear Power Plant License Renewal" (April 1990)	X	.....	.....	.....	X
NUREG-1411, "Response to Public Comments Resulting from the Public Workshop on Nuclear Power Plant License Renewal" (July 1990)	X	.....	.....	.....	X
"Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternate Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper"	X	.....	.....	.....	X
NUREG-0586, "2002 Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors"	X	.....	.....	.....	X

XI. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in clear and accessible language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this document.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

XIII. Finding of No Significant Environmental Impact

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion § 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation. This action is procedural in nature in that it pertains to the type of environmental information to be reviewed.

XIV. Paperwork Reduction Act Statement

This proposed rule would contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Part 51 Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Proposed Rule.

The form number if applicable: Not applicable.

How often the collection is required: Once per license renewal.

Who will be required or asked to report: Applicants for license renewal.

An estimate of the number of annual responses: Six.

The estimated number of annual respondents: Six.

An estimate of the total number of hours needed annually to complete the requirement or request (net one-time reporting): 1,944.00 hours

Abstract: 10 CFR Part 51 specifies information to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the NRC to

properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.htm> for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by October 14, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2008-0608. Comments can be submitted in electronic form via the Federal e-Rulemaking Portal at <http://www.regulations.gov> by search for Docket No. NRC-2008-0608. Comments can be mailed to NRC Clearance Officer, Tremaine Donnell (T-5F52), U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at (301) 415-5258, or by e-mail to INFOCOLLECTS.Resource@nrc.gov. Comments can be mailed to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0021), Office of Management and Budget, Washington, DC 20503, or by e-mail to Christine.J.Kyma@omb.eop.gov or by telephone at (202) 395-4638.

XV. Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The two alternatives considered (a) No Action—no change to applicable license renewal portions of Part 51 regulations, including Table B-1, which would require applicants seeking license renewal to comply with the existing provisions; or (b) review and update the environmental impact issues and findings and amend applicable license renewal portions of Part 51 and Table B-1. The conclusions of the regulatory analysis show substantial cost savings of alternative (b) over alternative (a).

The NRC requests public comments on this regulatory analysis. Information on availability of the regulatory analysis is provided in Section X of this document. Comments on the regulatory analysis may be submitted to the NRC as indicated under the ADDRESSES heading of this document.

XVI. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would only affect nuclear power plant licensees filing license renewal applications. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XVII. Backfit Analysis

The NRC has determined that the requirements in this proposed rule do not constitute backfitting as defined in § 50.109(a)(1). Therefore, a backfit analysis has not been prepared for this proposed rule.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Section 51.14(a) is amended by adding the term Historic properties in alphabetical order to read as follows:

§ 51.14 Definitions.

(a) * * * Historic properties means any prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria. The term also includes archaeological resources, such as artifacts, records, and remains, that are related to and located within such prehistoric or historic districts, sites, buildings, or structures.

* * * * * 3. Amend § 51.53 to revise the second sentence of paragraph (c)(2), revise the

first sentence of paragraph (c)(3)(ii)(A), revise the second sentence of paragraph (c)(3)(ii)(B), revise paragraph (c)(3)(ii)(E), to remove and reserve paragraphs (c)(3)(ii)(I) and (J), to revise paragraph (c)(3)(ii)(K) and to add paragraphs (c)(3)(ii)(N), (O), (P), and (Q) to read as follows:

§ 51.53 Postconstruction environmental reports.

* * * * * (c) * * * (2) * * * This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities. * * *

(3) * * * (ii) * * * (A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws make-up water from a river whose annual flow rate is less than 3.15x10¹² ft³/year (9x10¹⁰m³/year), an assessment of the impact of the proposed action on water availability and competing water demands, the flow of the river, and related impacts on instream (aquatic) and riparian (terrestrial) ecological communities must be provided. * * *

(B) * * * If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from thermal changes and impingement and entrainment.

* * * * * (E) All license renewal applicants shall assess the impact of refurbishment, continued operations, and other license-renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or endangered species in accordance with Federal laws protecting wildlife, including but not limited to the Endangered Species Act, and essential fish habitat in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

* * * * * (I) [Reserved] (J) [Reserved] (K) All applicants shall assess whether any historic properties will be affected by the proposed project.

* * * * * (N) Applicants shall provide information on the general demographic composition of minority- and low-income populations and communities (by race and ethnicity) residing in the immediate vicinity of the plant that could be affected by the renewal of the

plant's operating license, including any planned refurbishment activities, and ongoing and future plant operations.

(O) If the applicant's plant conducts industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals and has unlined wastewater lagoons, the applicant shall assess the potential for contamination of site groundwater, soil, and subsoil. The applicant shall provide an assessment of dissolved chemical and suspended sediment discharge to the plant's wastewater lagoons in addition to National Pollutant Discharge Elimination System (NPDES) compliance data collected for submittal to the U.S. Environmental Protection Agency (EPA) or designated State agency. A summary of existing reports describing site groundwater and soil contamination should also be included.

(P) Applicants shall provide information about past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect. For example, the applicant should include information about the construction and operation of other power plants and other industrial and commercial facilities in the vicinity of the nuclear plant.

(Q) An applicant shall assess the impact of any inadvertent releases of radionuclides into groundwater. The applicant shall include in its assessment a description of any groundwater protection program for the site, including a description of any monitoring wells, leak detection equipment, or procedures for the surveillance of accessible piping and components containing radioactive materials. The assessment shall also include a description of any past inadvertent releases, including information on the source of the release, the location of the release within the plant site, the types of radionuclides involved, including the quantities, forms, and concentrations of such radionuclides, and the projected impact to the environment during the license renewal term, including the projected transport pathways, concentrations of the radionuclides, and potential receptors (e.g., aquifers, rivers, lakes, ponds, ocean).

* * * * *

4. Amend § 51.71 to revise paragraphs (c) and (d) to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(c) *Status of compliance.* The draft environmental impact statement will list all Federal permits, licenses, and

approvals which must be obtained in implementing the proposed action and will describe the status of compliance with those requirements. If it is uncertain whether a Federal permit, license, or approval is necessary, the draft environmental impact statement will so indicate.

(d) *Analysis.* Unless excepted in this paragraph or § 51.75, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects, including any cumulative effects, of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects. Additionally, the draft environmental impact statement will include a consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives. The draft environmental impact statement will indicate what other interests and considerations of Federal policy, including factors not related to environmental quality, if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section. The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action. The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these

considerations or factors will be discussed in qualitative terms. Consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.³ While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

* * * * *

5. Amend § 51.95 to revise the introductory text of paragraph (c), and the second sentence of paragraph (c)(4) to read as follows:

§ 51.95 Postconstruction environmental impact standards.

* * * * *

(c) *Operating license renewal stage.* In connection with the renewal of an operating license or combined license

³ Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

for a nuclear power plant under parts 52 or 54 of this chapter, the Commission shall prepare an environmental impact statement, which is a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" [(Month 20XX)], which is available in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.
* * * * *

(4) * * * In order to make recommendations and reach a final decision on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions in the generic environmental impact statement for issues designated Category 1 (with the exception of offsite radiological impacts for collective effects and the disposal of spent fuel and high level waste) with information developed for those open Category 2 issues applicable to the plant

under § 51.53(c)(3)(ii), and any new and significant information. * * *
* * * * *

6. In Appendix B to Subpart A of Part 51, Table B-1 is revised to read as follows:

**Appendix B to Subpart A—
Environmental Effect of Renewing the
Operating License of a Nuclear Power
Plant**
* * * * *

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹

Issue	Category ²	Finding ³
Land Use		
Onsite land use	1	SMALL. Changes in onsite land use from continued operations and refurbishment associated with the license renewal term would be a small fraction of any nuclear power plant site and would involve only land that is controlled by the licensee.
Offsite land use	1	SMALL. Offsite land use would not be affected from continued operations and refurbishment associated with the license renewal term.
Offsite land use in transmission line rights-of-way (ROWs).	1	SMALL. Use of transmission line ROWs from continued operations and refurbishment associated with the license renewal term would continue with no change in land use restrictions.
Visual Resources		
Aesthetic impacts	1	SMALL. No important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with the license renewal term.
Air Quality		
Air quality (non-attainment and maintenance areas).	2	SMALL, MODERATE, or LARGE. Air quality impacts of continued operations and refurbishment activities associated with the license renewal term are expected to be small. However, emissions during these activities could be a cause for concern at locations in or near air quality nonattainment or maintenance areas. The significance of the impact cannot be determined without considering the compliance status of each site and the activities that could occur. These impacts would be short-lived and cease after projects were completed. Emissions from testing emergency diesel generators and fire pumps and from routine operations of boilers used for space heating would not be a concern, even for those plants located in or adjacent to nonattainment areas. Although particulate emissions from cooling towers may be a concern for a very limited number of plants located in States that regulate such emissions, the impacts in even these worst-case situations have been small.
Air quality effects of transmission lines	1	SMALL. Production of ozone and oxides of nitrogen is insignificant and does not contribute measurably to ambient levels of these gases.
Noise		
Noise impacts	1	SMALL. Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with the license renewal term.
Geology and Soils		
Impacts of nuclear plants on geology and soils.	1	SMALL. Impacts on geology and soils would be small at all nuclear plants if best management practices were employed to reduce erosion associated with continued operations and refurbishment.
Surface Water		
Surface-water use and quality	1	SMALL. Impacts are expected to be negligible if best management practices are employed to control soil erosion and spills. Water use associated with continued operation and refurbishment projects for license renewal would not increase significantly or would be reduced if a plant outage is necessary to accomplish the action.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS¹—
Continued

Issue	Category ²	Finding ³
Altered salinity gradients	1	SMALL. Effects on salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered thermal stratification of lakes	1	SMALL. Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Scouring caused by discharged cooling water.	1	SMALL. Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Discharge of metals in cooling system effluent.	1	SMALL. Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored as part of the National Pollutant Discharge Elimination System (NPDES) permit process.
Discharge of biocides, sanitary wastes, and minor chemical spills.	1	SMALL. The effects of these discharges are regulated by State and Federal environmental agencies. Discharges are monitored as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.
Water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river with low flow).	2	SMALL or MODERATE. Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.
Effects of dredging on water quality	1	SMALL. Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Groundwater		
Groundwater use and quality	1	SMALL. Extensive dewatering is not anticipated from continued operations and refurbishment activities associated with the license renewal term. The application of best management practices for handling any materials produced or used during activities would reduce impacts.
Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).	1	SMALL. Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.
Groundwater use conflicts (plants that withdraw more than 100 gpm including those using Ranney wells).	2	SMALL, MODERATE, or LARGE. Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.
Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).	2	SMALL, MODERATE, or LARGE. Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.
Groundwater quality degradation resulting from water withdrawals.	1	SMALL. Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.
Groundwater quality degradation (plants with cooling ponds in salt marshes).	1	SMALL. Sites with closed-cycle cooling ponds could degrade groundwater quality; however, because groundwater in salt marshes is brackish, this is not a concern for plants located in salt marshes.
Groundwater quality degradation (plants with cooling ponds at inland sites).	2	SMALL, MODERATE, or LARGE. Sites with closed-cycle cooling ponds could degrade groundwater quality. For plants located inland, the quality of the groundwater in the vicinity of the ponds could be affected. The significance of the impact would depend on cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.
Groundwater and soil contamination	2	SMALL or MODERATE. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals and unlined wastewater lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State and Environmental Protection Agency regulated cleanup and monitoring programs.
Radionuclides released to groundwater	2	SMALL or MODERATE. Underground system leaks of process water have been discovered in recent years at several plants. Groundwater protection programs have been established at all operating nuclear power plants.

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS¹—
Continued

Issue	Category ²	Finding ³
Terrestrial Resources		
Impacts of continued plant operations on terrestrial ecosystems.	2	SMALL, MODERATE, or LARGE. Continued operations, refurbishment, and maintenance activities are expected to keep terrestrial communities in their current condition. Application of best management practices would reduce the potential for impacts. The magnitude of impacts would depend on the nature of the activity, the status of the resources that could be affected, and the effectiveness of mitigation.
Exposure of terrestrial organisms to radionuclides.	1	SMALL. Doses to terrestrial organisms are expected to be well below exposure guidelines developed to protect these organisms.
Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).	1	SMALL. No adverse effects to terrestrial plants or animals have been reported as a result of increased water temperatures, fogging, humidity, or reduced habitat quality. Due to the low concentrations of contaminants in cooling system effluents, uptake and accumulation of contaminants in the tissues of wildlife exposed to the contaminated water or aquatic food sources are not expected to be significant issues.
Cooling tower impacts on vegetation (plants with cooling towers).	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have the potential to affect adjacent vegetation, but these impacts have been small at operating nuclear power plants and are not expected to change over the license renewal term.
Bird collisions with cooling towers and transmission lines.	1	SMALL. Bird collisions with cooling towers and transmission lines occur at rates that are unlikely to affect local or migratory populations.
Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using make-up water from a river with low flow).	2	SMALL or MODERATE. Impacts on terrestrial resources in riparian communities affected by water use conflicts could be of moderate significance in some situations.
Transmission line ROW management impacts on terrestrial resources.	1	SMALL. Continued ROW management during the license renewal term is expected to keep terrestrial communities in their current condition. Application of best management practices would reduce the potential for impacts.
Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock).	1	SMALL. No significant impacts of electromagnetic fields on terrestrial flora and fauna have been identified. Such effects are not expected to be a problem during the license renewal term.
Aquatic Resources		
Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. The impacts of impingement and entrainment are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems, depending on cooling system withdrawal rates and volumes and the aquatic resources at the site.
Impingement and entrainment of aquatic organisms (plants with cooling towers).	1	SMALL. Impingement and entrainment rates are lower at plants that use closed-cycle cooling with cooling towers because the rates and volumes of water withdrawal needed for makeup are minimized.
Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. Most of the effects associated with thermal discharges are localized and are not expected to affect overall stability of populations or resources. The magnitude of impacts, however, would depend on site-specific thermal plume characteristics and the nature of aquatic resources in the area.
Thermal impacts on aquatic organisms (plants with cooling towers).	1	SMALL. Thermal effects associated with plants that use cooling towers are small because of the reduced amount of heated discharge.
Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.	1	SMALL. Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been satisfactorily mitigated. Low dissolved oxygen was a concern at one nuclear power plant with a once-through cooling system but has been effectively mitigated. Eutrophication (nutrient loading) and resulting effects on chemical and biological oxygen demands have not been found to be a problem at operating nuclear power plants.
Effects of non-radiological contaminants on aquatic organisms.	1	SMALL. Best management practices and discharge limitations of NPDES permits are expected to minimize the potential for impacts to aquatic resources. Accumulation of metal contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal.
Exposure of aquatic organisms to radionuclides.	1	SMALL. Doses to aquatic organisms are expected to be well below exposure guidelines developed to protect these aquatic organisms.
Effects of dredging on aquatic organisms	1	SMALL. Effects of dredging on aquatic resources tend to be of short duration (years or less) and localized. Dredging requires permits from the U.S. Army Corps of Engineers, State environmental agencies, and other regulatory agencies.
Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using make-up water from a river with low flow).	2	SMALL or MODERATE. Impacts on aquatic resources in instream communities affected by water use conflicts could be of moderate significance in some situations.
Refurbishment impacts on aquatic resources.	1	SMALL. Refurbishment impacts with appropriate mitigation are not expected to change aquatic communities from their current condition.

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS¹—
Continued

Issue	Category ²	Finding ³
Impacts of transmission line ROW management on aquatic resources. Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses. Stimulation of aquatic nuisance species (e.g., shipworms).	1 1 1	SMALL. Application of best management practices to ROW near aquatic systems would reduce the potential for impacts. SMALL. These types of losses have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term. SMALL. Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Threatened, Endangered, and Protected Species and Essential Fish Habitat		
Threatened, endangered, and protected species and essential fish habitat.	2	SMALL, MODERATE, or LARGE. The magnitude of impacts on threatened, endangered, and protected species and essential fish habitat would depend on the occurrence of listed species and habitats and the effects of power plant systems on them. Consultation with appropriate agencies would be needed to determine whether special status species or habitats are present and whether they would be adversely affected by activities associated with license renewal.
Historic and Cultural Resources		
Historic and cultural resources	2	SMALL, MODERATE, or LARGE. Continued operations and refurbishment associated with the license renewal term are expected to have no more than small impacts on historic and cultural resources located onsite and in the transmission line ROW because most impacts could be mitigated by avoiding those resources. The National Historic Preservation Act (NHPA) requires the Federal agency to consult with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes to determine the potential impacts and mitigation. See § 51.14(a).
Socioeconomics		
Employment and income, recreation and tourism.	1	SMALL. Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment and income impacts from continued operations and refurbishment are expected to be small. Nuclear plant operations, employee spending, power plant expenditures, and tax payments have an effect on local economies. Changes in plant operations, employment and expenditures would have a greater effect on rural economies than on semi-urban economies.
Tax revenues	1	SMALL. Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term from continued operations and refurbishment is not expected to change, since the assessed value of the power plant, payments on energy production and PILOT payments are also not expected to change.
Community services and education	1	SMALL. Changes to local community and educational services would be small from continued operations and refurbishment associated with the license renewal term. With no increase in employment, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations. Changes in employment and tax payments would have a greater effect on jurisdictions receiving a large portion of annual revenues from the power plant than on jurisdictions receiving the majority of their revenues from other sources.
Population and housing	1	SMALL. Changes to regional population and housing availability and value would be small from continued operations and refurbishment associated with the license renewal term. With no increase in employment expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations. Changes in housing availability and value would have a greater effect on sparsely populated areas than areas with higher density populations.
Transportation	1	SMALL. Changes to traffic volumes would be small from continued operations and refurbishment activities associated with the license renewal term. Changes in employment would have a greater effect on rural areas, with less developed local and regional networks. Impacts would be less noticeable in semi-urban areas depending on the quality and extent of local access roads and the timing of plant shift changes when compared to typical local usage.
Human Health		
Radiation exposures to the public	1	SMALL. Radiation doses to the public from continued operations and refurbishment associated with the license renewal term are expected to continue at current levels, and would be well below regulatory limits.

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS¹—Continued

Issue	Category ²	Finding ³
Radiation exposures to occupational workers.	1	SMALL. Occupational doses from continued operations and refurbishment associated with the license renewal term are expected to be within the range of doses experienced during the current license term, and would continue to be well below regulatory limits.
Human health impact from chemicals	1	SMALL. Chemical hazards to workers would be minimized by observing good industrial hygiene practices. Chemical releases to the environment and the potential for impacts to the public are minimized by adherence to discharge limitations of NPDES permits.
Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river).	2	SMALL, MODERATE, or LARGE. These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals that discharge to rivers. Impacts would depend on site-specific characteristics.
Microbiological hazards to plant workers ...	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures.
Chronic effects of electromagnetic fields (EMFs) ⁵ .	N/A ⁴	Uncertain impact. Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (e.g., toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.
Physical occupational hazards	1	SMALL. Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and is of small significance if the workers adhere to safety standards and use protective equipment.
Electric shock hazards	2	SMALL, MODERATE, or LARGE. Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of each nuclear plant transmission line conformance with NESC criteria, it is not possible to determine the significance of the electrical shock potential.
Postulated Accidents		
Design-basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design-basis accidents are of small significance for all plants.
Severe accidents	2	SMALL. The probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants. However, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives.
Environmental Justice		
Minority and low-income populations	2	SMALL or MODERATE. Impacts to minority and low-income populations and subsistence consumption will be addressed in plant-specific reviews. See NRC Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040).
Solid Waste Management		
Low-level waste storage and disposal	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment would remain small during the term of a renewed license.
Onsite storage of spent nuclear fuel	1	SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite with small environmental effects through dry or pool storage at all plants, if a permanent repository or monitored retrievable storage is not available.
Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.	1	For the high-level waste and spent-fuel disposal component of the fuel cycle, the EPA established a dose limit of 15 millirem (0.15 mSv) per year for the first 10,000 years and 100 millirem (1.0 mSv) per year between 10,000 years and 1 million years for offsite releases of radionuclides at the proposed repository at Yucca Mountain, Nevada. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high level waste disposal, this issue is considered Category 1.

TABLE B-1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS¹—
Continued

Issue	Category ²	Finding ³
Mixed-waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and non-radiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.
Nonradioactive waste storage and disposal.	1	SMALL. No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.
Cumulative Impacts		
Cumulative impacts	2	Cumulative impacts of license renewal must be considered on a plant-specific basis. Impacts would depend on regional resource characteristics, the resource-specific impacts of license renewal, and the cumulative significance of other factors affecting the resource.
Uranium Fuel Cycle		
Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.	1	SMALL. The impacts to the public from radiological exposures have been considered by the Commission in Table S-3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.
Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.	1	There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant would be small.
Transportation	1	SMALL. The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.
Termination of Nuclear Power Plant Operations and Decommissioning		
Termination of plant operations and decommissioning.	1	SMALL. License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

¹ Data supporting this table are contained in NUREG-1437, Revision 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (XX 20XX).

² The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (*i.e.*, small, moderate, or large) has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

³ The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of "small," may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

For issues where probability is a key consideration (*i.e.*, accident consequences), probability was a factor in determining significance.

⁴ NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

⁵ If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

Dated at Rockville, Maryland, this 24th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9-18284 Filed 7-30-09; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0115; Directorate Identifier 2007-CE-080-AD]

RIN 2120-AA64

Airworthiness Directives; Reims Aviation S.A. Model F406 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: We propose to rescind an airworthiness directive (AD) for the products listed above. The existing AD resulted 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:

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

Since issuance of that AD, we have determined that the condition is not unsafe. This proposed action to rescind the AD would allow the public the opportunity to comment on the FAA's determination of the condition being unsafe before it is officially rescinded.

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.

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 rescission, 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD rescission. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0115; Directorate Identifier 2007-CE-080-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD rescission. We will consider all comments received by the closing date and may amend this proposed AD rescission 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 rescission.

Discussion

On December 13, 2007, we issued AD 2007-26-08, Amendment 39-15310 (72 FR 73258, December 27, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007-26-08, we have reconsidered this AD with respect to the determination of an unsafe condition.

We issued AD 2007-26-08 in consideration of the MCAI from an aviation authority of another country to identify and correct an unsafe condition on an airplane. At that time, we were not aware that there were several Cessna Aircraft Company (Cessna) model airplanes equipped with the same blowdown bottle part number (P/N) 9910154-4.

Before issuing an AD on domestic products, we prepare a risk assessment of the unsafe condition. A risk assessment was done for the Cessna model airplanes. The result of that assessment was not high enough to support AD action since the system is a backup system to the primary landing gear extension system.

Based on this risk assessment, we reevaluated the existing AD against Reims Aviation Model 406 airplanes (AD 2007-28-08) and determined the condition identified in the AD is not an unsafe condition.

FAA's Determination and Requirements of the Proposed AD Rescission

We are proposing this AD rescission because we evaluated all information and determined the condition identified in the existing AD is not unsafe and the AD is not necessary.

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 rescinding the determination of 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 rescission would not have federalism implications under Executive Order 13132. This proposed AD rescission 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 rescission of a 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 rescission and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 rescinding AD 2007–26–08, Amendment 39–15310 (72 FR 73258, December 27, 2007):

Reims Aviation S.A.: Docket No. FAA–2007–0115; Directorate Identifier 2007–CE–080–AD.

Comments Due Date

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

Affected ADs

(b) This AD rescinds AD 2007–26–08.

Applicability

(c) This AD applies to model F406 airplanes, all serial numbers, that are:

- (1) Equipped with landing gear emergency blowdown bottle part number (P/N) 9910154–4; and
- (2) certificated in any category.

Issued in Kansas City, Missouri, on July 27, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–18311 Filed 7–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0405; Airspace Docket No. 09–ASW–12]

Proposed Amendment of Class D and Class E Airspace; New Orleans NAS, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace at New Orleans NAS, LA. Changes in control tower operating hours for Class D airspace and cancellation of the NDB RWY 4 instrument approach for Class E airspace have made this action necessary for the continued safety and management of Instrument Flight Rules (IFR) aircraft operations at New Orleans NAS Alvin Callender Field.

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–2009–0405/Airspace Docket No. 09–ASW–12, at the beginning of your comments. You may also submit comments through 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–2009–0405/Airspace Docket No. 09–ASW–12." 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 amending Class D and Class E airspace at New Orleans NAS Alvin Callender Field, LA. Class D airspace would be effective during the specific dates and times established in advance by a Notice to Airmen. Class E airspace would reflect the cancellation of the NDB RWY 4 instrument approach.

Class D airspace areas 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. The Class D airspace designation listed in this document would be published subsequently in the Order.

Class E airspace areas are 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. 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 amend controlled airspace at New Orleans NAS Alvin Callender Field, LA.

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 5000 Class D Airspace.

* * * * *

ASW LA D New Orleans NAS, Alvin Callender Field, LA [Amended]

New Orleans NAS, Alvin Callender Field, LA (Lat. 29°49'31" N., long. 90°02'06" W.)
Harvey VORTAC
(Lat. 29°51'01" N., long. 90°00'11" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport, and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport, excluding that airspace within the New Orleans, LA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASW LA E2 New Orleans NAS, Alvin Callender Field, LA [Amended]

New Orleans NAS, Alvin Callender Field, LA (Lat. 29°49'31" N., long. 90°02'06" W.)
Harvey VORTAC
(Lat. 29°51'01" N., long. 90°00'11" W.)

Within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the from the 4.7-mile radius to 5.6 miles southwest of the airport, and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport, excluding that airspace within the New Orleans, LA, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

Anthony D. Roetzel,
*Manager, Operations Support Group, ATO
Central Service Center.*

[FR Doc. E9–18241 Filed 7–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0504; Airspace
Docket No. 09–AGL–7]

Proposed Amendment of Class E Airspace; Tioga, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Tioga, ND. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Tioga Municipal Airport, Tioga, ND. This action also amends the geographic coordinates of Tioga Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Tioga Municipal 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–2009–0504/Airspace Docket No. 09–AGL–7, at the beginning of your comments. You may also submit comments through 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-2009-0504/Airspace Docket No. 09-AGL-7." 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 NPRM's 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 Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Tioga Municipal Airport, Tioga, ND. This action would also amend the geographic coordinates of Tioga Municipal Airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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 at Tioga Municipal Airport, Tioga, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, 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 ND E5 Tioga, ND [Amended]

Tioga, Tioga Municipal Airport, ND
(Lat. 48°22'50" N., long. 102°53'53" W.)

Minot AFB, ND
(Lat. 48°24'57" N., long. 101°21'29" W.)

Williston VORTAC
(Lat. 48°15'12" N., long. 103°45'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Tioga Municipal Airport and within 4 miles either side of the 133° bearing from the Tioga Municipal Airport extending from the 6.7-mile radius to 10.2 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 49°00'00" N, on the east by the 47-mile radius of Minot AFB, on the south by V-430, on the southwest by the 21.8-mile radius of the Williston VORTAC, and on the west by the North Dakota/Montana state boundary.

* * * * *

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

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-18244 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0542; Airspace Docket No. 09-ACE-8]

Proposed Amendment of Class E Airspace; Minden, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Minden, NE. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Pioneer Village Field Airport, Minden, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Pioneer Village 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-2009-0542/Airspace Docket No. 09-ACE-8, at the beginning of your comments. You may also submit comments through 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-2009-0542/Airspace Docket No. 09-ACE-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 Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Pioneer Village Field Airport, Minden, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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 at Pioneer Village Field Airport, Minden, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, 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.

* * * * *

ACE NE E5 Minden, NE [Amended]

Pioneer Village Field Airport, NE

(Lat. 40°30'54" N., long. 98°56'44" W.)

Kearney VOR

(Lat. 40°43'32" N., long. 99°00'18" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pioneer Village Field Airport and within 3.9 miles each side of the 346° bearing from the airport extending from the 6.4-mile radius to 9.3 miles north of the airport and within 3.5 miles each side of the Kearney VOR 168° radial extending from the 6.4-mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 22, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-18246 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2009-0539; Airspace
Docket No. 09-AGL-14]

**Proposed Amendment of Class E
Airspace; Winona, MN**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class E airspace at Winona, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Winona Municipal Airport-Max Conrad Field, Winona, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Winona Municipal Airport-Max Conrad Field.

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-2009-0539/Airspace Docket No. 09-AGL-14, at the beginning of your comments. You may also submit comments through 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-2009-0539/Airspace Docket No. 09-AGL-14." 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 Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Winona Municipal Airport-Max Conrad Field, Winona, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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 at Winona Municipal Airport-Max Conrad Field, Winona, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, 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 MN E5 Winona, MN [Amended]

Winona Municipal Airport—Max Conrad Field, MN

(Lat. 44°04'38" N., long. 91°42'30" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Robertson Field Airport and within 8 miles southwest and 4 miles northeast of the 121° bearing from the airport extending from the 7-mile radius to 21 miles southeast of the airport, excluding that airspace within the La Crosse, WI Class D airspace area.

* * * * *

Issued in Fort Worth, TX on July 22, 2009.

Anthony D. Roetzal,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-18239 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0541; Airspace Docket No. 09-ACE-7]

Proposed Amendment of Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace for the St. Louis, MO, area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Spirit of St. Louis Airport, St. Louis, MO. Also, there would be minor adjustments to the geographic coordinates for Lambert-St. Louis International Airport, St. Louis VORTAC, and the Foristell VORTAC. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Spirit of St. Louis 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-2009-0541/Airspace Docket No. 09-ACE-7, 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-2009-0541/Airspace Docket No. 09-ACE-7." 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 extending upward from 700 feet above the surface for SIAPs operations at Spirit of St. Louis Airport, St. Louis, MO, and adjusting the geographic coordinates for Lambert-St. Louis International Airport, St. Louis VORTAC, and the Foristell VORTAC to coincide with the FAAs National Aeronautical Charting Office.

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 St. Louis, MO 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.

* * * * *

ACE MO E5 St. Louis, MO [Amended]

St. Louis, Lambert-St. Louis International Airport, MO

(Lat. 38°44'55" N., long. 90°22'12" W.)

St. Louis, Spirit of St. Louis Airport, MO
(Lat. 38°39'44" N., long. 90°39'07" W.)

Alton, St. Louis Regional Airport, MO
(Lat. 38°53'25" N., long. 90°02'46" W.)

St. Charles, St. Charles County Smartt Airport, MO

(Lat. 38°55'47" N., long. 90°25'48" W.)

St. Louis VORTAC

(Lat. 38°51'38" N., long. 90°28'57" W.)

Foristell VORTAC

(Lat. 38°41'40" N., long. 90°58'16" W.)

ZUMAY LOM

(Lat. 38°47'17" N., long. 90°16'44" W.)

OBLIO LOM

(Lat. 38°48'01" N., long. 90°28'29" W.)

Civic Memorial NDB

(Lat. 38°53'32" N., long. 90°03'23" W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 30L ILS localizer course extending from the airport to

8.7 miles southeast of the airport, and within a 6.8-mile radius of Spirit of St. Louis Airport, and within 3.9 miles each side of the 258° bearing from Spirit of St. Louis Airport extending from the 6.8-mile radius of Spirit of St. Louis Airport to 10.6 miles west of the airport, and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius of Spirit of St. Louis Airport to 8.3 miles west of the airport, and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.9-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9-mile radius of St. Louis Regional Airport to 7 miles north of the airport, and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

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

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–18240 Filed 7–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 250**

[Docket ID: MMS–2007–OMM–0068]

RIN 1010–AD47

Annular Casing Pressure Management for Offshore Wells

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations to address sustained casing pressure in oil and gas wells completed on the Outer Continental Shelf. Sustained casing pressure is a problem that, if left untreated, could cause serious harm to human life or the environment. The proposed rule would establish criteria for monitoring and testing of wells with sustained casing pressure, and would also incorporate the American Petroleum Institute's Recommended Practice for managing annular casing pressure. New regulations are needed because the current regulations do not adequately address requirements for wells that have sustained casing pressure. This rule would promote human safety and environmental protection, and require Outer Continental Shelf lessees to follow best industry practices for wells with sustained casing pressure.

DATES: Submit comments by September 29, 2009. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by August 31, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD47 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Under the tab “More Search Options,” click “Advanced Docket Search,” then select “Minerals Management Service” from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2007–OMM–0068 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's “User Tips” link. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference *Annular Casing Pressure Management for Offshore Wells, 1010–AD47* in your comments and include your name and return address.

- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD47, Office of Management and Budget; 202–395–5806 (fax); e-mail: oir_a_docket@omb.eop.gov. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Kirk Malstrom, Office of Offshore Regulatory Programs, Regulations and Standards Branch, 703–787–1751. For questions on technical issues, contact Russell Hoshman, Technical Assessment and Operations Support Section, Gulf of Mexico Outer Continental Shelf Region, 504–736–2627.

SUPPLEMENTARY INFORMATION:

Background: Sustained casing pressure (SCP) is pressure between the casing and the well's tubing, or between strings of casing, that rebuilds after being bled down. Data gathered by MMS

have shown that SCP is most often caused by leaks in the production tubing and tubing connectors. It is also caused by poorly cemented casing, channeling in the cemented annulus, and leaks in seals or other equipment. If left uncontrolled, this SCP represents an ongoing safety hazard and can cause serious or immediate harm or damage to human life, the marine and coastal environment, and property. During the period from 1980 to 1990, the oil and gas industry in the Gulf of Mexico (GOM) suffered four serious accidents as a result of high SCP, and the lack of proper control and monitoring of these pressures. In response, MMS developed a policy for the GOM Outer Continental Shelf (OCS) under which lessees could effectively monitor the SCP of wells in an attempt to prevent future accidents.

As far back as 1977, OCS Order No. 6, *Completion of Oil and Gas Wells*, required the testing and repair of all wells that exhibit SCP. The current regulation at 30–CFR–250.517 addresses tubing and wellhead equipment. Paragraph (a) of § 250.517 requires that tubing strings must maintain pressure integrity. Paragraph (c) requires that wellheads be equipped to monitor SCP in all casing annuli, and stipulates that the lessee must notify the District Manager if SCP is observed. The primary intent of this regulation, with respect to SCP, is to achieve and maintain pressure control of wells. Since that regulation was issued in 1988, MMS has interpreted § 250.517(c) to mean that no SCP is to be maintained on any annulus of an OCS well. With over 8,000 affected wells in the GOM with SCP in at least one annuli, immediate elimination of all SCP has proved to be impractical and exceedingly costly. The MMS has sought to identify and eliminate SCP in cases that represent a clear hazard to the safety of personnel or the environment and establish a monitoring system for the rest, all the while working towards elimination of the problem.

The MMS's SCP policy was then further revised with the issuance of the 1991 and 1994 Letters to Lessees (LTLs). These documents provided further clarification regarding wells with SCP, reporting procedures, time retention of field records, and departure procedures. Using the procedures of these LTLs, departures from the requirement for no SCP were requested and approved under § 250.142. Since the 1994 LTL was issued, MMS has identified areas of concern with the existing reporting, testing, and monitoring procedures. Once the final rulemaking becomes effective, the 1994 LTL will be rescinded.

On November 9, 2001, MMS published a notice of proposed rulemaking (66 FR 56620) to add SCP requirements to 30 CFR part 250, subpart E. Various industry representatives commented and had concerns about the 2001 notice of proposed rulemaking. Industry proposed a research project to study and develop guidance for annular casing pressure and MMS agreed. In August 2006, industry completed the first step in managing annular casing pressure by publishing the American Petroleum Institute's Recommended Practice 90, *Annular Casing Pressure Management for Offshore Wells* (API RP 90). The API RP 90 largely utilizes monitoring, diagnostic testing, and documentation to establish an annular casing pressure management program. The next step for industry would be to develop API RP 65–3, which identifies practices to prevent or remediate casing pressure in existing wells.

The API, industry, and MMS have worked collectively to produce API RP 90. As explained in section three of API RP 90, this RP is based on establishing an annular casing pressure management program that filters out nonproblematic wells that present an acceptable level of risk, thus allowing for a more focused effort on wells that are problematic. The management program, as outlined in API RP 90, includes monitoring, diagnostic testing, determining maximum allowable wellhead operating pressure (MAWOP) for each annulus, documentation, and risk assessment considerations.

The cooperative efforts of both industry and MMS have shown the importance and need to manage annular casing pressure. This proposed rulemaking would clarify the intended policy and procedures, and incorporate API RP 90 into MMS regulations. Along with the incorporation of API RP 90, new sections would be added to subparts E and F. The new sections proposed to be added in subpart E include additional requirements and clarifications beyond that of API RP 90. The MMS believes the level of risk in some particulars of API RP 90 needs to be clarified and enhanced; therefore additional requirements are explained in more detail in applicable sections. The following contains a brief section by section review of the proposed requirements:

Tubing and Wellhead Equipment (§ 250.517)

In this section, only paragraph (c) would be changed. A chart would be added to clarify the requirements of the different well types for casing pressure

monitoring. The current regulation does not apply to subsea and hybrid wells.

What are the requirements for casing pressure management? (§ 250.518)

This section states that MMS would require you to follow API RP 90 and the proposed requirements in §§ 250.519 through 250.530. It also emphasizes that if there is a conflict between API RP 90 and §§ 250.519 through 250.530, you must adhere to the latter.

How often do I have to monitor for casing pressure? (§ 250.519)

With many different well types in the OCS, a table would be added to clarify when you must monitor each type of well and how often you must record your pressure data.

When do I have to perform a casing diagnostic test? (§ 250.520)

This section states that a casing diagnostic test would be required only if you experience casing pressure under the criteria listed for each well type. There is an exemption to the requirements of this section. You are exempt from performing a diagnostic pressure test for the production casing on a well operating under active gas lift.

How do I manage the thermal effects caused by initial production on a newly completed or recompleted well? (§ 250.521)

A newly completed or recompleted well often has thermal casing pressure during initial startup. Bleeding casing pressure and casing fluids during the startup process is considered a normal and necessary operation to manage casing pressure; therefore, you do not need to evaluate these operations as casing diagnostic tests. However, after you complete startup operations, and if you observe casing pressure, then the provisions of this section apply.

When do I have to repeat casing diagnostic testing? (§ 250.522)

This section explains the various instances in which you would have to repeat casing diagnostic testing. Most repeat tests are attributed to timing, pressure, or corrective action.

How long do I keep records of casing pressure and diagnostic tests? (§ 250.523)

This section explains how long you would have to keep pressure test data in the field office closest to your well. This is so your personnel may access the data, and that such data would be available for MMS inspection. Requiring the last diagnostic test be kept at the nearest field office until the well is

abandoned helps assure that the abandonment design properly addresses casing pressure issues.

When am I required to take action from my casing diagnostic test? (§ 250.524)

This section clarifies when action is required based on the results of the diagnostic test. By focusing on specific pressure requirements, this section will assist lessees and operators in determining when they need to take action regarding casing pressure, and limit the number of casing pressure requests. Once the rulemaking becomes effective, NTL 2005 G-09 would be rescinded. Under paragraph (d), you must submit a casing pressure request if a well that has increasing casing pressure is bled down to prevent it from exceeding its MAWOP, except during initial startup operations. A newly completed or recompleted well often has thermal casing pressure during initial startup. Bleeding casing pressure and casing fluids during the startup process is considered a normal and necessary operation to manage casing pressure.

What do I submit if my casing diagnostic test requires action? (§ 250.525)

This section shows when and where you must submit a notification of corrective action or casing pressure request. The new casing pressure request is equivalent to the old departure requests, in that under certain casing pressure conditions, you still need MMS approval to continue operations. In lieu of a casing pressure request, a corrective action notice can be submitted if you recognize that you have a well with annular casing pressure that requires corrective action. The MMS added the corrective action request to allow operators the ability to begin corrective action without having to go through the process of the casing pressure request and denial before they can begin corrective actions. By circumventing the casing pressure request, both MMS and industry can focus efforts on the necessary corrective actions. Submittals are to be sent to the appropriate locations to help MMS processing.

What must I include in my notification of corrective action? (§ 250.526)

This section would clarify the required contents of a notification of corrective action. Once you send in your corrective action notice, you are required, within 30 days of the diagnostic test requiring action, to submit the appropriate Application for

Permit to Modify, corrective action plan, and other requirements.

What must I include in my casing pressure request? (§ 250.527)

This section would clarify the required contents of a casing pressure request. The information contained in a casing pressure request helps MMS facilitate the review and approval process.

What are the terms of my casing pressure request? (§ 250.528)

This section explains that the Regional Supervisor, Field Operations would set the term of the request and could also impose additional requirements or restrictions to allow continued operations of the well.

What if my casing pressure request is denied? (§ 250.529)

If your casing pressure request is denied, this section explains that a corrective action plan is required within 30-days of the request denial. The corrective action is sent to the District Manager because the district office is in charge of approving well operations and workovers. After the corrective action is complete and you perform the required casing diagnostic tests, you must also send the casing diagnostic test data to the Regional Supervisor, Field Operations. The Regional Supervisor, Field Operations uses the data to review and bring closure to the appropriate casing pressure issue.

When does my casing pressure request become invalid? (§ 250.530)

This section explains when your casing pressure request is no longer valid. Most casing pressure requests become invalid due to timing, pressure issues, or corrective actions.

Tubing and Wellhead Equipment (§ 250.617)

In this section, only paragraph (c) would be changed. A chart would be added to clarify the requirements of the different well types for casing pressure monitoring. The current regulation does not apply to subsea and hybrid wells.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or tribal governments or communities. There would be some costs associated with this rulemaking, mostly due to diagnostic testing, MAWOP calculations, and reporting to MMS. Taking into account paperwork burden requirements, diagnostic testing, and MAWOP calculations, the costs associated with this rulemaking would be approximately \$5 million industry-wide. The proposed rule would not require any new equipment to be installed, and diagnostic testing is currently being done throughout industry and is not new.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The changes in the proposed rule are strictly planning requirements for management of annular casing pressure in offshore wells.

(4) This proposed rule would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes proposed in the rule would affect lessees and operators of leases and pipeline right-of-way holders in the OCS. This could include about 130 active Federal oil and gas lessees. Small entities that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent (91) of these companies are considered small. This proposed rule, therefore, would affect a substantial number of small entities. This rule would affect every well on the OCS, and every operator both large and small would have the same criteria per well regardless of company size.

Nonetheless, the changes proposed in the rule would not have a significant economic effect on a substantial number of small entities because management of annular casing pressure would be a

moderate cost, mostly attributed to diagnostic testing. Taking into account recordkeeping, diagnostic testing, and MAWOP calculations, the costs associated with this rulemaking would be approximately \$5 million industry-wide. In comparison, to remediate the approximate 8,000 wells with SCP at approximately \$250,000 per well would cost approximately \$2 billion. The costs that are associated with this rulemaking would be minor when compared to SCP remediation costs and would not impede a company of any size.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the SBA will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant

takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act (PRA)

The proposed rule contains no new reporting or recordkeeping requirements, and an Office of Management and Budget (OMB) submission under the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed regulations will replace the references to NTLs and LTLs with specific cites to the code of federal regulations. The proposed rulemaking refers to, but does not change, information collection requirements under approved OMB Control Number 1010-0067 (18,756 hours, expiration 12/31/2010).

National Environmental Policy Act

We have prepared an environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment

under the National Environmental Policy Act of 1969.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C section 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Oil and gas exploration, and Reporting and recordkeeping requirements.

Dated: July 15, 2009 .
Ned Farquhar,
Acting Assistant Secretary—Land and Minerals Management.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

2. In § 250.198, add the following document incorporated by reference to the table in paragraph (e) in alphanumerical order.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

§ 250.198 Documents incorporated by reference.
 * * * * *
 (e) * * *

Title of documents	Incorporated by reference at
* * * * *	* * * * *
API RP 90, Annular Casing Pressure Management for Offshore Wells, First Edition, August 2006, Product No. G09001	§ 250.518
* * * * *	* * * * *

3. Revise § 250.517(c) to read as follows:

§ 250.517 Tubing and wellhead equipment.

pressure according to the following chart:

(c) When the tree is installed, you must equip wells to monitor for casing

If you have . . .	you must equip . . .	so you can monitor . . .
(1) Fixed platform wells, (2) Subsea wells, (3) Hybrid ¹ wells,	the wellhead the tubing head the surface wellhead	all annuli (A, B, C, D, etc., annuli). the production casing annulus (A annulus). all annuli at the surface (A and B riser annuli). If the production casing below the mudline and the production casing riser above the mudline are pressure isolated from each other, provisions must be made to monitor the production casing below the mudline for casing pressure.

¹ Characterized as a well drilled with a subsea wellhead and completed with a surface casing head, a surface tubing head, a surface tubing hangar, and a surface christmas tree.

* * * * *
 4. Add an undesignated center heading and new §§ 250.518 through 250.530 to Subpart E—Oil and Gas Well-Completion Operations to read as follows:

Casing Pressure Management

- Sec.
 250.518 What are the requirements for casing pressure management?
 250.519 How often do I have to monitor for casing pressure?
 250.520 When do I have to perform a casing diagnostic test?
 250.521 How do I manage the thermal effects caused by initial production on a newly completed or recompleted well?

- 250.522 When do I have to repeat casing diagnostic testing?
 250.523 How long do I keep records of casing pressure and diagnostic tests?
 250.524 When am I required to take action from my casing diagnostic test?
 250.525 What do I submit if my casing diagnostic test requires action?
 250.526 What must I include in my notification of corrective action?
 250.527 What must I include in my casing pressure request?
 250.528 What are the terms of my casing pressure request?
 250.529 What if my casing pressure request is denied?
 250.530 When does my casing pressure request become invalid?

§ 250.518 What are the requirements for casing pressure management?

Once you install your wellhead, you must meet the casing pressure management requirements of API RP 90 (incorporated by reference as specified in § 250.198) and the requirements of §§ 250.519 through 250.530. If there is a conflict between API RP 90 and the casing pressure requirements of this subpart, you must follow the requirements of this subpart.

§ 250.519 How often do I have to monitor for casing pressure?

You must monitor for casing pressure in your well according to the following table:

If you have . . .	you must monitor . . .	with a minimum one pressure data point recorded per . . .
(a) Fixed platform wells, (b) Subsea wells, (c) Hybrid wells, (d) Wells operating under a casing pressure request, (e) Wells operating under a casing pressure request on an unmanned fixed platform,	monthly continuously continuously daily weekly	month for each casing. day for the production casing. day for each riser and/or the production casing. day for each casing. week for each casing.

§ 250.520 When do I have to perform a casing diagnostic test?

observing or imposing casing pressure according to the following table:

(a) You must perform a casing diagnostic test within 30 days after first

If you have a . . .	you must perform a casing diagnostic test if . . .
(1) Fixed platform well, (2) Subsea well,	the casing pressure is greater than 100 psig. the measurable casing pressure is greater than the external hydrostatic pressure plus 100 psig measured at the subsea wellhead.
(3) Hybrid well,	a riser or the production casing pressure is greater than 100 psig measured at the surface.

(b) You are exempt from performing a diagnostic pressure test for the production casing on a well operating under active gas lift.

during initial startup. Bleeding casing pressure during the startup process is considered a normal and necessary operation to manage thermal casing pressure; therefore, you do not need to evaluate these operations as a casing diagnostic test. After 30 days of continuous production, the initial production startup operation is

complete and you must perform casing diagnostic testing as required in §§ 250.520 and 250.522.

§ 250.521 How do I manage the thermal effects caused by initial production on a newly completed or recompleted well?

A newly completed or recompleted well often has thermal casing pressure

§ 250.522 When do I have to repeat casing diagnostic testing?

Casing diagnostic testing must be repeated according to the following table:

When . . .	you must repeat diagnostic testing . . .
(a) Your casing pressure request approved term has expired, (b) Your well, previously on gas lift, has been shut-in or returned to flowing status for more than 180 days, (c) Your casing pressure request becomes invalid, (d) A casing or riser has an increase in pressure greater than 200 psig over the previous casing diagnostic test, (e) After any corrective action has been taken to remediate undesirable casing pressure, either as a result of a casing pressure request denial or any other action, (f) Your fixed platform well production casings (A annulus) has pressure exceeding 10 percent of its minimum internal yield pressure (MIYP), except for production casings on active gas lift, (g) Your fixed platform well's outer casing (B, C, D, etc., annuli) has a pressure exceeding 20 percent of its MIYP,	immediately. immediately on the production casing (A annulus). The production casing (A annulus) of wells on active gas lift are exempt from diagnostic testing. within 30 days. within 30 days. within 30 days. once per year, not to exceed 12 months between tests. once every 5 years, at a minimum.

§ 250.523 How long do I keep records of casing pressure and diagnostic tests?

Records of casing pressure and diagnostic tests must be kept at the field office nearest the well for a minimum of 2 years. The last casing diagnostic test for each casing or riser must be retained at the field office nearest the well until the well is abandoned.

(a) Any fixed platform well with a casing pressure exceeding its maximum allowable wellhead operating pressure (MAWOP);

(b) Any fixed platform well with a casing pressure that is greater than 100 psig and that cannot bleed to 0 psig through a 1/2 inch needle valve within 24 hours, or is not bled to 0 psig during a casing diagnostic test;

(c) Any well that has demonstrated tubing/casing, tubing/riser, casing/casing, riser/casing, or riser/riser communication;

(d) Any well that has sustained casing pressure (SCP) and is bled down to prevent it from exceeding its MAWOP;

(e) Any hybrid well with casing or riser pressure exceeding 100 psig; or

(f) Any subsea well with a casing pressure 100 psig greater than the external hydrostatic pressure at the subsea wellhead.

§ 250.524 When am I required to take action from my casing diagnostic test?

You must take action if you have any of the following conditions:

§ 250.525 What do I submit if my casing diagnostic test requires action?

Within 14 days after you perform a casing diagnostic test requiring action under § 250.524:

You must submit either:	Submit to the appropriate:	Submittal must include:	You must also:
(a) A notification of corrective action; or	District Manager and copy the Regional Supervisor, Field Operations.	requirements of § 250.526	submit an Application for Permit to Modify or Corrective Action Plan within 30 days of the diagnostic test.
(b) A casing pressure request.	Regional Supervisor, Field Operations.	requirements of § 250.527.	

§ 250.526 What must I include in my notification of corrective action?

The following information must be included in the notification of corrective action:

- (a) Lessee or Operator name;
- (b) Area name, OCS block number;
- (c) Well name and API number; and
- (d) Casing diagnostic test data.

§ 250.527 What must I include in my casing pressure request?

The following information must be included in the casing pressure request:

- (a) API number;
- (b) Lease number;
- (c) Area name and number;
- (d) Well number;
- (e) Company name and mailing address;
- (f) All casing, riser, and tubing sizes, weights, grades, and MIYP;
- (g) All casing/riser calculated MAWOPs;
- (h) All casing/riser pre-bleed down pressures;
- (i) Shut-in tubing pressure;
- (j) Flowing tubing pressure;
- (k) Date and the calculated daily production rate during last well test (oil, gas, basic sediment, and water);
- (l) Well status (shut-in, temporarily abandoned, producing, injecting, or gas lift);
- (m) Well type (dry tree, hybrid, or subsea);
- (n) Date of diagnostic test;
- (o) Well schematic;
- (p) Water depth;
- (q) Volumes and types of fluid bled from each casing or riser evaluated;
- (r) Type of diagnostic test performed:
 - (1) Bleed down/buildup test;
 - (2) Shut-in the well and monitor the pressure drop test;
 - (3) Constant production rate and decrease the annular pressure test;
 - (4) Constant production rate and increase the annular pressure test;
 - (5) Change the production rate and monitor the casing pressure test; and
 - (6) Casing pressure and tubing pressure history plot;
 - (s) The casing diagnostic test data for all casing exceeding 100 psig;
 - (t) Associated shoe strengths for casing shoes exposed to annular fluids;
 - (u) Concentration of any H2S that may be present;
 - (v) Whether the structure on which the well is located is manned or unmanned;
 - (w) Additional comments; and
 - (x) Request date.

(2) Shut-in the well and monitor the pressure drop test;

- (3) Constant production rate and decrease the annular pressure test;
- (4) Constant production rate and increase the annular pressure test;
- (5) Change the production rate and monitor the casing pressure test; and
- (6) Casing pressure and tubing pressure history plot;
- (s) The casing diagnostic test data for all casing exceeding 100 psig;
- (t) Associated shoe strengths for casing shoes exposed to annular fluids;
- (u) Concentration of any H2S that may be present;
- (v) Whether the structure on which the well is located is manned or unmanned;
- (w) Additional comments; and
- (x) Request date.

§ 250.528 What are the terms of my casing pressure request?

Casing pressure requests are granted by the Regional Supervisor, Field Operations for a term to be determined by the Regional Supervisor on a case-by-case basis. The Regional Supervisor may impose additional restrictions or requirements to allow continued operation of the well.

§ 250.529 What if my casing pressure request is denied?

(a) If your casing pressure request is denied, then the operating company must submit plans for corrective action to the respective District Manager within 30 days of receiving the denial. The District Manager will establish a specific time period in which this corrective action will be taken. You

must notify the respective District Manager within 30 days after completion of your corrected action.

(b) You must submit the casing diagnostic test data to the appropriate Regional Supervisor, Field Operations within 14 days of completion of the diagnostic test required under § 250.522(e).

§ 250.530 When does my casing pressure request become invalid?

A casing pressure request becomes invalid when:

- (a) The casing or riser pressure increases by 200 psig over the granted casing pressure request pressure;
- (b) The approved term ends;
- (c) The well is worked-over, side-tracked, redrilled, recompleted, or acid stimulated;
- (d) A different casing or riser on the same well requires a casing pressure request; or
- (e) A well has more than one casing operating under a casing pressure request and one of the casing pressure requests become invalid, then all casing pressure requests for that well become invalid.

5. Revise § 250.617(c) to read as follows:

* * * * *

§ 250.617 Tubing and wellhead equipment.

* * * * *

(c) When reinstalling the tree you must:

- (1) Equip wells to monitor for casing pressure according to the following chart:

If you have . . .	you must equip . . .	so you can monitor . . .
(i) Fixed platform wells, (ii) Subsea wells, (iii) Hybrid ¹ wells,	the wellhead the tubing head the surface wellhead	all annuli (A, B, C, D, etc., annuli). the production casing annulus (A annulus). all annuli at the surface (A and B riser annuli). If the production casing below the mudline and the production casing riser above the mudline are pressure isolated from each other, provisions must be made to monitor the production casing below the mudline for casing pressure.

¹ Characterized as a well drilled with a subsea wellhead and completed with a surface casing head, a surface tubing head, a surface tubing hangar, and a surface christmas tree.

(2) Follow the casing pressure management requirements in subpart E of this part.

* * * * *

[FR Doc. E9-17874 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-MR-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

[FDMS Docket NARA-09-0003]

RIN 3095-AB60

Photography in Public Exhibit Space

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The proposed rule limits the use of film, photographic, and videotape equipment inside the National Archives Building in Washington, DC. Filming, photographing, and videotaping will be prohibited in exhibits of the National Archives Experience (NAE) in Washington, DC, including the Declaration of Independence, the Constitution, and the Bill of Rights (known as the Charters of Freedom) in the Rotunda of the National Archives Building. In 2003 NARA installed new

exhibit cases for displaying the Charters and other NAE documents to provide better clarity for viewing the exhibits. NARA seeks to ensure the necessary protection for the documents from the cumulative effects of photographic flash.

DATES: Comments are due by September 29, 2009.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301-837-0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Marilyn Redman at 301-837-1850 or fax number 301-837-0319.

SUPPLEMENTARY INFORMATION: In order to secure and protect all documents on display in the National Archives Experience (NAE) from unnecessary exposure to the harmful effects of flash photography and to improve the overall visitor experience, NARA is proposing to ban all photography from exhibit areas in the NAE. The 2003 renovations to the Rotunda exhibit area included the installation of new exhibit cases, which were designed with special glass with high clarity and no colored filters, to improve the ability to see the documents on display. The new display cases provide little protection from the damaging effects of photographic flash. While NARA staff goes to great lengths to adjust the Rotunda light levels to protect documents on display from excess light, public photography with attendant flash works against the efforts to protect the documents.

The NAE exhibitions primarily contain paper and parchment documents that are susceptible to the harmful effects of light and in particular to the cumulative effects of photographic flash. While all original documents on display are at risk from excessive light exposure, the Declaration of Independence, Constitution and Bill of Rights (known collectively as the Charters of Freedom) are especially susceptible to the damaging effects from photographic

flash because these documents are on permanent display.

Currently, signage, pamphlets, and security officers inform visitors that flash photography is prohibited in the exhibit areas. Most photographic flash occurs from accidental acts rather than intentional action. However, over the past six years it has proved to be an impossible task to prevent visitors from intentionally or accidentally using additional light. Security officers do escort those visitors out of the building who continue to use flash photography after being warned. But, by the time a security officer makes that decision, at least two or three flashes have already occurred, needlessly exposing documents to excessive light. Numerous visitors' remarks in the informal visitors' comment log as well as letters to NARA include apologies for inadvertent flash; complaints that flash disrupts their visit; that flash rules are not effectively enforced; and, that camera use should be banned.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individuals. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend part 1280 of title 36, Code of Federal Regulations, as follows:

PART 1280—USE OF NARA FACILITIES

1. The authority citation for Part 1280 continues to read as follows:

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112, 2903

2. Amend § 1280.46 by redesignating (b)(3) as paragraph (c) and revising it to read as follows:

§ 1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?

* * * * *

(c) You may not film, photograph, or videotape in any of the exhibit areas of the National Archives Building in Washington, DC, including the Rotunda where the Declaration of Independence, the Constitution, and the Bill of Rights are displayed.

Dated: July 28, 2009.

Adrienne C. Thomas,

Acting Archivist of the United States.

[FR Doc. E9-18461 Filed 7-30-09; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0547; FRL-8938-5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Clean Data for the 1997 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the West Virginia portions of three nonattainment areas for the 1997 fine particulate (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) have clean data for the 1997 PM_{2.5} NAAQS. These are Berkeley County, part of the Hagerstown-Martinsburg MD-WV nonattainment area; Wood County, part of the Parkersburg-Marietta WV-OH nonattainment area; and Marshall County and Ohio County, part of the Wheeling WV-OH nonattainment area, hereinafter referred to in this notice as the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on 2006-2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show these areas continue to have clean data for the 1997 PM_{2.5} NAAQS. If this proposed determination is made final, the requirements for these areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to meet the 1997 PM_{2.5} NAAQS.

DATES: Written comments must be received on or before August 31, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0547 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail*:
fernandez.cristina@epa.gov.

C. *Mail*: EPA–R03–OAR–2009–0547, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0547. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA's Analysis of the Relevant Air Quality Data?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is proposing to determine that the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 PM_{2.5} NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's PM_{2.5} implementation rule (see 40 CFR section 51.1004(c)), the requirements for the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would be suspended for so long as these areas continue to meet the 1997 PM_{2.5} NAAQS.

As further discussed below, the proposed determination would: (1) For

the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas, suspend the requirements to submit an attainment demonstration, associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress (RFP) plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS; (2) continue until such time, if any, that EPA subsequently determines that these areas have violated the 1997 PM_{2.5} NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling areas based on the 2006 PM_{2.5} NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 PM_{2.5} NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that these areas have violated the 1997 PM_{2.5} NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist, and these areas would thereafter have to address the pertinent requirements.

EPA's determination that the air quality data for these areas shows clean data for the 1997 PM_{2.5} NAAQS, as proposed in this **Federal Register** notice, is not equivalent to the redesignation of the areas to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for these areas as required under section 175A of the CAA, nor a determination that these areas have met the other requirements for redesignation. The designation status of these areas would remain nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that these areas meet the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. The 1997 PM_{2.5} NAAQS

became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR section 50.7. The 2006 PM_{2.5} NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR section 50.13. At this point, EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 PM_{2.5} NAAQS. EPA has not made any designation determination for the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling areas based on the 2006 PM_{2.5} NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 PM_{2.5} NAAQS for the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling areas. Conversely, any future designation determination of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling areas, based on the 2006 PM_{2.5} NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment areas continue to demonstrate attainment with the 1997 PM_{2.5} NAAQS, the requirements for the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would remain suspended, regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 PM_{2.5} NAAQS.

Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a twenty-four hour standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Hagerstown-Martinsburg nonattainment area (Berkeley County, WV and Washington County, MD), the Parkersburg-Marietta nonattainment area (Wood County, WV and Washington County, OH), and the Wheeling nonattainment area (Marshall County, WV, Ohio County, WV, and Belmont County, OH) were designated nonattainment for the 1997 PM_{2.5} NAAQS (see 40 CFR part 81).

IV. What Is EPA’s Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for PM_{2.5}, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA AQS database for the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling PM_{2.5} nonattainment areas from 2006 to the present time. On the basis of that review, EPA has concluded that these areas are meeting the 1997 PM_{2.5} NAAQS based on 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show these areas continue to attain the 1997 PM_{2.5} NAAQS.

Under EPA regulations at 40 CFR Part 50, section 50.7:

(1) The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 µg/m³;

(2) The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 µg/m³.

Tables 1.a, 1.b, and 1.c show the 2006–2008 design values for the 1997 Annual PM_{2.5} NAAQS for the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment area monitors, respectively. Table 2.a, 2.b, and 2.c show the 2006–2008 design values for the 1997 24-Hour PM_{2.5} NAAQS for these same respective monitors. All design values in the tables are in micrograms per cubic inch (µg/m³).

TABLE 1.a—ANNUAL DESIGN VALUES FOR HAGERSTOWN-MARTINSBURG MD-WV

Location	AQS site ID	1997 Annual PM _{2.5} standard	2006–2008 Design values
Berkeley County, WV	540030003	15	14.9
Washington County, MD	240430009	15	12.2

TABLE 1.b—ANNUAL DESIGN VALUES FOR PARKERSBURG-MARIETTA WV–OH

Location	AQS site ID	1997 Annual PM _{2.5} standard	2006–2008 Design values
Wood County	541071002	15	14.6

Note: There are no PM_{2.5} monitors in the Ohio portion of this nonattainment area.

TABLE 1.c—ANNUAL DESIGN VALUES FOR WHEELING WV—OH

Location	AQS site ID	1997 Annual PM _{2.5} standard	2006–2008 Design values
Marshall County, WV	540511002	15	14.2
Ohio County, WV	540690010	15	13.7

Note: There are no PM_{2.5} monitors in the Ohio portion of this nonattainment area.

TABLE 2.a—24-HOUR DESIGN VALUES FOR HAGERSTOWN-MARTINSBURG MD-WV

Location	AQS site ID	1997 24-Hour PM _{2.5} standard	2006–2008 Design values
Berkeley County, WV	540030003	65	31
Washington County, MD	240430009	65	30

TABLE 2.b—24-HOUR DESIGN VALUES FOR PARKERSBURG-MARIETTA WV—OH

Location	AQS site ID	1997 24-Hour PM _{2.5} standard	2006–2008 Design values
Wood County, WV	541071002	65	34

Note: There are no PM_{2.5} monitors in the Ohio portion of this nonattainment area.

TABLE 2.c—24-HOUR DESIGN VALUES FOR WHEELING WV—OH

Location	AQS site ID	1997 24-Hour PM _{2.5} standard	2006–2008 Design values
Marshall County, WV	540511002	65	34
Ohio County, WV	540690010	65	31

Note: There are no PM_{2.5} monitors in the Ohio portion of this nonattainment area.

EPA's review of these data indicate that the Martinsburg-Hagerstown MD-WV, Parkersburg-Marietta WV-OH, and Wheeling WV-OH nonattainment areas have met and continue to meet the 1997 PM_{2.5} NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to determine that the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. As provided in 40 CFR section 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS so long as these areas continue to attain the 1997 PM_{2.5} NAAQS.

VI. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 proposed determination that the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment areas have clean data for the 1997 PM_{2.5} standard 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 23, 2009.

Judith M. Katz,

Acting Regional Administrator, Region III.

[FR Doc. E9-18393 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0506; FRL-8938-3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Determination of Clean Data for the 1997 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Johnstown (Cambria and Indiana Counties), Lancaster (Lancaster County), Reading (Berks County) and York (York County), Pennsylvania nonattainment areas for the 1997 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) have clean data for the 1997 PM_{2.5} NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show that these areas continue to meet the 1997 PM_{2.5} NAAQS. If this proposed determination is made final, the requirements for these areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as each of these areas continue to meet the 1997 PM_{2.5} NAAQS.

DATES: Written comments must be received on or before August 31, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0506 by one of the following methods:

A. <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0506, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2009-0506. 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.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA's Analysis of the Relevant Air Quality Data?
- V. What Is EPA's Proposed Action?
- VI. What Are the Statutory and Executive Order Reviews?

I. What Action Is EPA Taking?

EPA is proposing to determine that the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show that these areas continue to meet the 1997 PM_{2.5} NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's PM_{2.5} implementation rule (see 40 CFR 51.1004(c)), the requirements for the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would be suspended for so long as each area continues to meet the 1997 PM_{2.5} NAAQS.

As further discussed below, the proposed determination would: (1) For

the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas, suspend the requirements to submit for each area an attainment demonstration, associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress (RFP) plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS; (2) continue until such time, if any, that EPA subsequently determines that each area have violated the 1997 PM_{2.5} NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas based on the 2006 PM_{2.5} NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Furthermore, as described below, any such final determinations would not be equivalent to the redesignation of these areas to attainment based on the 1997 PM_{2.5} NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that these areas have violated the 1997 PM_{2.5} NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and these areas would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, that the air quality data show attainment of the 1997 PM_{2.5} NAAQS, is not equivalent to the redesignation of these areas to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for these areas as required under section 175A of the CAA, nor a determination that these areas have met the other requirements for redesignation. The designation status of these areas would remain nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that these areas meet the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5}

nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. The 1997 PM_{2.5} NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7. The 2006 PM_{2.5} NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR section 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 PM_{2.5} NAAQS.

At this point, EPA has not made any designation determination for the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas based on the 2006 PM_{2.5} NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 PM_{2.5} NAAQS for these Pennsylvania PM_{2.5} nonattainment areas. Conversely, any future designation determination of these Pennsylvania PM_{2.5} nonattainment areas based on the 2006 PM_{2.5} NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas continue to demonstrate attainment with the 1997 PM_{2.5} NAAQS, the requirements for these Pennsylvania PM_{2.5} nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would remain suspended, regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Once these areas are designated for the 2006 NAAQS, they will have to meet all applicable requirements for that designation.

III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a twenty-four hour standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects

are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Johnstown, Lancaster, Reading and York, Pennsylvania nonattainment areas were designated nonattainment for the 1997 PM_{2.5} NAAQS (see 40 CFR part 81).

IV. What Is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for PM_{2.5} consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA AQS database for the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas from 2006 through the present time. On the basis of that review, EPA has concluded that these areas meet the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show that these areas continue to attain the 1997 PM_{2.5} NAAQS.

Under EPA regulations at 40 CFR part 50, § 50.7:

(1) The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 µg/m³.

(2) The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 65 µg/m³.

Table 1 shows the design values for the 1997 24-hour PM_{2.5} NAAQS for Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment area monitors for the years 2006–2008. Table 2 shows the design values for the 1997 annual PM_{2.5} NAAQS for these same monitors and the same three-year period.

TABLE 1—DESIGN VALUES FOR THE 1997 24-HOUR PM_{2.5} NAAQS FOR JOHNSTOWN, LANCASTER, READING AND YORK, PENNSYLVANIA IN MICROGRAMS PER CUBIC METER (µg/m³)

Location	AQS site ID	1997 24-Hour attainment standard	2006–2008 Design values
Cambria County (Johnstown, PA)	42–021–0011	65	35
Lancaster County (Lancaster, PA)	42–071–0007	65	37
Berks County (Reading, PA)	42–011–0011	65	34
York County (York, PA)	42–133–0008	65	35

TABLE 2—DESIGN VALUES FOR THE 1997 ANNUAL PM_{2.5} NAAQS FOR JOHNSTOWN, LANCASTER, READING AND YORK, PENNSYLVANIA IN MICROGRAMS PER CUBIC METER (µg/m³)

Location	AQS site ID	1997 Annual attainment standard	2006–2008 Design values
Cambria County (Johnstown, PA)	42–021–0011	15.0	14.4
Lancaster County (Lancaster, PA)	42–071–0007	15.0	14.5
Berks County (Reading, PA)	42–011–0011	15.0	13.6
York County (York, PA)	42–133–0008	15.0	14.6

EPA’s review of these data indicate that the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas have met and continue to meet the 1997 PM_{2.5} NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. What Is EPA’s Proposed Action?

EPA is proposing to determine that the Johnstown, Lancaster, Reading and York, Pennsylvania nonattainment areas for the 1997 PM_{2.5} NAAQS have clean data for the 1997 PM_{2.5} NAAQS. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS so long as these areas continue to meet the 1997 PM_{2.5} NAAQS.

VI. What Are the Statutory and Executive Order Reviews?

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 proposed rule pertaining to the determination of the 1997 fine particle standard for the Johnstown, Lancaster, Reading and York, Pennsylvania PM_{2.5} nonattainment areas, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

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

Dated: July 24, 2009.

Judith M. Katz,

Acting Regional Administrator, Region III.

[FR Doc. E9–18341 Filed 7–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2009-0214; FRL-8939-3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides (NO_x)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) that amend 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds. On March 10, 2009, the State of Texas submitted a SIP revision containing amendments to the Beaumont-Port Arthur (BPA) 8-Hour Ozone Nonattainment Area Major Source rules, the Houston-Galveston-Brazoria (HGB) 8-Hour Ozone Nonattainment Area Major Source rules, and the HGB 8-Hour Ozone Nonattainment Area Minor Source rules. These revisions will result in additional flexibility and consistency in the current stationary reciprocating internal combustion engine and gas turbine monitoring specifications found in Chapter 117 by allowing for an output-based option for monitoring nitrogen oxides (NO_x) emissions. This additional option is expected to be equally effective as totalizing fuel flow meters in the monitoring of NO_x emissions at major stationary sources in the BPA 8-hour ozone nonattainment area and at both major and minor sources in the HGB 8-hour ozone nonattainment area. The EPA is proposing to approve these revisions pursuant to section 110 of the Federal Clean Air Act (CAA).

DATES: Written comments must be received on or before August 31, 2009.**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.**FOR FURTHER INFORMATION CONTACT:** Dayana Medina, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7241; fax number 214-665-7263; e-mail address medina.dayana@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal 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 relevant adverse comments are received in response to this action, 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. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: July 21, 2009.

Carl E. Edlund,*Acting Regional Administrator, Region 6.*

[FR Doc. E9-18343 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2009-0199; FRL-8938-4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Determination of Clean Data for the 1997 Fine Particulate Matter Standard**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to determine that the Baltimore, Maryland and Hagerstown-Martinsburg, Maryland (MD)-West Virginia (WV) nonattainment areas for the 1997 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) have clean data for the 1997 PM_{2.5} NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on the 2006-2008 data. In

addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA Air Quality System (AQS) database, and not yet certified, show that these areas continue to meet the 1997 PM_{2.5} NAAQS. If this proposed determination is made final, the requirements for these areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as each of these areas continue to meet the 1997 PM_{2.5} NAAQS.

DATES: Written comments must be received on or before August 31, 2009.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0199 by one of the following methods:

A. *www.regulations.gov*. Follow the online instructions for submitting comments.

B. *E-mail:*

fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0199, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2009-0199. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic

comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the 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 www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814-2037, or by e-mail at lewis.jacqueline@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA’s Analysis of the Relevant Air Quality Data?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is proposing to determine that the Baltimore and the Maryland portion of the Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show that these areas continue to meet the 1997 PM_{2.5} NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA’s PM_{2.5} implementation rule (see 40 CFR section 51.1004(c)), the requirements for the Baltimore and the Maryland portion of the Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would be suspended for so long as each area continues to meet the 1997 PM_{2.5} NAAQS.

As further discussed below, the proposed determination for the Baltimore, MD and for the Maryland portion of the Hagerstown-Martinsburg, MD-WV nonattainment areas would: (1) Suspend the requirements to submit for each area an attainment demonstration, associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress (RFP) plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS; (2) continue until such time, if any, that EPA subsequently determines that each area have violated the 1997 PM_{2.5} NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Baltimore and Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas based on the 2006 PM_{2.5} NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment for purposes of the 2006 PM_{2.5} NAAQS. Furthermore, as described below, any such final determinations would not be equivalent to the redesignation of these areas to attainment based on the 1997 PM_{2.5} NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the areas have violated the 1997 PM_{2.5} NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist, and these areas would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, that the air quality data shows attainment of the 1997 PM_{2.5} NAAQS, is not equivalent to the redesignation of these areas to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act

(CAA), because we would not yet have an approved maintenance plan for these areas as required under section 175A of the CAA, nor a determination that these areas have met the other requirements for redesignation. The designation status of these areas would remain nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that these areas meet the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Baltimore and the Maryland portion of the Hagerstown-Martinsburg MD-WV PM_{2.5} nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. The 1997 PM_{2.5} NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR section 50.7. The 2006 PM_{2.5} NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR section 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(2), for the 2006 PM_{2.5} NAAQS. At this point, EPA has not made any designation determination for the Baltimore and Hagerstown-Martinsburg MD-WV PM_{2.5} nonattainment areas based on the 2006 PM_{2.5} NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 PM_{2.5} NAAQS for the Baltimore and Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas. Conversely, any future designation determination of the Baltimore and Hagerstown-Martinsburg, MD-WV nonattainment areas, based on the 2006 PM_{2.5} NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Baltimore and the Maryland portion of the Hagerstown-Martinsburg, MD-WV nonattainment areas continue to demonstrate attainment with the 1997 PM_{2.5} NAAQS, the requirements for the nonattainment areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would remain suspended, regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Once these areas are designated for the 2006 NAAQS, they will have to meet all applicable requirements for that designation.

III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a twenty-four hour standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications

for the 1997 PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Baltimore and Hagerstown-Martinsburg, MD-WV nonattainment areas were designated nonattainment for the 1997 PM_{2.5} NAAQS (see 40 CFR part 81).

IV. What Is EPA’s Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for PM_{2.5}, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA AQS database for the Baltimore and Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas from 2006 through the present time. On the basis of that review, EPA has concluded that these areas meet the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data for 2009 that are available in the EPA AQS database, but not yet certified, show these areas

continue to attain the 1997 PM_{2.5} NAAQS.

Under EPA regulations at 40 CFR Part 50, section 50.7:

(1) The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 µg/m³.

(2) The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 µg/m³.

Table 1.a shows the design values for the 1997 Annual PM_{2.5} NAAQS for the Baltimore nonattainment area monitors for the years 2006–2008. Table 1.b shows the design values for the 1997 Annual PM_{2.5} NAAQS for the Hagerstown-Martinsburg, MD-WV nonattainment area monitors for the years 2006–2008.

TABLE 1.a—DESIGN VALUES FOR COUNTIES IN THE BALTIMORE, MD NONATTAINMENT AREA FOR 1997 PM_{2.5} NAAQS—ANNUAL STANDARD

Location	AQS site ID	1997 annual attainment standard	2006–2008 design values
Anne Arundel County	24–003–1003	15	13.3
Baltimore County	24–005–1007	15	12.6
Baltimore County	24–005–3001	15	13.6
Harford County	24–025–1001	15	11.7
Baltimore City	24–510–0006	15	12.8
Baltimore City	24–510–0007	15	12.9
Baltimore City	24–510–0008	15	14
Baltimore City	24–510–0035	15	14.5
Baltimore City	24–510–0040	15	14

TABLE 1.b—DESIGN VALUES FOR THE HAGERSTOWN-MARTINSBURG, MD-WV NONATTAINMENT AREA FOR 1997 PM_{2.5} NAAQS—ANNUAL STANDARD

Location	AQS site ID	1997 Annual attainment standard	2006–2008 design values
Washington County, MD	24–043–0009	15	12.2
Berkeley County, WV	54–003–0003	15	14.9

Table 2.a shows the design values for the 1997 24-Hour PM_{2.5} NAAQS for these same monitors and the same 3-

year period. Table 2.b shows the design values for the 1997 24-Hour PM_{2.5}

NAAQS for these same monitors and the same 3-year period.

TABLE 2.a—DESIGN VALUES FOR COUNTIES IN THE BALTIMORE, MD NONATTAINMENT AREA FOR 1997 PM_{2.5} NAAQS—24-HOUR STANDARD

Location	AQS site ID	1997 Annual attainment standard	2006–2008 design values
Anne Arundel County	24–003–1003	65	34
Baltimore County	24–005–1007	65	32
Baltimore County	24–005–3001	65	33
Harford County	24–025–1001	65	29

TABLE 2.a—DESIGN VALUES FOR COUNTIES IN THE BALTIMORE, MD NONATTAINMENT AREA FOR 1997 PM_{2.5} NAAQS—24-HOUR STANDARD—Continued

Location	AQS site ID	1997 Annual attainment standard	2006–2008 design values
Baltimore City	24–510–0006	65	33
Baltimore City	24–510–0007	65	33
Baltimore City	24–510–0008	65	35
Baltimore City	24–510–0035	65	34
Baltimore City	24–510–0040	65	34

TABLE 2.b—DESIGN VALUES FOR THE HAGERSTOWN-MARTINSBURG, MD-WV NONATTAINMENT AREA FOR 1997 PM_{2.5} NAAQS—24-HOUR STANDARD

Location	AQS site ID	1997 24-Hour attainment standard	2005–2007 design values
Washington County, MD	24–043–0009	65	30
Berkeley County, WV	54–003–0003	65	31

EPA’s reviews of these data indicate that the Baltimore, MD and Hagerstown-Martinsburg, MD-WV PM_{2.5} nonattainment areas have met and continue to meet the 1997 PM_{2.5} NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Please note that if EPA received adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. What’s EPA’s Proposed Action?

EPA is proposing to determine that the Baltimore and the Maryland portion of the Hagerstown-Martinsburg, MD-WV nonattainment areas for the 1997 PM_{2.5} NAAQS have clean data for the 1997 PM_{2.5} NAAQS. As provided in 40 CFR section 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS so long as these areas continues to meet the 1997 PM_{2.5} NAAQS.

VI. What Are the 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 (Public Law 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 proposed determination that the Maryland portion of the Hagerstown-Martinsburg and the Baltimore nonattainment areas have clean data for the 1997 PM_{2.5} standard 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 23, 2009.

Judith M. Katz,

Acting Regional Administrator, Region III.

[FR Doc. E9–18394 Filed 7–30–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 146

Friday, July 31, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 27, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: School Nutrition Dietary Assessment Study-IV.

OMB Control Number: 0584-0527.
Summary of Collection: The School Nutrition Dietary Assessment Study-IV (SNDA-IV) will collect a broad range of data from a nationally representative sample of public School Food Authorities (SFAs) and schools. The study will focus on assessing the nutrient content of school meals offered and served to students in elementary, middle and high schools. The study will also assess issues related to the operation of school meals program, particularly aspects that may influence the nutrient content of meals offered to children, children's decisions to participate in the meal programs and the experience of children who do participate in the programs.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect data from the study to address three broad set of research questions of interest to USDA, the states, SFAs and other program stakeholders: (1) What are the characteristics of schools and SFAs participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), particularly as they relate to meal service operations and the food environment? (2) What are the characteristics of meals and snacks offered and served to students? (3) How have school food service and school environment characteristics and meals offered and served to students changed over time? Without this information, FNS will not be able to assess progress toward key strategic goals for the NSLP and SBP or identify related training and technical assistance needs of SFAs and schools.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 3,725.

Frequency of Responses: Report: Other (One time).

Total Burden Hours: 7,111.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9-18245 Filed 7-30-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest, Laurentian Ranger District; Minnesota; Tracks Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) for the Tracks Project. The proposed activities would manage forest vegetation composition, age class, and spatial patterns. Proposed activities also address the transportation system associated with vegetation activities and long-term Federal and non-federal access needs.

The project area encompasses nearly 78,000 acres of National Forest System land.

The proposed action would create young forest through timber harvest; improve stand structure and within-stand diversity with harvests such as thinning; and restore stand conditions without harvest. Managing the minimum road system needed for long-term vegetation management would involve adding and decommissioning miles of road. The proposed project is located on the Laurentian Ranger District, Aurora, Minnesota.

DATES: Comments concerning the scope of the analysis must be received by August 31, 2009. The draft environmental impact statement is expected in late 2009 and the final environmental impact statement is expected in spring 2010.

ADDRESSES: Send written comments to Stephen J. Kuennen, Laurentian District Ranger, Tracks Project, 318 Forestry Road, Aurora, MN 55705. Send electronic comments to comments-eastern-superior-laurentian@fs.fed.us. Comments may also be sent via facsimile to (218) 229-8821.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely

and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT:

Susan Duffy, Tracks Project Coordinator at 1393 Hy 169, Ely, MN 55731, telephone (218) 365-2097.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of the Tracks Project is to maintain and promote native vegetation communities that are diverse, productive, healthy, and resilient by moving the vegetation towards the desired vegetation and landscape ecosystem conditions described in the Superior National Forest Land and Resource Management Plan (Forest Plan). Forest Plan direction for the transportation system is also part of the project's purpose.

Proposed Action

The proposed action would manage forest vegetation composition, age class, and spatial patterns and the transportation system associated with these activities. Proposed activities include: creating young forest on approximately 5,166 acres, improving stand structure and within-stand diversity on approximately 1,345 acres, and restoring stand conditions through a variety of non-harvest activities such as planting, biomass removal, and conducting prescribed burns to reduce risk of wildfire on approximately 352 acres. Managing the minimum road system needed for long-term vegetation management would involve adding 5.2 miles of system road and decommissioning 11.4 miles of road.

Responsible Official

Stephen J. Kuennen, Laurentian District Ranger, 318 Forestry Road, Aurora, MN 55705.

Nature of Decision To Be Made

An environmental analysis for the Tracks Project will evaluate site-specific issues, consider management alternatives, and analyze the potential effects of the proposed action and alternatives. The scope of the project is limited to decisions concerning

activities within the Tracks Project Area that meet the purpose and need, as well as desired conditions. An environmental impact statement will provide the Responsible Official, Stephen J. Kuennen, with the information needed to decide which actions, if any, to approve.

Permits or Licenses Required

Easement or permission to cross non-federal property may be needed to access some treatment units to implement Forest Service activities.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Written comments will be solicited through a notice that will be sent to the landowners within the Tracks Project area and other interested individuals and organizations.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: July 20, 2009.

Stephen J. Kuennen,

Laurentian District Ranger.

[FR Doc. E9-17996 Filed 7-30-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

**Associated Electric Cooperative, Inc.:
Notice of Finding of No Significant
Impact**

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to a request from Associated Electric Cooperative, Inc. (AECI) for assistance to finance the construction, operation, and maintenance of a new 540-MW gas-fired combustion combined-cycle generation unit, a new 161/345-kV substation, a new 161-kV transmission line, and a

new 345-kV transmission line in Mayes County, Oklahoma.

ADDRESSES: The FONSI is available for public review at the USDA Rural Utilities Service's Web site—<http://www.usda.gov/rus/water/ees/ea.htm> or at 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250-1571; and at AECI's headquarters office located at 211 South Golden, Springfield, Missouri 65801-4775 or the Pryor Public Library at 505 E. Graham, Pryor, OK 74361. To obtain copies of the FONSI or for further information, contact Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250-1571, Telephone: (202) 720-0468 or e-mail: stephanie.strength@wdc.usda.gov or AECI's headquarters office located at 211 South Golden, Springfield, Missouri 65801-4775.

SUPPLEMENTARY INFORMATION: AECI proposes to construct a 540-megawatt (MW) combined-cycle, gas-fired generation unit at the Mid America Industrial Park Chouteau Power Plant in Mayes County, Oklahoma. A new substation will also be constructed, to be located approximately two miles east of the existing plant, to be connected by a single circuit 161-kV line. A single circuit 345-kV line will further connect the substation to the Grand River Dam Authority (GRDA) Coal-Fired Power Plant, located in Mayes County, Oklahoma. Burns and McDonnell Engineering Company, Inc., an environmental consulting firm, prepared an Environmental Report for RUS. RUS conducted an independent evaluation of the Environmental Report and agreed that it accurately assessed the impacts of the proposal. RUS accepted the document as its Environmental Assessment and published the document for a 30-day public comment period. The applicant is responsible for obtaining all permits required to construct the proposal.

Pursuant to 36 CFR 800.4(d)(1) of the regulations (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, RUS made a finding that this project will not affect historic properties. RUS received no objection to this finding of effect from the Oklahoma State Historic Preservation Office or other consulting parties. RUS has determined this finding of no historic properties affected made pursuant to Section 106 of NHPA to be consistent with its FONSI.

In accordance with the National Environmental Policy Act, as amended

(42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR 1500–1508), and RUS' Environmental Policies and Procedures (7 CFR Part 1794), RUS has determined that the environmental impacts of the proposal have been adequately addressed and that no significant impacts to the quality of the human environment would result from the construction and operation of the proposal. Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant federal and state environmental laws and regulations. Since RUS' action will not result in significant impacts to the quality of the human environment, the preparation of an environmental impact statement related to the proposed project is not necessary.

Dated: July 23, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–18249 Filed 7–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Fitzgerald Renewable Energy, LLC: Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to a request from Fitzgerald Renewable Energy, LLC (FRE) for assistance to finance the construction, operation, and maintenance of a new 55-megawatt (MW) gas-fired combustion biomass fueled power plant in Ben Hill County, Georgia near Fitzgerald, Georgia.

ADDRESSES: The FONSI is available for public review at the USDA Rural Utilities Service's Web site—<http://www.usda.gov/rus/water/ees/ea.htm> or at 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571; and at FRE's headquarters office located at Fitzgerald Renewable Energy, LLC, 152 Lincoln Avenue, Winter Park, FL 32789 or at the Fitzgerald/Ben Hill County Library, 123 North Main Street, Fitzgerald, GA 31750. To obtain copies of the FONSI or for further information, contact Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence

Avenue, SW., Stop 1571 Washington, DC 20250–1571, Telephone: (202) 720–0468 or e-mail:

stephanie.strength@wdc.usda.gov, or FRE's headquarters office located at Fitzgerald Renewable Energy, LLC, 152 Lincoln Avenue, Winter Park, FL 32789.

SUPPLEMENTARY INFORMATION: Fitzgerald Renewable Energy, LLC proposes to construct a 55-megawatt (MW) biomass fueled power plant (the Proposal) on Peachtree Road near Fitzgerald, Georgia in Ben Hill County. The Proposal, which will be fueled primarily by wood debris and residue from the regional forest products industry, is projected to be in service in 2011. Trinity Consultants, an environmental consulting firm, prepared an Environmental Report for RUS. RUS conducted an independent evaluation of the Environmental Report and agreed that it accurately assessed the impacts of the proposal. RUS accepted the document as its Environmental Assessment and published the document for a 30-day public comment period. The applicant is responsible for obtaining all permits required to construct the Proposal.

Pursuant to 36 CFR 800.4(d)(1) of the regulations (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, RUS made a finding that this Proposal will not affect historic properties. RUS received no objection to this finding of effect from the Georgia State Historic Preservation Office or other consulting parties. RUS has determined this finding of no historic properties affected made pursuant to Section 106 of NHPA.

In accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR 1500–1508), and RUS' Environmental Policies and Procedures (7 CFR part 1794), RUS has determined that the environmental impacts of the Proposal have been adequately addressed and that no significant impacts to the quality of the human environment would result from the construction and operation of the proposal. Any final action by RUS related to the Proposal will be subject to, and contingent upon, compliance with all relevant Federal and State environmental laws and regulations. Since RUS' action will not result in significant impacts to the quality of the human environment, the preparation of an environmental impact statement related to the proposed project is not necessary.

Dated: July 23, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–18250 Filed 7–30–09; 8:45 am]

BILLING CODE 3410–15–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to Ross_A_Rutledge@omb.eop.gov fax to 202–395–6974. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0572.

Form Number: N/A.

Title: Summer Internship Application.

Type of Submission: Renewal of Information Collection.

Purpose: The United States Agency for International Development, Africa Bureau, intends to use the Summer internship Application to collect information from approximately 300 student applicants to its summer internship programs for USAID Missions in Africa and in Washington, DC.

Annual Reporting Burden:

Respondents: 300.

Total annual responses: 300.

Total annual hours requested: 150 hours.

Dated: July 27, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9–18310 Filed 7–30–09; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2010 Dress Rehearsal of the Redesigned Survey of Income & Program Participation.

Form Number(s): SIPP 2010DR105(L) Director's Letter; SIPP/CAPI Automated Instrument.

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 5,376.

Number of Respondents: 10,752.

Average Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the 2010 dress rehearsal for the Re-engineered Survey of Income and Program Participation (SIPP).

The Census Bureau's SIPP CAPI interview will use an event history calendar (EHC) interviewing method and a 12-month, calendar-year reference period in place of the current SIPP questionnaire approach with a sliding 4-month reference period. The Census Bureau is re-engineering the SIPP to accomplish several goals including improving the collection instrument and processing system, development of the EHC, use of the administrative records data, and increased stakeholder interaction.

The SIPP represents a source of information for a wide variety of separate topics to be integrated to form a single and unified database in order to examine the interaction between tax, transfer, and other government and private policies. Government domestic policy formulators depend heavily upon the SIPP information to determine the effect of tax and transfer programs on the distribution of income received directly as money or indirectly as in-kind benefits. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, by measuring levels of economic well-being and changes in these levels over time.

The main objective of the SIPP has been to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The survey's mission is to provide a nationally representative sample for evaluating: (1) Annual and sub-annual income dynamics, (2) movements into and out of government transfer programs, (3) family and social context of individuals and households,

and (4) interactions among these items. The re-engineering of SIPP pursues these objectives in the context of several goals—cost reduction and improved accuracy, relevance, timeliness, reduced burden on respondents, and accessibility. The Re-engineered SIPP will collect detailed information on cash and non-cash income (including participation in government transfer programs) one time per year. A major use of the SIPP has been to evaluate the use of and eligibility for government programs and to analyze the impacts of options for modifying them.

A key component of the re-engineering process involves the proposed shift from the every-four-month data collection schedule of traditional SIPP to an annual data collection schedule for the re-engineered survey. To accomplish this shift with minimal impact on data quality, the Census Bureau proposes employing the use of an event history calendar (EHC) to gather SIPP data. The Re-engineered SIPP will interview respondents in one year intervals, collecting data for the previous calendar year as the reference period. The content of the Re-engineered SIPP will combine the content of the 2008 Panel SIPP core as well as selected topical module questions. The Re-engineered SIPP will not contain free-standing topical modules. The EHC will allow recording dates of events and spells of coverage and should provide monthly transitions of program receipt and coverage, labor force transitions, health insurance transitions, and others. The 2010 Re-engineered SIPP dress rehearsal will also involve recording a small number of the field interviews for research purposes. Recorded verbal consent will be obtained during the interview prior to recording.

The 2010 Re-engineered SIPP dress rehearsal will be conducted from January 2010 to March 2010. Approximately 8,000 households are selected for the 2010 Re-engineered SIPP dress rehearsal, of which, 5,120 households are expected to be interviewed. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 10,752 person-level interviews in the dress rehearsal. Interviews take 30 minutes on average. The total annual burden for the 2010 Re-engineered SIPP dress rehearsal interviews will be 5,376 hours in FY 2010.

The EHC methodology is intended to help respondents recall information in a more natural "autobiographical" manner by using life events as triggers to other economic events. For example, a residence can change and in many

cases occurs contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data. For example, if the respondents are unemployed, they may then look for a job, and then become employed.

The 2010 dress rehearsal instrument will be evaluated in several domains including field implementation issues and data comparability vis-à-vis SIPP 2008 and administrative records. Distributional characteristics such as the percent of persons with TANF, Food Stamps, Medicare, who are working, who are enrolled in school, or who have health insurance coverage from the EHC will be compared to the same distributions from 2008 SIPP Panel. The primary focus will be to demonstrate to data users that the new instrument yields data for low-income programs that are of sufficient quality. The field test sample is focused in low income areas in order to increase the "hit rate" of households likely to participate in government programs. In general, there are two ways we will evaluate data quality:

(1) We will compare monthly estimates from the field test to estimates from parallel sample areas in the 2008 SIPP panel for characteristics such as participation in Food Stamps, TANF, SSI, WIC, and Medicaid. To the extent those estimates are reasonably aligned with each other, we can assume that data quality is reasonably comparable. Misalignment of the estimates, and especially misalignment in the direction of the EHC estimates being consistently lower than the SIPP estimates, would be worrisome, because it would be suggestive of (*not* definitive evidence of) reduced data quality in the EHC.

(2) For a small subset of characteristics, and for a subset of sample areas, we will have access to administrative record data. These data will permit a more objective data quality assessment.

Results from both the 2010 dress rehearsal and the 2008 SIPP Panel will be used to inform final decisions regarding the design, content, and implementation of the re-engineered SIPP for production beginning in 2013.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail (bharrisk@omb.eop.gov).

Dated: July 27, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-18206 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement (US-PERU TPA).

OMB Control Number: None.

Type of Request: Emergency submission.

Burden Hours: 89.

Number of Respondents: 16.

Average Hours Per Response: 8 hours for a Request of Commercial Availability Determination; 2 hours for a Response to Request; and 1 hour for Rebuttal.

Needs and Uses: The United States and Peru negotiated the US-Peru Trade Promotion Agreement (the "Agreement"), which entered into force on February 1, 2009. Under the textile provisions of the Agreement, fabric, yarn, and fiber produced in Peru or the United States and traded between the two countries are entitled to duty-free tariff treatment. The Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States commercially unavailable fabrics, yarns, and fibers are also entitled to duty-free treatment

despite not being produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision of the Agreement (See Chapter 3, Article 3.3, Paragraphs 5-7 of the Agreement). Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President "promptly publish" procedures for parties to exercise the right to make these requests. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (CITA), which issues procedures and acts on requests through the Office of Textiles and Apparel (OTEXA). OTEXA was unable to publish these procedures earlier and is requesting an emergency review of the information collection and procedures from the Office of Management and Budget.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to section 203(o) of the US-PERU TPA.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395-3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at dHynek@doc.gov.

Written comments and recommendations for the proposed information collection should be sent by August 7, 2009 to Wendy Liberante, OMB Desk Officer, Fax number (202) 395-5167 or via the Internet at Wendy_L_Liberante@omb.eop.gov.

Dated: July 27, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-18211 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-FP-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ64

Endangered Species; File No. 14508

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc., Jensen Beach, FL 34957 (Principal Investigator: Michael Bresette), has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 31, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/index.cfm>, and then selecting File No. 14508 from the list of available applications. These documents are also available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided

the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14508

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The purpose of the proposed research is to continue to collect long-term data on species comparison, size frequencies, disease rates, seasonal abundance, genetic origin and feeding ecology of sea turtles using Lake Worth Lagoon in Palm Beach County, Florida. Up to 50 green, 5 loggerhead, 2 hawksbill, and 1 Kemp's ridley sea turtles would be captured annually. Turtles would be flipper and passive integrated transponder tagged, blood and tissue sampled, measured, photographed, and weighed. A subset of green sea turtles would be lavaged. The permit would be issued for five years.

Dated: July 27, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-18384 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ27

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS

has issued one-year Letter of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: The authorization is effective from August 1, 2009, through July 31, 2010.

ADDRESSES: The application and LOA is available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301-713-2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of an annual LOA, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain

in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to ATP Oil & Gas Corporation. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: July 28, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-18383 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XO28

Listing Endangered and Threatened Species: Initiation of a Status Review for the Oregon Coast Evolutionarily Significant Unit of Coho Salmon

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

ACTION: Reopening of public comment period.

SUMMARY: On April 29, 2009, we, NMFS, announced the initiation of a status review under the Endangered Species Act (ESA) for the Oregon Coast coho salmon (*Oncorhynchus kisutch*) evolutionarily significant unit (ESU). As part of that proposal, we provided a 90-

day comment period, ending on July 28, 2009. We have received requests for an extension of the public comment period. In response to these requests, we are reopening the comment period for the proposed action.

DATES: Information and comments on the subject action must be received by August 18, 2009.

ADDRESSES: You may submit comments, identified by 0648-XO28, by any of the following methods:

- Fax: 503-230-5441
- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. You may hand-deliver written comments to our office during normal business hours at the street address given above.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231-2005; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION: On April 29, 2009, we announced the initiation of a status review under the ESA for the Oregon Coast coho salmon ESU. As part of that proposal, we provided a 90-day comment period, ending on July 28, 2009. We have received requests for an extension of the public comment period. In response to these requests, we are reopening the comment period for the proposed action. The public comment period closed on July 28, 2009. We are reopening the public comment period until August 21, 2009, to receive additional local and public information and comments that may be relevant to the status review. Public comments received between the close of the first comment period on July 28, 2009, and the reopening of the comment period July 31, 2009 will also be considered timely.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 27, 2009.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. E9-18385 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the Agenda below.

DATES: The announced meeting is scheduled for Wednesday August, 26–Friday August 28, 2009.

ADDRESSES: The meeting will be held at the Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Pearson, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11704, Silver Spring, Maryland 20910, 301-734-1083.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established by Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94-461, 33 U.S.C. 1128). The duties of the Board were amended by the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110-394). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The Agenda for the meeting can be found at: <http://www.seagrants.noaa.gov/leadership/advisoryboard/agenda0809.pdf>.

Dated: July 24, 2009.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E9-18234 Filed 7-30-09; 8:45 am]

BILLING CODE 3510-KA-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services

to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/31/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On May 22, 2009 (74 FR 23999-24000); May 29, 2009 (74 FR 25717-25718); and June 5, 2009 (74 FR 27022-27023), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following the products and services are added to the Procurement List:

Products

NSN: 6230-01-514-0921—Kit, Safety, Lighting.

NSN: 6230-01-514-0920—Kit, Safety, Lighting.
 NSN: 6230-01-513-2551—Kit, Safety, Lighting.
 NSN: 6230-01-513-1934—Kit, Safety, Lighting.
 NSN: 6230-01-513-1933—Kit, Safety, Lighting.
 NSN: 6230-01-513-1930—Kit, Safety, Lighting.
 NSN: 6230-01-513-1925—Kit, Safety, Lighting.
 NSN: 6230-01-513-1924—Kit, Safety, Lighting.
 NSN: 6230-01-513-1920—Kit, Safety, Lighting.
 NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, NJ.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.
Coverage: C-list for the total requirement of the Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Custodial Services, Mercedita Airport, State Road No.1, Ponce, PR; International Mail Facility, LMM Airport, Tony Santana Ave, San Juan, PR.
 NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: Bureau of Customs and Border Protection, National Acquisition Center, Indianapolis, Indiana.
Service Type/Location: Grounds Maintenance Service, Marine Corps Reserve Center, 8820 Somers Rd., Jacksonville, FL.
 NPA: Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL.
Contracting Activity: Dept of the Navy, Navy Facilities Engineering Command, Norfolk, VA.
Service Type/Location: Supply Room Support Services, Defense Contract Management Agency (DCMA) Headquarters, 6350 Walker Lane, Alexandria, VA.
 NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Defense Contract Management Agency (DCMA), Alexandria, VA.
Service Type/Location: Document Management, USFS Pacific Northwest Region, Region 6, and the Pacific Northwest Research Station, 5312 NE., 148th Avenue, Portland, OR.
 NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Forest Service, Northwest Oregon Contracting Area, Sandy, OR.
Service Type/Location: Furniture Services, MCOLF Atlantic Field, Air Base Road, Atlantic, NC; MCALF Bogue Field, HWY 70, Bogue, NC; MCAS Cherry Point, Hwy 101, Cherry Point, NC.
 NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.
Contracting Activity: Department of the Navy, Marine Corps Air Station, Cherry Point MCAS, NC.
Service Type/Location: Vehicle Retrofitting

Service, Retrofit Facility (Prime Contract): Bremerton, WA; Skookum Contract Services, 2600 Burwell Street Bremerton, WA.

NPA: Skookum Educational Programs, Bremerton, WA.

Service Type/Location: Vehicle Retrofitting Service, Good Vocations, Inc., 5171 Eisenhower Parkway, Macon, GA.

NPA: Good Vocations, Inc., Macon, GA.

Contracting Activity: Bureau of Customs and Border Protection, SBI Acquisition Office, Washington, DC.

Requirement: 100% of the vehicles that overflow/exceed the capacity of Federal Prison Industries' to provide the service; designated NPA will each produce 50% of the requirement of overflow of vehicles.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9-18269 Filed 7-30-09; 8:45 am]

BILLING CODE 6353-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled "Day of Service Registration and Reporting (Serve.gov)" to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Rhonda Taylor, at (202) 606-6721. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Corporation for National and Community Service, by any of the following two methods within 60 days from the date of publication in this **Federal Register:**

(1) *By fax to:* (202) 606-3460, Attention: Rhonda Taylor, Corporation for National and Community Service; and

(2) *Electronically by e-mail to:* RTaylor@cns.gov.

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
 - Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
 - Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

Description: The Corporation seeks to renew the Day of Service Registration and Reporting (Serve.gov). The purpose of this information collection is to help expand volunteering throughout the country. This collection assists volunteer organizations in finding volunteers for projects, as well as providing opportunities for those wishing to volunteer.

Type of Review: Renewal, previously granted emergency clearance.

Agency: Corporation for National and Community Service.

Title: "Day of Service Registration and Reporting (Serve.gov)"

OMB Number: 3045-0122.

Agency Number: None.

Affected Public: Nonprofit organizations.

Total Respondents: 50,000 respondents for registering projects.

Frequency: Annual.

Average Time Per Response: 25 minutes.

Estimated Total Burden Hours: 20,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Affected Public: Nonprofit organizations.

Total Respondents: 50,000 respondents for reporting accomplishments.

Frequency: Annual.

Average Time Per Response: 20 minutes.

Estimated Total Burden Hours: 16,667 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Affected Public: Nonprofit organizations.

Total Respondents: 450,000 individual volunteers.

Frequency: Annual.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 75,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 21, 2009.

Rhonda Taylor,

Acting Director, Office of Corporate Relations.

[FR Doc. E9-18302 Filed 7-30-09; 8:45 am]

BILLING CODE 6050-SS-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement for the Matagorda Ship Channel Improvement Project, Calhoun County and Matagorda County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District, announces the release of the Final Environmental Impact Statement (FEIS) and the public comment period for the Calhoun Port Authority's (CPA) proposed Matagorda Ship Channel (MSC) Improvement Project.

DATES: The USACE Galveston District will be accepting written public comments on the FEIS through August 31, 2009. All comments must be postmarked by August 31, 2009.

ADDRESSES: You may send written comments to the U.S. Army Corps of Engineers, Galveston District, Attn: Denise Sloan (PE-RB), P.O. Box 1229, Galveston, TX 77553-1229.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS can be answered by Ms. Denise Sloan, (409) 766-3962.

SUPPLEMENTARY INFORMATION:

Authority: This Federal Action is in consideration of a Department of the Army (DA) permit application for work under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. 1344), and

Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1413).

Background: In January 2006, the CPA submitted a DA permit application to widen and deepen the MSC and to dredge a new turning basin and marine slip. It was determined that an Environmental Impact Statement would be required for the proposed project. Since the April 25, 2006, Scoping Meeting, the consulting firm of PBS&J, under the direction of the Galveston District, U.S. Army Corps of Engineers (USACE), prepared a Draft and Final Environmental Impact Statement (DEIS and FEIS) for the proposed project. The DEIS was made available for a 45-day comment period on May 18, 2007, which was extended through September 4, 2007. A public hearing and workshop was held August 9, 2007, in Port Lavaca, Texas. Comments received during the comment period and at the public hearing have been considered in the evaluation of the proposed project and incorporated into the FEIS. The FEIS is now available for public review and comment.

Project Description: The CPA proposes to widen and deepen the approximately 26.6-mile-long MSC from the existing turning basin at the Port of Port Lavaca-Point Comfort (Channel Station 117+223), through Lavaca Bay and Matagorda Bay, and ending offshore in the Gulf of Mexico (Channel Station -23+000). A proposed new turning basin at the intersection of the MSC and the Alcoa Channel would have a 1,650-foot turning circle, and both the existing CPA berthing facilities, the existing and proposed turning basins, and a proposed new berthing area adjacent to the new turning basin would be dredged to a depth of -44 feet Mean Low Tide (MLT). The authorized channel dimensions of the MSC, from the Port of Port Lavaca-Point Comfort to the Matagorda Peninsula, are 200 feet wide (bottom width) by -36 feet MLT deep, and the CPA proposes to enlarge this reach to 400 feet wide by -44 feet MLT deep (plus 2 feet of advanced maintenance and 2 feet of overdepth). The existing authorized channel dimensions through the Matagorda Peninsula are 300 feet wide by -36 feet MLT deep, and in the Gulf of Mexico are 300 feet wide by -38 feet MLT deep, and the CPA proposes to enlarge these reaches to 600 feet wide by -46 feet MLT deep (plus 3 feet of advanced maintenance and 2 feet of overdepth). The CPA proposes to use both hydraulic and mechanical dredges, including hopper dredges, to perform new work and maintenance dredging of the

proposed project. Approximately 46.5 million cubic yards of new work dredged material would be generated from the proposed widening and deepening project. Maintenance dredging of the proposed channel would generate approximately 257.5 million cubic yards of dredged material during the 50-year planning period. Dredged material would be used to create or protect habitats, nourish beaches, and cap mercury-impacted sediments, and would be placed in confined dredged material placement areas (PAs) in bays and on land, in unconfined PAs in Matagorda Bay, and in unconfined ocean dredged material disposal sites (ODMDS) in the Gulf of Mexico. Additional dredging and placement of 400,000 cubic yards of dredged material would create a levee designed to protect habitat.

Water Quality Certification: Texas Commission on Environmental Quality (TCEQ) water quality certification is required. Concurrent with Corps processing of the permit application, the TCEQ is reviewing the application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards.

Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 103 of the MPRSA authorizes the USACE to permit the placement of dredged material within an ODMDS, subject to EPA concurrence and use of the EPA's dumping criteria. With concurrence from the EPA, the placement of approximately 12 million cubic yards of new work dredged material from construction of the proposed project into a new, one-time use ODMDS may be authorized by the USACE under Section 103 of MPRSA. Similarly, with EPA concurrence, the USACE may authorize continued use of the existing maintenance material ODMDS following construction of the proposed project under Section 103 of MPRSA. Information associated with the Section 103 authorizations is included in the FEIS (primarily in Appendix N).

National Register of Historic Places: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic resources and the effects of the proposed project upon these properties: Remote sensing surveys have been completed for the majority of the project footprint in Matagorda Bay, Lavaca Bay,

and the Gulf of Mexico. Remote sensing surveys will be conducted for the following potentially affected areas that have not already been surveyed: The proposed new-work ODMDS, three beach nourishment sites, the remainder of two areas for proposed oyster bed creation, and the in-bay upland site. Additional close-order surveys will be conducted on 11 features within 164 feet of the proposed channel alignment. The close-order surveys will help identify features that need further investigation to determine significance. Close-order surveys will also be conducted on two features identified within, or within 164 feet of, a proposed in-bay PA that cannot be avoided. Archival research and terrestrial surveys will be conducted at the upland PA and along the three beach nourishment areas. In addition, limited terrestrial shoreline surveys will be conducted where one proposed PA would tie into the bluff. A Scope of Work for additional surveys of impact areas, testing potentially eligible sites, and managing data recovery or avoidance measures as necessary was submitted to the Texas Historical Commission (THC) on June 12, 2009, and concurrence was provided on June 24, 2009. Should the decision be made to issue a permit for the proposed MSCIP, it would be conditioned to require completion of historical and archaeological surveys to meet National Historical Preservation Act Section 106 requirements. If the permit is granted, the CPA will obtain clearance from the THC and the USACE prior to performing construction activities in these areas.

Threatened and Endangered Species: Indications are that the proposed project may affect a few Federally listed endangered or threatened species. The project is likely to adversely affect but is not likely to jeopardize the continued existence of loggerhead, Kemp's ridley, hawksbill, leatherback, and green sea turtles. The project is unlikely to destroy or adversely modify critical habitat for any listed species. A Biological Assessment (BA) was prepared and was presented to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) in the DEIS. The NMFS has reviewed the BA and has prepared a Biological Opinion outlining the measures to be taken to avoid and minimize potential sea turtle takes, particularly during hopper dredging activities. The USFWS provided concurrence with the determinations made in the BA for all species under their jurisdiction, including nesting sea turtles (Appendix P of the FEIS).

Essential Fish Habitat (EFH): Consultation for EFH of the Magnuson-Stevens Fishery Conservation and Management Act was initiated in April 2006 via the workshop prior to the public scoping meeting. Letters were also sent to the NMFS in May 2006. Our initial determination is the proposed action would have negative impacts on EFH and Federally managed fisheries in the Gulf of Mexico. However, these unavoidable impacts to EFH and Federally managed fisheries would be compensated through the protection and creation of marshes and seagrass beds, increasing the amount of nursery areas, protective habitat, and food sources within the Matagorda Bay estuary. The NMFS and the Gulf of Mexico Fisheries Management Council reviewed the EFH Assessment, following additional correspondence and revision to the EFH Assessment, and concurred with the findings that the proposed project may impact EFH and that no further consultation is required (Appendix H of the FEIS).

Other Agency Authorizations: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program. Coordination with the General Land Office Coastal Protection Division regarding consistency with the goals and policies of the Coastal Management Program is ongoing.

Availability of Final Environmental Impact Statement (FEIS): Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended and as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508) a FEIS for the proposed Matagorda Ship Channel Improvement Project has been filed with the EPA and is being made available to Federal, State, and local agencies, and all interested parties. The FEIS can be viewed at <http://www.swg.usace.army.mil/reg/pn.asp>. Copies of the FEIS are available by contacting Ms. Denise Sloan. In addition, copies of the FEIS are available for viewing at the following libraries:

- Calhoun County Public Library, 200 West Mahan Street, Port Lavaca, TX 77979.
- Calhoun County Public Library, Port O'Connor Branch, Highway 185 and Sixth Street, Port O'Connor, TX 77982.
- Calhoun County Public Library, Point Comfort Branch, One Lamar Street, Point Comfort, TX 77978.

- Calhoun County Public Library, Seadrift Branch, 103 West Dallas Avenue, Seadrift, TX 77983.
- Victoria Public Library, 302 North Main Street, Victoria, TX 77901.
- Jackson County Memorial Library, 411 North Wells Street, Room 121, Edna, TX 77957.
- Palacios Library, 326 Main Street, Palacios, TX 77465.
- Matagorda County Library, Bay City Branch, 1100 7th Street, Bay City, TX 77414.

Public Interest Review Factors: The permit application will be reviewed in accordance with 33 CFR 320–332, the Regulatory Program of the U.S. Army Corps of Engineers, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against reasonably foreseeable detriments associated with the proposal. All factors which may be relevant to the proposal will be considered. These include, but are not limited to: Dredged material management, air quality, shoreline erosion, economics, general environmental concerns, historic resources, protected species, navigation, recreation, water and sediment quality, energy needs, safety, hazardous materials, and in general, the welfare of the people.

Solicitation of Comments: The USACE will accept comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE to determine whether to issue, condition, or deny a permit for this proposal. To make this decision, comments will be considered in the evaluation of impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments will be used in preparation of the Record of Decision pursuant to NEPA. Comments are also used to determine the overall public interest of the proposed activity.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
 [FR Doc. E9–17902 Filed 7–27–09; 8:45 am]
BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE**Department of the Navy****Meeting of the Ocean Research and Resources Advisory Panel****AGENCY:** Department of the Navy, DOD.**ACTION:** Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will hold its third regularly scheduled meeting of the year. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, August 11, 2009 from 9 a.m. to 5:30 p.m. and Wednesday, August 12, 2009 from 9 a.m. to 3 p.m. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held in the offices of the Consortium of Ocean Leadership, 1201 New York Avenue, NW., 4th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203-1995, telephone (703) 696-4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on coastal hazards, fishery management initiatives, ocean science policy, ocean observations, ocean mapping, education, and other current issues in the ocean science and resource management communities.

Dated: July 24, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9-18382 Filed 7-30-09; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY**[OE Docket No. EA-360]****Application To Export Electric Energy; Iberdrola Renewables, Inc.****AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.**ACTION:** Notice of Application.

SUMMARY: Iberdrola Renewables, Inc. (IRI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 31, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-586-8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On July 24, 2009, DOE received an application from IRI for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. IRI does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which IRI proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. IRI has requested an electricity export authorization with a 5-year term.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by IRI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Iberdrola Renewables, Inc. application to export electric energy to Canada should be clearly marked with Docket No. EA-360. Additional copies are to be filed directly with Toan-Hao Nguyen and Julie Morris, Iberdrola Renewables, Inc. 1125 NW Couch Street, Suite 700, Portland, Oregon 97209. A final decision will be made on this

application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at http://www.oe.energy.gov/permits_pending.htm, or by e-mailing Odessa Hopkins at Odessa.hopkins@hq.doe.gov.

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

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9-18288 Filed 7-30-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 13431-000]****Resilient Energy LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications**

July 27, 2009.

On April 13, 2009, Resilient Energy LLC (Resilient) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Thomaston Dam Project. The Thomaston Dam Project would be located on the Naugatuck River at the U.S. Army Corps of Engineers' Thomaston Dam in the town of Thomaston, Litchfield County, Connecticut.

The proposed Thomaston Dam Project would consist of: (1) One or more turbine generator units with a total installed capacity of 2,750 kilowatts; (2) a 3-mile-long transmission line; and (3) appurtenant facilities. The project would have an estimated annual generation of 4,850 megawatt-hours.

Applicant Contact: Mr. Hoon T. Won, 9 Benedict Place, 2nd Floor, Greenwich, Connecticut 06830; (203) 340-2517.

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-13431) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18296 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13503-000]

University of New Hampshire; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 27, 2009.

On June 9, 2009, the University of New Hampshire, Center for Ocean Renewable Energy filed an application, pursuant to the FPA, proposing to study the feasibility of the General Sullivan and Little Bay Bridges Tidal Energy Project No. 13503, to be located on the Piscataqua River, in Rockingham and Strafford Counties, New Hampshire.

The proposed project would be located near the General Sullivan and Little Bay bridges and would consist of: (1) A single 10-foot-wide by 35-foot-long test platform suspending a variety of hydrokinetic devices including a Gorlov Helical turbine generating unit into the river; and (2) appurtenant facilities. Project generation would be used to power the test platform, therefore no transmission line is proposed.

Applicant Contact: Professor Ken Baldwin, Chase Ocean Engineering Laboratory, 24 Colovos, University of

New Hampshire, Durham, NH 03824, (603) 862-1898.

FERC Contact: Tom Dean, (202) 502-6041.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 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 "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-13503) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18297 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13385-000]

Lock +™ Hydro Friends Fund V, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 27, 2009.

On March 2, 2009, and supplemented on May 29, 2009, Lock +™ Hydro Friends Fund V, 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 Bulldog Project. The Bulldog Project would be located on the Mississippi River at the U.S. Army Corps of Engineers Lock and Dam No. 27 in Granite City, Madison County, Illinois, and within Clair County, Illinois, and St. Louis County, Missouri.

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 V, 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-13385) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18301 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13526-000]

The Bowersock Mills and Power Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 27, 2009.

On June 24, 2009, The Bowersock Mills and Power Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of The Bowersock Mills and Power Company Kansas River Project, which is located on the Kansas River in Douglas County, Kansas. 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 operate run-of-river and consist of the following:

(1) The existing 665-foot-long, 17-foot-high timber-crib Bowersock Dam; (2) a 120-foot-long gated spillway with seven gates; (3) raising existing flashboards from 4-foot-high to 5.5-foot-high flashboards; (4) an existing 4.3 mile-long reservoir having a normal water surface elevation of 813.5 feet mean sea level; (5) an existing South powerhouse containing seven turbine/generator units (6) a proposed North powerhouse housing four turbine/generator units; (7) a proposed 20-foot-wide Taintor gate; (8) a new intake flume with trashracks; (9) a new 150-foot-long recreational boat portage located at the north bank of the Kansas River; (10) a new 765-foot-long, 12-kilovolt (kV) transmission line connecting to an existing 535-foot-long 2.3 kV transmission line; and (8) appurtenant facilities. The proposed project would have a total capacity of 7.15 megawatts (MW) and an average annual generation of 33 gigawatt-hours.

Applicant Contact: Sarah Hill-Nelson, The Bowersock Mills and Power Company, P.O. Box 66, Lawrence, Kansas 66044; phone: (785) 766-0884.

FERC Contact: Monte TerHaar, 202-502-6035.

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-13526) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-18298 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

July 24, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-4281-020; ER00-1259-009; ER02-1572-007; ER02-1571-007; ER00-3718-008.

Applicants: NRG Power Marketing LLC, Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC.

Description: NRG Power Marketing LLC *et al.* submits amended request for classification as Category 1 Sellers in the Central and Southwest Power Pool regions.

Filed Date: 07/22/2009.

Accession Number: 20090723-0027.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER01-2233-005.

Applicants: GWF Energy LLC.

Description: GWF Energy LLC Notice of Change in Status.

Filed Date: 07/23/2009.

Accession Number: 20090723-5047.

Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER02-1213-011.

Applicants: Mirant Energy Trading, LLC.

Description: Mirant Energy Trading, LLC submits amendment to its 6/30/09 market based tariff revision.

Filed Date: 07/21/2009.

Accession Number: 20090723-0029.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: ER06-857-002.

Applicants: Energy Resource

Management Corporation.

Description: Energy Resources Management Corporation submits pursuant to regional schedule set forth in Appendix D-2 of Order No 697-A, a request for Category 1 Seller classification in the Central Power Pool Region.

Filed Date: 07/22/2009.

Accession Number: 20090723-0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER07-841-005; ER09-629-004; ER07-844-005; ER07-845-005; ER07-846-005; ER99-4160-020; ER07-847-005; ER00-3696-012.

Applicants: Dynege Arlington Valley, LLC, Dynege Marketing and Trade, LLC, Dynege Morro Bay, LLC, Dynege Moss Landing, LLC, Dynege Oakland, LLC, Dynege Power Marketing, Inc., Dynege South Bay, LLC, Griffith Energy LLC.

Description: Notice of Change in Status and Request to File Out-of-Time of Dynege Arlington Valley, LLC, *et al.*

Filed Date: 07/23/2009.

Accession Number: 20090723-5084.

Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER08-677-001.

Applicants: Western Kentucky Energy Corp.

Description: Western Kentucky Energy Corp submits revised cancelled tariff sheets specifying the consummation date of the transaction accepted by FERC's 5/9/08 Order.

Filed Date: 07/22/2009.

Accession Number: 20090722-0142.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER09-759-003.

Applicants: E. ON U.S. LLC.

Description: Louisville Gas and

Electric Company *et al.* submits Substitute Second Revised Service Agreement 14 to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 07/23/2009.

Accession Number: 20090724-0073.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09-1141-002.

Applicants: J.P. Morgan Commodities Canada Corporation.

Description: JP Morgan Commodities Canada Corporation supplements their petition for acceptance of initial tariff, waivers and blanket authority in response to FERC's request.

Filed Date: 07/22/2009.
Accession Number: 20090722-0139.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER09-1146-002.
Applicants: Lafarge Midwest, Inc.
Description: Lafarge Midwest Inc. submits Amendment to Application for Market Based Rate Authority sought in ER09-1146.

Filed Date: 07/22/2009.
Accession Number: 20090722-5011.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09-1480-000.
Applicants: Marble River, LLC.
Description: Petition of Marble River, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.

Filed Date: 07/23/2009.
Accession Number: 20090723-0172.
Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER09-1481-000.
Applicants: Meadow Lake Wind Farm II LLC.

Description: Meadow Lake Wind Farm II LLC submits petition for order accepting market based rate tariff for filing and granting waivers and blank approvals.

Filed Date: 07/23/2009.
Accession Number: 20090723-0173.
Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER09-1482-000.
Applicants: Sagebrush Power Partners, LLC.

Description: Petition of Sagebrush Power Partners, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.

Filed Date: 07/23/2009.
Accession Number: 20090723-0170.
Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER09-1483-000.
Applicants: Duquesne Power, LLC.
Description: Duquesne Power, LLC submits notice of succession to inform the Commission that Duquesne Power converted from a limited partnership company to a limited liability company.

Filed Date: 07/22/2009.
Accession Number: 20090722-0138.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER09-1484-000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Engineering and Procurement Agreement dated 7/8/09 with Tri-State Generation and Transmission Association designated as Service Agreement 581 under Seventh Revised Volume 11 etc.

Filed Date: 07/22/2009.
Accession Number: 20090723-0085.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER09-1485-000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Co submits Interconnection Agreement for Qualifying Facilities between FPL and Wheelabrator South Broward Inc.

Filed Date: 07/22/2009.
Accession Number: 20090723-0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: ER09-1486-000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised sheets to the Large Generator Interconnection Agreement among El Segundo Power II LLC, SCE, and the California Independent System Operator Corporation.

Filed Date: 07/23/2009.
Accession Number: 20090723-0174.
Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Docket Numbers: ER09-1487-000.
Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits three notices terminating Generator Special Facilities Agreements and Generator Interconnection Agreements with Midway Power, LLC et al.

Filed Date: 07/23/2009.
Accession Number: 20090723-0169.
Comment Date: 5 p.m. Eastern Time on Thursday, August 13, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09-30-001.
Applicants: Entergy Gulf States Louisiana, LLC.

Description: Supplemental Information of Entergy Gulf States Louisiana, LLC.

Filed Date: 07/23/2009.
Accession Number: 20090723-5097.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 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. E9-18308 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 803-087]

Pacific Gas and Electric Company, California; Notice of Availability of Final Environmental Assessment

July 24, 2009.

In accordance with the National Environmental Policy Act of 1969 and Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the

Office of Energy Projects has reviewed the application for a new license for the DeSabra-Centerville Hydroelectric Project (project), located on Butte Creek in Butte County, California, and has prepared a final environmental assessment (final EA). In the final EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-18300 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1888-027]

York Haven Power Company, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

July 24, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 1888-027.

c. *Date Filed:* June 1, 2009.

d. *Submitted By:* York Haven Power Company, LLC.

e. *Name of Project:* York Haven Hydroelectric Project.

f. *Location:* On the Susquehanna River, in Dauphin, Lancaster and York Counties, Pennsylvania. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Douglas Weaver, York Haven Power

Company, LLC, 1 Hydro Park Drive and Locust Street, York Haven, PA 17370, at (717) 266-9470 or e-mail at deweaver@olympuspower.com and Mike Hoover, Senior Regulatory Specialist, HDR/DTA, 970 Baxter Boulevard, Suite 301, Portland, ME 04103, at (207) 775-4495 or e-mail at Mike.Hoover@hdrinc.com.

i. *FERC Contact:* John Smith at (202) 502-8972 or e-mail at john.smith@ferc.gov.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o. below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating York Haven Power Company, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. York Haven Power Company, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://ferc.gov/docs-filing/esubscription.asp> to be notified

via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document issued July 24, 2009, as well as study requests. All comments on the PAD and Scoping Document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (York Haven Hydroelectric Project) and number (P-1888-027), and bear the heading Comments on Pre-Application Document, Study Requests, Comments on Scoping Document, Request for Cooperating Agency Status, or Communications to and from Commission Staff. Any individual or entity interested in submitting study requests, commenting on the PAD or Scoping Document, and any agency requesting cooperating status must do so by September 29, 2009.

Comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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/docs-filing/ferconline.asp>) under the e-filing link. For a simpler method of submitting text only comments, click on "Quick Comment."

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is

primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday August 26, 2009.

Time: 7 p.m.

Location: Holiday Inn Conference Center, PA Turnpike exit 242 and Interstate 83 exit 40A, New Cumberland, Pennsylvania 17070.

Phone: Donna Stutz at (717) 774-2722.

Daytime Scoping Meeting

Date: Thursday August 27, 2009.

Time: 10 a.m.

Location: Pennsylvania Fish and Boat Commission Headquarters, Susquehanna Room, 1601 Elmerton Avenue, Harrisburg, Pennsylvania 17110.

Phone: Larry Miller at (717) 705-7838 or for directions only call (717) 705-7800.

The Scoping Document, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of the Scoping Document will be available at the scoping meetings, or may be viewed on the Web at <http://www.ferc.gov>, using the eLibrary link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a revised Scoping Document may be issued which may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Wednesday August 26, 2009, starting at 10 a.m. All participants should meet at the York Haven Project at 1 Hydro Park Drive and Locust Street, York Haven, Pennsylvania 17370. Some transportation will be provided by York Haven Power Company, LLC or participants may use their own transportation. Please notify Douglas Weaver at 717-266-9470 or deweaver@olympuspower.com or Beth

Fetzner at 717-266-6454 or bfetzner@yorkhavenpower.com by August 19, 2009, if you plan to attend the site visit.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and Scoping Document are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-18299 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09-20-002]

Enbridge Pipelines (Louisiana Intrastate) L.L.C.; Notice of Filing

July 27, 2009.

Take notice that on July 23, 2009, Enbridge Pipelines (Louisiana Intrastate) L.L.C. filed its Statement of Operating Conditions in compliance with the July 16, 2009 Letter Order and pursuant to section 284.123(e) of the Commission's regulations. Louisiana Intrastate states that it made revisions to include a stand-alone statement of rates.

Any person desiring to participate in this proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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.

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 Tuesday, August 4, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-18295 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RT01-99-000, RT01-99-001, et al.]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al.

Regional Transmission Organizations RT01-99-000, RT01-99-001, RT01-99-002 and RT01-99-003.
Bangor Hydro-Electric Company, et al RT01-86-000, RT01-86-001 and RT01-86-002.

New York Independent System Operator, Inc., <i>et al</i>	RT01-95-000, RT01-95-001 and RT01-95-002.
PJM Interconnection, L.L.C., <i>et al</i>	RT01-2-000, RT01-2-001, RT01-2-002 and RT01-2-003.
PJM Interconnection, L.L.C	RT01-98-000.
ISO New England, Inc. New York Independent System Operator, Inc	RT02-3-000.

Notice

July 27, 2009.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their Internet Web sites information updating their progress on the resolution of RTO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 18, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18306 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER09-1481-000]

Meadow Lake Wind Farm II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 27, 2009.

This is a supplemental notice in the above-referenced proceeding of Meadow Lake Wind Farm II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 17, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18304 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER09-1480-000]

Marble River, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 27, 2009.

This is a supplemental notice in the above-referenced proceeding of Marble River, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 17, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for

review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9-18305 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1482-000]

Sagebrush Power Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 27, 2009.

This is a supplemental notice in the above-referenced proceeding of Sagebrush Power Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 17, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9-18303 Filed 7-30-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2006-0394; FRL-8938-2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs (Renewal); EPA ICR No. 1569.07, OMB Control No. 2040-0153

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 01/31/2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 29, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2006-0394 by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* OW-Docket@epa.gov.

- *Fax:* 202-566-9744.

- *Mail:* US Environmental Protection Agency, EPA Docket Center (EPA/DC), Water Docket—Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery:* Office of Water Docket, Environmental Protection Agency, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2006-0394. 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/dockets>.

FOR FURTHER INFORMATION CONTACT: Don Wayne, Assessment and Watershed Protection Division, Office of Wetlands Oceans and Watersheds, Mail Code 4503-T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (202) 566-1170; fax number: (202) 566-1333; e-mail address: waye.don@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2006-0394, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 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 Water Docket is 202-566-2426.

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. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your 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.

What Information Collection Activity or ICR Does this Apply to?

Affected entities: Entities potentially affected by this action are 13 coastal States with conditionally approved Coastal Nonpoint Pollution Control Programs.

Title: Approval of State Coastal Nonpoint Pollution Control Programs (Renewal).

ICR numbers: EPA ICR No. 1569.07, OMB Control No. 2040-0153.

ICR status: This ICR is currently scheduled to expire on 01/31/2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the provisions of national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 29 coastal States and 5 coastal Territories with federally approved Coastal Zone

Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. EPA and NOAA have fully approved 16 States and 5 Territories, and conditionally approved 13 States. The conditional approvals will require States and Territories to submit additional information in order to obtain final program approval. CZARA section 6217 requires States and Territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 375 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements 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 ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 13 States.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Four.

Estimated total annual burden hours: 4,875 hours.

Estimated total annual costs: \$180,375.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 1875 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is the result of EPA and NOAA having fully approved 21 of the 34 programs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 23, 2009.

Suzanne E. Schwartz,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. E9-18391 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8938-1]

Agreement and Covenant Not To Sue

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: As required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended ("CERCLA"), notice is hereby given that an Agreement and Covenant Not to Sue ("Agreement") is proposed by the United States, on behalf of the Environmental Protection Agency ("EPA"), and the Redevelopment Agency of Salt Lake City ("Settling Respondent") for a portion of the Utah Power and Light/American Barrel Superfund Site located in Salt Lake County, Utah ("Site") which Settling Respondent is proposing to purchase ("the Property").

The Site was listed on the National Priorities List in 1989. Historical operations on the Site, including a coal gasification plant, pole treating (creosote), railroad operations, and industrial barrel reclamation and storage resulted in the release of various types of hazardous substances into Site soils and shallow groundwater.

During the 1990s, Utah Power and Light Company ("UP&L") undertook certain response actions at the Site, including the Property, in order to implement the Record of Decision issued by EPA for the Site. Specific

response actions undertaken by UP&L associated with the Property included excavation, and removal of soils impacted by organic compounds (tar) and lead down to a depth of 15 feet. Construction completion was achieved in 1996 for the Site. EPA has conducted two five-year reviews in 2001 and 2006. The response action for the Site was and continues to be protective of human health and the environment. Active groundwater remediation efforts (soil vapor extraction) have been completed and shallow groundwater contamination is currently being addressed through monitored natural attenuation.

This Agreement requires the Settling Respondent to place an environmental covenant with use and activity restrictions on the Property and to pay the United States \$30,000 for future oversight of the environmental covenant. In addition, the Settling Respondent will seek, to the maximum extent practicable, to have future developers incorporate the Environmentally Responsible Redevelopment and Reuse ("ER3") components listed in Appendix D of the Agreement in future development of the Property.

DATES: Comments should be received by August 31, 2009. The Agency will consider all comments received on the proposed Agreement and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Sharon Abendschan, Enforcement Specialist (8ENF-RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado, 80202-2466, (303) 312-6957, and should reference the Utah Power and Light proposed Agreement.

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Legal Enforcement Attorney (ENF-L), Legal Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202-2466, (303) 312-6638.

It is so agreed:

Dated: July 22, 2009.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8.

[FR Doc. E9-18392 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8934-6]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method and Two New Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of one new reference method and two new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, one new reference method for measuring concentrations of oxides of nitrogen (NO_x) in the ambient air and two new equivalent methods, one for measuring concentrations of ozone (O₃) in the ambient air and one for measuring concentrations of sulfur dioxide (SO₂) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541-5691, e-mail: Kaushik.Surender@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of one new reference method for measuring NO_x in the ambient air and two new equivalent methods, one for measuring

concentrations of O₃ in the ambient air and one for measuring SO₂ in the ambient air. These designations are made under the provisions of 40 CFR Part 53, as amended on December 18, 2006 (71 FR 61271).

The new reference method for NO_x is an automated method (analyzer) utilizing the measurement principle based on gas phase chemiluminescence and the calibration procedure specified in Appendix F of 40 CFR part 50. This newly designated reference method is identified as follows:

RFNA-0809-186, "Ecotech Serinus 40 Oxides of Nitrogen Analyzer", operated in the range of 0-0.5 ppm, with a five-micron Teflon® filter element installed, and with the following selected: Control Loop-Enabled, Diagnostic Mode-Operate, Pres/Temp/Flow Compensation-Enabled, Span Compensation-Disabled, with concentration automatically corrected for temperature and pressure changes, and operated according to the Serinus 40 Oxides of Nitrogen Analyzer User Manual.

The new equivalent method for O₃ is an automated method that utilizes a measurement principle based on non-dispersive ultraviolet absorption photometry. The newly designated equivalent method for O₃ is identified as follows:

EQOA-0809-187, "Ecotech Serinus 10 Ozone Analyzer", operated in the range of 0-0.5 ppm, with a five-micron Teflon® filter element installed, and with the following selected: Control Loop-Enabled, Diagnostic Mode-Operate, Pres/Temp/Flow Compensation-Enabled, Span Compensation-Disabled, with concentration automatically corrected for temperature and pressure changes, and operated according to the Serinus 10 Ozone Analyzer User Manual.

The new equivalent method for SO₂ is an automated method (analyzer) that utilizes a measurement principle based on ultraviolet fluorescence. The newly designated equivalent method for SO₂ is identified as follows:

EQSA-0809-188, "Ecotech Serinus 50 Sulfur Dioxide Analyzer", operated in the range of 0-0.5 ppm, with a five-micron Teflon® filter element installed, and with the following selected: Background-Enabled, Control Loop-Enabled, Diagnostic Mode-Operate, Pres/Temp/Flow Compensation-Enabled, Span Compensation-Disabled, with concentration automatically corrected for temperature and pressure changes, and operated according to the Serinus 50 Sulfur Dioxide Analyzer User Manual.

Applications for the reference method and equivalent method determinations for these candidate methods were received by the EPA on March 19, 2008, April 22, 2009 and June 22, 2009, respectively. The monitors are commercially available from the applicant, Ecotech Pty. Ltd., 1492

Ferntree Gully Road, Knoxfield, Victoria, 3180, Australia.

Test analyzers representative of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR Part 53 (as amended on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the respective applications, EPA has determined, in accordance with Part 53, that these methods should be designated as a reference or equivalent method, as appropriate. The information submitted by the applicant in the respective applications will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated reference or equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designated method description (see the identifications of the methods above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program" EPA-454/B-08-003, December, 2008 (available at <http://www.epa.gov/ttn/amtic/qabook.html>). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be

upgraded or converted (e.g., by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E9-18388 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8934-8; Docket ID No. EPA-HQ-ORD-2007-0517]

Draft Integrated Science Assessment for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the second external review draft of a document titled, "Second External Review Draft Integrated Science Assessment for Particulate Matter" (EPA/600/R-08/139B and EPA/600/R-08/139BA). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for particulate matter.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). The draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. EPA will consider any public comments submitted in response to this notice when revising the document.

DATES: The public comment period begins on or about July 31, 2009. Comments must be received on or before September 30, 2009.

ADDRESSES: The "Second External Review Draft Integrated Science Assessment for Particulate Matter" will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. A limited number of CD-ROM or paper copies will be available. Contact Ms. Debbie Wales by phone (919-541-4731), fax (919-541-5078), or e-mail (wales.deborah@epa.gov) to request either of these, and please provide your name, your mailing address, and the document title, "Second External Review Draft Integrated Science Assessment for Particulate Matter" (EPA/600/R-08/139B and EPA/600/R-08/139C) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Lindsay Wichers Stanek, NCEA; telephone: 919-541-7792; facsimile: 919-541-2985; or e-mail: stanek.lindsay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. * * * Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review

and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Particulate matter (PM) is one of six principal (or "criteria") pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109(d)(2) of the Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On June 28, 2007 (72 FR 35462), EPA formally initiated its current review of the air quality criteria for PM, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Integrated Review Plan for the National Ambient Air Quality Standard for Particulate Matter" (EPA/452/P-08-006) was made available in October 2007 for public comment and was discussed by the CASAC PM Review Panel via a publicly accessible teleconference consultation on November 30, 2007 (72 FR 63177). EPA finalized the plan and made it available in March 2008 (EPA/452/R-08-004; http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html). In June 2008 (73 FR 30391), EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared in the development of the PM ISA and its supplementary annexes.

The First External Review Draft ISA for PM (EPA/600/R-08/139 and EPA/600/R-08/139A; <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201805>) was released on December 22, 2008 (73 FR 77686). This document was reviewed by the CASAC and discussed at a public meeting on April 1 and 2, 2009 (74 FR 7688). The CASAC held a follow-up public teleconference on May 7, 2009 (74 FR 18230) to review and approve the CASAC PM Review Panel's draft letter providing comments to the Agency on the First External Review Draft ISA for PM (<http://yosemite.epa.gov/sab/sab>

[product.nsf/73ACCA834AB44A10852575BD0064346B/\\$File/EPA-CASAC-09-008-unsigned.pdf](http://product.nsf/73ACCA834AB44A10852575BD0064346B/$File/EPA-CASAC-09-008-unsigned.pdf)).

The second external review draft ISA for PM will be reviewed and discussed by CASAC at a public meeting. Public comments received will be provided to the CASAC PM Review Panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2007-0517, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- E-mail: ORD.Docket@epa.gov.
- Fax: 202-566-1753.

- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202-566-1752.

- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2007-0517. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov>, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail

that you consider to be CBI or otherwise protected. 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: Documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: July 21, 2009.

Rebecca M. Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9-18387 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8596-8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements filed 07/20/2009 through 07/24/2009 Pursuant to 40 CFR 1506.9.

EIS No. 20090250, Draft EIS, IBR, NV, Walker River Basin Acquisition Program, To Provide Water to Walker Lake an at Risk Natural Desert Terminal Lake, Funding, Walker River Basin, NV, Comment Period Ends: 09/14/2009, Contact: Caryn Hunt DeCarol, 775-884-8352.

EIS No. 20090251, Final EIS, NPS, NY, Fort Stanwix National Monument General Management Plan, Implementation, Funding, City of Rome, Oneida County, NY, Wait Period Ends: 08/31/2009, Contact: James O'Connell, 617-223-5222.

EIS No. 20090252, Draft EIS, NPS, DC, White-Tailed Deer Management Plan, To Develop a White-Tailed Deer Management that Supports Long-Term Protection, Preservation and Restoration of Native Vegetation and other Natural and Cultural Resource in Rock Creek Park, Washington, DC, Comment Period Ends: 09/14/2009, Contact: Ken Ferebee, 202-895-6221.

EIS No. 20090253, Draft EIS, AFS, OR, Deadlog Vegetation Management Project, To Implement Treatments that would Reduce the Risk of High Intensity, Stand Replacement Wildlife and the Risk of Heavy Tree Mortality from Insects and Disease, Deschutes National Forest Lands, Deschutes County, OR, Comment Period Ends: 09/14/2009, Contact: Terry Craig, 541-548-7749.

EIS No. 20090254, Draft EIS, AFS, 00, Bridgeport Travel Management Project, To Provide the Primary Framework for Sustainable Management of Motor Vehicle Use on the Bridgeport Ranger District, Humboldt-Toiyabe National Forest, Mono County, CA and Lyon, Douglas, and Mineral Counties, NV, Comment Period Ends: 09/14/2009, Contact: Dave Lomis, 775-884-8132.

EIS No. 20090255, Final EIS, BLM, CO, Canyons of the Ancients National Monument Resource Management Plan, To Address Future Management Options for Approximately 165.00 Acres of Land, Dolores and Montezuma Counties, CO, Wait Period Ends: 08/31/2009, Contact: Heather Musclow, 970-882-5600.

EIS No. 20090256, Draft EIS, BLM, NV, Round Mountain Expansion Project, Proposed to Construct and Operate and Expand the Existing Open-Pit Gold Mining and Processing Operations, north of the town of Tonopah in Nye County, NV, Comment Period Ends: 09/14/2009, Contact: Thomas J. Seely, 775-482-7800.

EIS No. 20090257, Draft EIS, BLM, SD, Dewey Conveyor Project, To Transport Limestone from a Future

Quarry Location to a Rail Load-Out Facility near Dewey, Application for Transportation and Utility Systems and Facilities on Federal Lands, Custer County, SD, Comment Period Ends: 09/14/2009, Contact: Marian Atkins, 605-892-7000.

EIS No. 20090258, Final EIS, FRC, 00, Catawba-Wateree Hydroelectric Project (FERC No. 2232), Application for Hydroelectric License, Catawba and Wateree Rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln and Gaston Counties, NC and York, Lancaster, Chester, Fairfield and Kershaw Counties, SC, Wait Period Ends: 08/31/2009, Contact: Julia Bovey, 1-866-208-3372.

EIS No. 20090259, Draft Supplement, AFS, PA, Allegheny National Forest, Updated Information for the 2007 Land and Resource Management Plan, Implementation, Elk, Forest, McKean and Warren Counties, PA, Comment Period Ends: 10/28/2009, Contact: Lois DeMarco, 814-728-6179.

EIS No. 20090260, Final EIS, COE, TX, Calhoun Port Authority's, Proposed Matagorda Ship Channel Improvement Project to Widen and Deepen Berthing Facilities, US Army COE Section 10 and 404 Permits, Calhoun and Matagorda Counties, TX, Wait Period Ends: 08/31/2009, Contact: Denise Sloan, 409-766-3962.

EIS No. 20090261, Final Supplement, GSA, MD, U.S. Food and Drug Administration (FDA) Headquarters Consolidation, Master Plan Update, Federal Research Center at White Oak, Silver Spring, Montgomery County, MD, Wait Period Ends: 08/31/2009, Contact: Suzanne Hill, 202-205-5821.

EIS No. 20090262, Draft EIS, EPA, GU, Apra Harbor, Guam, Proposed Site Designation of an Ocean Dredged Material Disposal Site Offshore of Guam, Comment Period Ends: 09/28/2009, Contact: Allan Ota, 415-972-3476.

EIS No. 20090263, Final EIS, NSF, HI, Advanced Technology Solar Telescope Project, Issuing Special Use Permit to Operate Commercial Vehicles on Haeakala National Park Road during the Construction of Site at the University of Hawai'i Institute for Astronomy, Haleakala High Altitude Observatory (HO) Site, Island of Maui, HI, Wait Period Ends: 08/31/2009, Contact: Craig Foltz, 703-292-4909.

EIS No. 20090264, Final EIS, FHW, OH, Cleveland Innerbelt Project, Proposing Major Rehabilitation and Reconstruction between I-71 and I-90, Cleveland Central Business District, Funding, City of Cleveland,

Cuyahoga County, OH, Wait Period Ends: 08/31/2009, Contact: Herman Rodrigo, 614-280-6896.

Amended Notices

EIS No. 20090179, Draft EIS, AFS, CA, Klamath National Forest Motorized Route Designation, Motorized Travel Management, (Formerly Motorized Route Designation), Implementation, Siskiyou County, CA, Comment Period Ends: 08/04/2009, Contact: Jan Ford, 530-842-6131. Revision to FR Notice Published 06/05/2009: Extending Comment Period from 07/20/2009 to 08/04/2009.

EIS No. 20090198, Draft EIS, AFS, CA, Shasta-Trinity National Forest Motorized Travel Management Project, Proposal to Prohibit Cross-County Motor Vehicle Travel off Designated National Forest Transportation System (NFTS) Roads, Motorized Trails and Areas by the Public Except as Allowed by Permit or other Authorization (excluding snowmobile use), CA, Comment Period Ends: 08/25/2009, Contact: Robert Remillard, 530-226-2421. Revision to FR Notice Published 06/26/2009: Extending Comment Period from 08/10/2009 to 08/25/2009.

Dated: July 28, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9-18350 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8595-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20080242, ERP No. D-BLM-D65040-WV, East Lynn Lake Coal Lease Project, Proposal to Lease Federal Coal That Lies Under Nine Tracts of Land for Mining, Wayne County, WV.

Summary: EPA expressed environmental objections about adverse impacts to water quality and aquatic life. EPA recommends the development of an alternative that incorporates a larger, more conservative and protective buffer between potential mining operations and the existing earthen dam. EPA requested additional information on past and current water quality and quality impairments. Rating EO2.

EIS No. 20080385, ERP No. D-FTA-D54042-MD, Red Line Corridor Transit Study, Alternatives Analysis, Implementation of a New East-West Transit Alignment through Baltimore, Baltimore County, MD.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20080422, ERP No. D-FTA-D54043-MD, Purple Line Transit Project, Proposed 16-Mile Rapid Transit Line Extending from Bethesda in Montgomery County to New Carrollton in Prince George's County, MD.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090154, ERP No. D-NPS-E65083-AL, Tuskegee Airmen National Historic Site, General Management Plan, Implementation, Tuskegee, AL.

Summary: While EPA has no objections to the proposed action, it suggested the use of Best Management Practices. Rating LO.

Final EISs

EIS No. 20090158, ERP No. F-FHW-F40435-IL, Illinois Route 29 (FAP 318) Corridor Study, Transportation Improvement from Illinois 6 to Interstate 180, Funding and US Army COE Section 404 Permit, Peoria, Marshall, Putnam and Bureau Counties, IL.

Summary: EPA continues to have environmental concerns about wetland and habitat impacts, and requested that the Record of Decision include more information on mitigation measures to reduce erosion and wildlife crossings.

EIS No. 20090193, ERP No. F-AFS-F65072-WI, Camp Four Vegetation Project, Proposes Vegetation and Road Management Activities, Desired Future Condition (DFC), Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Price County, WI.

Summary: EPA does not object to the proposed action.

EIS No. 20090194, ERP No. F-AFS-K65342-CA, Moonlight and Wheeler Fires Recovery and Restoration

Project, Analysis of the No-Action and Action Alternatives, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA.

Summary: EPA continues to have environmental concerns about adverse impacts to watersheds, and recommended that the action avoid California spotted owl home range core areas and protected activity centers, minimize new road construction, and use all practical methods to minimize emissions during construction.

EIS No. 20090195, ERP No. F-COE-G39051-LA, Mississippi River-Gulf Outlet (MRGO), Louisiana, and Lake Borgne Wetland Creation and Shoreline Protection Project, Proposes to Construct Shoreline Protection Features Along the Lake Borgne Shoreline to Restore and Nourish Wetlands, Lake Borgne, LA.

Summary: EPA's previous comments were adequately addressed; therefore, EPA does not object to the proposed action.

Dated: July 28, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9-18349 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8933-6; Docket ID No. EPA-HQ-ORD-2009-0495]

Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document titled, "Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen" (EPA/600/R-09/057). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. The case studies focus on two different applications of nanoscale titanium dioxide, water treatment and topical sunscreen. The document is intended to serve as a foundation for creating a long-term research strategy to provide the information needed for comprehensive environmental assessments of selected nanomaterials. It does not attempt to draw conclusions regarding potential environmental risks

of nanoscale titanium dioxide, but only to identify what is known and what needs to be known to support future assessment efforts.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

DATES: The 45-day public comment period begins July 31, 2009, and ends September 14, 2009. Technical comments should be in writing and must be received by EPA by September 14, 2009.

ADDRESSES: The draft "Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. A limited number of paper copies are available from Deborah Wales, NCEA-RTP, Research Triangle Park, NC 27711; *phone:* (919) 541-4731; *facsimile:* (919) 541-5078. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, "Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen."

Comments may be submitted electronically via <http://www.regulations.gov>, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* (202) 566-1752; *facsimile:* (202) 566-1753; or *e-mail:* ORD.Docket@epa.gov.

For technical information, contact Dr. J. Michael Davis, NCEA; *telephone:* (919) 541-4162; *facsimile:* (919) 685-3331; or *e-mail:* Davis.Jmichael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

Engineered nanoscale materials (*nanomaterials*) are conventionally defined as having at least one

dimension between 1 and 100 nanometers (nm) and unique properties that arise from their small size. Like all technological developments, nanomaterials offer the potential for both benefits and risks. The assessment of such risks and benefits requires information, but given the nascent state of nanotechnology, much remains to be learned about the characteristics and effects of nanomaterials before such assessments can be completed. The draft document, "Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen," is a starting point to identify what is known and, more importantly, what *needs* to be known about selected nanomaterial applications—in this case, for nanoscale titanium dioxide (*nano-TiO₂*)—to assess their potential ecological and health implications. The complex properties of various nanomaterials make evaluating them in the abstract or with generalizations difficult if not impossible. Thus, this document focuses on two specific uses of *nano-TiO₂*, as a drinking water treatment and as topical sunscreen. These "case studies" do *not* represent completed or even preliminary assessments; rather, they present the structure for identifying and prioritizing research needed to support future assessments. The case studies follow the comprehensive environmental assessment (CEA) approach, which combines a product life-cycle framework with the risk assessment paradigm. In essence, risk assessment relates exposure and effects information for a given substance or stressor, and CEA expands on this paradigm by including life-cycle stages and considering both indirect and direct ramifications of a substance or stressor.

II. How To Submit Technical Comments to the Docket at <http://www.regulations.gov>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD 2009-0495, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov
- *Fax:* (202) 566-1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is (202) 566-1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2009-0495. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov>, including any personal information provided, unless a 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>.

Docket: Documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: July 8, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9-18386 Filed 7-30-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 27, 2009.

SUMMARY: On July 22, 2009, the Federal Communications Commission (Commission) received Office of Management and Budget (OMB) approval, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), for the public information collections contained in § 10.350 of the Commission's rules, as adopted by the Commission in its Commercial Mobile Alert System, Second Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 10765 (rel. July 8, 2008) ("CMAS Second Report and Order"). The effective date for the information collections contained in § 10.350 was deferred until approved by OMB. In this document, the Commission provides notice that those information collections have been approved by OMB and are effective immediately.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the "FOR FURTHER INFORMATION CONTACT" section below.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, Leslie.Haney@fcc.gov, (202) 418-1002.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1126.
OMB Approval Date: July 22, 2009.
Expiration Date: July 31, 2012.

Title: Section 10.350, Testing Requirements for the Commercial Mobile Alert System (CMAS)

Form No.: Not applicable.

Estimated Annual Burden: 1,752 responses; 2.5 seconds per response; 2 hours annual total.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), and (o), 201, 303(r), 403 and 606 of the Communications Act of 1934, as amended; as well as by sections 602(a), (b), (c), and (f), 603, 604, and 606 of the WARN Act.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission requested OMB approval of a new information collection in order to obtain the full three-year clearance from them. The Commission's estimates for public burden are described above.

As required by the Warning, Alert, and Response Network (WARN) Act, Public Law 109-347, the Federal Communications Commission adopted final rules to establish a Commercial Mobile Alert System (CMAS), under which the Commercial Mobile Service (CMS) providers may elect to transmit emergency alerts to the public, see *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-164, 23 FCC Rcd. In order to ensure that the CMAS operates efficiently and effectively, the Commission requires participating CMS providers to receive required monthly test messages initiated by the Federal Alert Gateway Administrator, to test their infrastructure and internal CMAS delivery systems by distributing the monthly message to their CMAS coverage area, and to log the results of the tests. The Commission also requires periodic testing of the interface between the Federal Alert Gateway and each CMS Provider Gateway to ensure the availability and viability of both gateway functions. The CMS Provider Gateways must send an acknowledgement to the Federal Alert Gateway upon receipt of these interface test messages.

The Commission, the Federal Alert Gateway and participating CMS providers will use this information to ensure the continued functioning of the CMAS, thus complying with the WARN Act and the Commission's obligation to promote the safety of life and property through the use of wire and radio communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary

[FR Doc. E9-18377 Filed 7-30-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009-N-05]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is submitting the information collection known as "Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances" to the Office of Management and Budget (OMB) for review and approval of a three year extension of the control number 2590-0008, which is due to expire on August 31, 2009.

DATES: Interested persons may submit comments on or before August 31, 2009.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: 202-395-6974, *E-mail address:*

OIRA_Submission@omb.eop.gov and to FHFA using any one of the following methods: *E-mail:*

regcomments@fhfa.gov. Please include Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2009-N-05) in the subject line of the message. *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, ATTENTION: Public Comments/ Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2009-N-05). *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>. For Further Information or Copies of the

Information Collection Contact: David L. Roderer, Senior Financial Analyst at 202-408-2540 (not a toll-free number), david.l.roderer@fhfa.gov. The telephone number for the Telecommunications Device for the Deaf is 800-877-8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

The FHFA has authorized the Federal Home Loan Banks (Banks) to acquire mortgage loans and other assets from their members or housing associates under certain circumstances. 12 CFR part 955. The regulation refers to these assets as acquired member assets or AMA. As part of this regulatory authorization, each Bank that acquires residential mortgage loans must provide to the FHFA certain loan-level data on a quarterly basis. The reporting requirements, which previously were in 12 CFR part 955 (specifically, section 955.4 and Appendices A and B), currently are contained in the FHFA Data Reporting Manual (DRM). The FHFA uses this data to monitor the safety and soundness of the Banks and the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs. See 12 U.S.C. 1422a(a), repealed by section 1204 of the Housing and Economic Recovery Act of 2008 (HERA) and replaced with section 1312 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (July 30, 2008).

While the Banks provide the AMA data directly to the FHFA, each Bank initially must collect the information from the private-sector member or housing associate from which the Bank acquires the mortgage loan. Bank members and housing associates already collect the vast majority of the data the FHFA requires in order to do business with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) under regulatory requirements issued by the Department of Housing and Urban Development (HUD) and pursuant to the data collection requirements under the Home Mortgage Disclosure Act (HMDA). Thus, the FHFA's information collection imposes only a minor incremental additional burden on Bank members and housing associates.

The OMB control number for the information collection, which expires on August 31, 2009, is 2590-0008. The likely respondents are institutions that sell AMA assets to Banks.

B. Burden Estimate

The FHFA estimates that the hour burden associated with the AMA collection is little changed. More institutions are participating in the AMA program, but the average report size has gone down dramatically. The FHFA estimates the total annual average number of respondents at 750, with 4 responses per respondent. The estimate for the average hours per response is 12 hours. The estimate for the total annual hour burden is 36,000 hours (750 respondents \times 4 responses per respondent \times 12 hours).

Bank members could incur additional one-time costs to be able to collect and report additional loan-level data elements. The FHFA estimates this additional, one-time cost at \$150,000 (\$2,000 \times 750 members).

C. Comment Request

In accordance with 5 CFR 1320.8(d), the FHFA published a request for public comments regarding this information collection in the **Federal Register** on May 28, 2009. See 74 FR 25538. The 60-day comment period closed on July 27, 2009. The FHFA received no public comments.

The FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information, including whether the agency used valid methods and assumptions; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology and including whether the agency should expand the electronic reporting options for respondents. Comments may be submitted to OMB in writing at the e-mail address and fax number listed above.

Dated: July 27, 2009.

James B. Lockhart III,
Director, Federal Housing Finance Agency.
[FR Doc. E9-18381 Filed 7-30-09; 8:45 am]
BILLING CODE 8070-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *State Bank of Hawley Employee Stock Ownership Plan and Trust*, Hawley, Minnesota; to acquire additional voting shares, for a total of 51.9 percent, of the voting shares of Bankshares of Hawley, Inc., Hawley, Minnesota, and thereby indirectly acquire additional voting shares of State Bank of Hawley, Hawley, Minnesota.

Board of Governors of the Federal Reserve System, July 27, 2009.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. E9-18277 Filed 7-30-09; 8:45 am]
BILLING CODE 6210-01-S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements

under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 010099–051.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compañia SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd.; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW; Washington, DC 20006–1600.

Synopsis: The amendment would add Regional Container Lines Public Company Limited (RCL) as a party to the agreement.

Agreement No.: 201202–001.

Title: Oakland MTO Agreement.

Parties: Eagle Marine Services, Ltd.; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Ports America Outer Harbor Terminal, LLC as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: July 28, 2009.

Karen V. Gregory,
Secretary.

[FR Doc. E9–18365 Filed 7–30–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 011584–007.

Title: NYK/WWL/NSCSA/Cooperative Working Agreement.

Parties: Nippon Yusen Kaisha; Wallenius Wilhelmsen Logistics AS; and the National Shipping Company of Saudi Arabia.

By Order of the Federal Maritime Commission.

Dated: July 28, 2009.

Karen V. Gregory,
Secretary.

[FR Doc. E9–18362 Filed 7–30–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board; Notification of Charter Renewal

AGENCY: Department of Health and Human Services, Office of the Secretary.
ACTION: National Biodefense Science Board; Notification of charter renewal.

SUMMARY: The Secretary of Health and Human Services has renewed the National Biodefense Science Board (NBSB) charter for an additional two-year period through July 3, 2011.

SUPPLEMENTAL INFORMATION: As stipulated by the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 Section 9(c), the U.S. Department of Health and Human Services is hereby giving notice of the renewal of the NBSB charter for an additional two-year period. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

FOR FURTHER INFORMATION CONTACT: CAPT Leigh A. Sawyer, D.V.M., M.P.H., Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and

Response, U.S. Department of Health and Human Services, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20447; 202–205–3815; fax: 202–205–8508; e-mail address: leigh.sawyer@hhs.gov.

Dated: July 23, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9–18375 Filed 7–30–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees at Area IV of the Santa Susana Field Laboratory, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 18, 2009, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors and subcontractors who worked in any area of Area IV of the Santa Susana Field Laboratory for a number of work days aggregating at least 250 work days from January 1, 1955 through December 31, 1958, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on July 18, 2009, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on July 18, 2009, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT:

Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also

be submitted by e-mail to
OCAS@CDC.GOV.

Christine M. Branche,

*Acting Director, National Institute for
Occupational Safety and Health.*

[FR Doc. E9-18290 Filed 7-30-09; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National
Coordinator for Health Information
Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on August 14, 2009, from 10 a.m. to 3 p.m./Eastern Time.

Location: The Holiday Inn Washington Capitol Hotel, 550 C Street, SW., Washington, DC. The hotel telephone number is 202-479-4000.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202-205-4528, Fax: 202-690-6079, e-mail: judy.sparrow@hhs.gov Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will discuss the definition of Meaningful Use, and hear presentations from the Certification/Adoption and Information Exchange Workgroups. The HIT

Standards Committee will also update the HIT Policy Committee on its progress to date. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at <http://healthit.hhs.gov>.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 4, 2009. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation is limited to two minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://healthit.hhs.gov> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: July 28, 2009.

Judith Sparrow,

*Office of Programs and Coordination, Office
of the National Coordinator for Health
Information Technology.*

[FR Doc. E9-18331 Filed 7-30-09; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National
Coordinator for Health Information
Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on August 20, 2009, from 9 a.m. to 3 p.m. Eastern Time.

Location: The Holiday Inn Washington Capitol, 550 C Street, SW., Washington, DC. The hotel telephone number is 202-479-9400.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202-205-4528, Fax: 202-690-6079, e-mail:

judy.sparrow@hhs.gov Please call the contact person for up-to-date information on this meeting. A notice in the Federal Register about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Committee will discuss reports and recommendations from its Clinical Quality, Clinical Operations, and Privacy and Security Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at <http://healthit.hhs.gov>.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 12, 2009. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation may be limited. If the number of speakers requesting to comment is greater than can be reasonably

accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://healthit.hhs.gov> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: July 28, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9-18330 Filed 7-30-09; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting. The meeting is open to the public.

DATES: The NBSB will hold a public meeting on September 25, 2009 from 8 a.m. to 5 p.m. EDT. The agenda is subject to change as priorities dictate.

ADDRESSES: Washington DC Metro Area. The venue details will be posted on the NBSB Web page at <http://www.hhs.gov/aspr/omsph/nbsb/index.html> as they become available.

FOR FURTHER INFORMATION CONTACT: CAPT Leigh A. Sawyer, D.V.M., M.P.H., Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20201; 202-205-3815;

fax: 202-205-8508; *e-mail address:* leigh.sawyer@hhs.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d-7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

Background: The tentative agenda includes updates from the chairs of the: Pandemic Influenza Working Group, MCM Markets and Sustainability Working Group, Disaster Medicine Working Group, Personal Preparedness Working Group, and the Disaster Mental Health Subcommittee. Additional topics surrounding the current H1N1 influenza outbreak will be considered during the public meeting. This agenda is subject to change as priorities dictate.

Availability of Materials: The meeting agenda, and other materials will be posted on the NBSB Web site at <http://www.hhs.gov/aspr/omsph/nbsb/index.html> prior to the meeting.

Procedures for Providing Public Input: Any member of the public providing oral comments at the meeting must sign in at the registration desk and provide his/her name, address, and affiliation. All written comments must be received prior to September 17, 2009, and should be sent by e-mail to NBSB@hhs.gov with "NBSB Public Comment" as the subject line, or mailed to Leigh Sawyer, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20201. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Dated: July 24, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, Rear Admiral, U.S. Public Health Service.

[FR Doc. E9-18374 Filed 7-30-09; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board: Notification of a Public Teleconference

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Biodefense Science Board (NBSB) will hold three teleconference meetings. The meetings are open to the public. Pre-registration is NOT required, however, individuals who wish to participate in the public comment session should e-mail NBSB@HHS.GOV to RSVP.

DATES: The meetings will be held on August 14, 2009, from 12 p.m. to 2 p.m. EDT, October 14, 2009, 12 p.m. to 2 p.m. EDT, and on November 13, 2009, 12 p.m. to 2 p.m. EST.

ADDRESSES: The meetings will occur by teleconference. To attend, please call 1-866-395-4129, pass-code "ASPR." Please call 15 minutes prior to the beginning of the conference call to facilitate attendance.

FOR FURTHER INFORMATION CONTACT: Ms. Erin Fufts, National Biodefense Science Board, Department of Health and Human Services, Room 5128, Switzer Building, 330 C St., SW., Washington, DC 20201. *Phone:* 202-260-1201; *E-mail:* NBSB@HHS.GOV

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d-7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

These are special meetings of the NBSB. Discussions will surround issues related to Novel Influenza A H1N1.

For these special meetings, members of the public are invited to attend by teleconference via a toll-free call-in phone number. The call-in number will be operator assisted to provide members

of the public the opportunity to provide comments to the Board. Public participation and ability to comment will be limited to time and space available. Public comment will be limited to no more than 3 minutes per speaker. To be placed on the public participant list, you should notify the operator when you enter the call-in number.

Any members of the public who wish to have printed material distributed to the NBSB should submit materials via email at NBSB@HHS.GOV, with "NBSB Public Comment" as the subject line, prior to the close of business one week before each meeting (conference call). A draft agenda and any additional materials/agendas will be posted on the NBSB Web site ([HTTP://WWW.HHS.GOV/ASPR/OMSPH/NBSB/](http://WWW.HHS.GOV/ASPR/OMSPH/NBSB/)) prior to the meeting.

Dated: July 24, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, Rear Admiral, U.S. Public Health Service.

[FR Doc. E9-18372 Filed 7-30-09; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Project: Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930-0106)—Revision

The DASIS consists of three related data systems: the Inventory of Substance Abuse Treatment Services (I-SATS); the National Survey of Substance Abuse Treatment Services (N-SSATS), and the Treatment Episode Data Set (TEDS). The I-SATS includes all substance abuse treatment facilities known to SAMHSA. The N-SSATS is an annual survey of all substance abuse treatment facilities listed in the I-SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment. In addition, several National Outcome Measures (NOMS) data elements are collected in TEDS to

assess the performance of the Substance Abuse Prevention and Treatment (SAPT) Block Grant.

The request for OMB approval will include a request to conduct the 2010 through 2012 N-SSATS and Mini-N-SSATS. The Mini-N-SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The N-SSATS questionnaire is expected to remain unchanged except for minor modifications to wording. If there is a need for substantial revision to the N-SSATS questionnaire during the period of this clearance, a supplemental request for clearance will be submitted.

The OMB request will also include the collection of TEDS data, including the addition of two new NOMS data elements to the TEDS client-level record. To the extent that states already collect the elements from their treatment providers, the following elements will be included in the TEDS data collection: Frequency of attendance at self-help programs in past 30 days at admission; and frequency of attendance at self-help programs in past 30 days at discharge. No significant changes are expected in the other DASIS activities.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	6.25	1,300
TEDS Discharge Data	52	4	8.25	1,716
TEDS Discharge Crosswalks	5	1	10	50
I-SATS Update ¹	56	70	.08	314
State Subtotal	56	.....	.....	3,380
Facilities:				
I-SATS Update ²	200	1	.08	16
N-SSATS questionnaire	17,000	1	.67	11,390
Augmentation screener	1,000	1	.08	80
Mini N-SSATS	2,000	1	.42	840
Facility Subtotal	20,200	.....	.....	12,326
Total	20,256	.....	.....	15,706

¹ States forward to SAMHSA information on newly licensed/approved facilities and on changes in facility name, address, status, etc. This is submitted electronically by nearly all States.

² Facilities forward to SAMHSA information on new facilities and on changes to existing facilities. This is submitted by e-mail by nearly all facilities.

Written comments and recommendations concerning the proposed information collection should be sent by August 31, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: July 27, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9-18313 Filed 7-30-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0092]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 31, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0594. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezuto, Office of Information

Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle—(OMB Control Number 0910-0594)—Extension

Under the Safe Medical Devices Act of 1990 (Public Law 101-629, 104 Stat. 4511), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it deems necessary to provide reasonable assurance of the safety and effectiveness of the device. The special control guidance serves to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components as well as the special control for the automated blood cell separator device operating on a filtration separation principle intended for the routine collection of blood and blood components reclassified as class II (§ 864.9245 (21 CFR 864.9245)).

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II or, on the anniversary date of the section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under

Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components relieves manufacturers of the burden of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities and manufacturers have certain responsibilities under the Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b)). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse events that have occurred and that are not required to be reported by manufacturers under MDR. The MedWatch medical device reporting code instructions (<http://www.fda.gov/cdrh/mdr/373.html>) contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

In the **Federal Register** of March 2, 2009 (74 FR 9097), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Annual Report	4	1	4	5	20

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufactures of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission 501(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR).

Dated: July 24, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18354 Filed 7–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase VI–NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services is responsible for the national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program (Children's Mental Health Initiative—

CMHI) that will collect data on child mental health outcomes, family life, and service system development and performance. Data will be collected on 26 service systems, and approximately 5,541 children and families.

Data collection for this evaluation will be conducted over a five-year period. Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The length of time that individual families will participate in the study ranges from 12 to 24 months depending upon when they enter the evaluation. The outcome measures include the following: Child symptomatology and functioning, family functioning, satisfaction, and caregiver strain. The core of service system data will be collected every 18–24 months throughout the 5-year evaluation period, with a sustainability survey conducted in years 3 and 5. Service utilization and cost data will be tracked and submitted to the national evaluation every six months using two tools, the Flex Fund Tool and the Services and Costs Data Tool, to estimate average cost of treatment per child, distribution of costs, and allocation of costs across service categories. Service delivery and system variables of interest include the following: Maturity of system of care development in funded system of care communities, adherence to the system of care program model, and client service experience. We will also conduct a comprehensive evaluation of the CMHI's data driven technical assistance; this component of the evaluation will employ a mixed-methods approach, combining qualitative and quantitative data to provide a comprehensive assessment of the continuous quality improvement (CQI) process in funded system of care communities. Specifically, data will be gathered through three complementary activities: A baseline survey of key

constituents in all funded communities; a subsequent monitoring survey administered every two years to the same constituents; and biennial case studies of four selected communities.

In addition, the evaluation will include three special studies: (1) The sector specific assessment and quasi-experimental comparison study will examine in more detail the outcomes and service experience of children from multiple child-serving sectors and, through child-level matching, compare these outcomes with those not receiving system of care services; (2) The Alumni Network Study will examine the effectiveness of the system of care Alumni Network Web site by evaluating end-user satisfaction and usability of the Web site and will also assess the collaboration between communities via a Web-based Networking and Collaboration Survey that will measure the nature and extent of the interaction between communities; (3) The Study of State Strategies for Sustainability will examine the state's role in sustaining communities after federal funding ceases and describe effective strategies for sustaining funded systems of care. A short version of the sustainability survey developed for this evaluation will be used to gather this information.

Internet-based technology such as Web-based surveys and data entry and management tools will be used in this evaluation. The measures of the national evaluation address the national outcome measures for mental health programs as currently established by SAMHSA.

The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take to complete each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

PHASE VI ESTIMATE OF RESPONDENT BURDEN

[Note: Total burden is annualized over a 5-year period]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	5-year average annual burden hours
System of Care Assessment						
Interview Guide A. Core Agency Representative. Interview Guide B. Project Director. Interview Guide C. Family Representative/Representative of Family/Advocacy Organizations. Interview Guide D. Program Evaluator. Interview Guide E. Intake Worker. Interview Guide F. Care Coordinator. Interview Guide G. Direct Service Delivery Staff. Interview Guide H. Care Review Participant. Interview Guide I. Caregiver of Child or Youth Served by the Program. Interview Guide L. Direct Service Staff from Other Public Child-Serving Agencies. Interview Guide M. Care Record/Chart Review. Interview Guide N. Other Staff. Interview Guide O. Debriefing Document. Interview Guide P. Youth Respondent. Interview Guide Q. Youth Coordinator. Interview Guide R. Cultural and Linguistic Competence Coordinator. Interview Guide S. Social Marketing Communications Manager.	Key site informants	1,598	3	1.00	1,794	359
Child and Family Outcome Study						
Caregiver Information Questionnaire, Revised: Caregiver—Intake (CIQ-RC-I). Caregiver Information Questionnaire, Revised: Staff as Caregiver—Intake (CIQ-RS-I).	Caregiver Staff as Caregiver.	2,541	1	0.37	2,032	406
Caregiver Information Questionnaire, Revised: Caregiver—Follow-Up (CIQ-RC-F). Caregiver Information Questionnaire, Revised: Staff as Caregiver—Follow-Up (CIQ-RS-F).	Caregiver Staff as Caregiver.	5,541	3 ⁴	0.28	6,280	1,256
Caregiver Strain Questionnaire (CGSQ).	Caregiver	5,541	5	0.17	4,627	925
Child Behavior Checklist 1½-5 (CBCL 1½-5).	Caregiver	5,541	5	0.33	9,226	1,845

PHASE VI ESTIMATE OF RESPONDENT BURDEN—Continued

[Note: Total burden is annualized over a 5-year period]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	5-year average annual burden hours
Child Behavior Checklist 6–18 (CBCL 6–18).						
Education Questionnaire, Revision 2 (EQ–R2).	Caregiver	5,541	5	0.33	9,226	1,845
Living Situations Questionnaire (LSQ).	Caregiver	5,541	5	0.08	2,300	460
Behavioral and Emotional Rating Scale—Second Edition, Parent Rating Scale (BERS–2C).	Caregiver	4,909	5	0.17	4,099	820
Columbia Impairment Scale (CIS).	Caregiver	⁵ 5,348	5	0.08	2,219	444
Parenting Stress Index (PSI).	Caregiver	⁶ 2,030	5	0.08	846	169
Devereux Early Childhood Assessment for Infants (DECA 1–18M). Devereux Early Childhood Assessment for Toddlers (DECA 18–36M). Devereux Early Childhood Assessment (DECA 2–5Y).	Caregiver	⁷ 1,528	5	0.08	637	127
Preschool Behavioral and Emotional Rating (PreBERS).	Caregiver	1,528	5	0.10	764	153
Delinquency Survey, Revised (DS–R).	Youth	⁸ 3,624	5	0.13	2,416	483
Behavioral and Emotional Rating Scale—Second Edition, Youth Rating Scale (BERS–2Y).	Youth	3,624	5	0.17	3,026	605
Gain Quick–R: Substance Problem Scale (GAIN).	Youth	3,624	5	0.08	1,504	301
Substance Use Survey, Revised (SUS–R).	Youth	3,624	5	0.10	1,812	362
Revised Children’s Manifest Anxiety Scales (RCMAS).	Youth	3,624	5	0.05	906	181
Reynolds Adolescent Depression Scale—Second Edition (RADS–2).	Youth	3,624	5	0.05	906	181
Youth Information Questionnaire, Revised—Intake (YIQ–R–I).	Youth	3,624	1	0.25	906	181
Youth Information Questionnaire, Revised—Follow-Up (YIQ–R–F).	Youth	3,624	4	0.25	3,624	725
Service Experience Study						
Multi-Sector Service Contacts, Revised: Caregiver—Intake (MSSC–RC–I).	Caregiver	5,541	1	0.25	1,385	277

PHASE VI ESTIMATE OF RESPONDENT BURDEN—Continued

[Note: Total burden is annualized over a 5-year period]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	5-year average annual burden hours
Multi-Sector Service Contacts, Revised: Staff as Caregiver—Intake (MSSC-RS-I).	Staff as Caregiver.					
Multi-Sector Service Contacts, Revised: Caregiver—Follow-Up (MSSC-RC-F).	Caregiver	5,541	4	0.25	5,541	1,108
Multi-Sector Service Contacts, Revised: Staff as Caregiver—Follow-Up (MSSC-RS-F).	Staff as Caregiver.					
Cultural Competence and Service Provision Questionnaire, Revised (CCSP-R).	Caregiver	5,541	⁹ 4	0.13	2,955	591
Youth Services Survey for Families (YSS-F).	Caregiver	5,541	4	0.12	2,593	519
Youth Services Survey (YSS).	Youth	3,624	4	0.08	1,203	241
Comparison and Sector Study: Juvenile Justice						
Court Representative Questionnaire (CRQ).	Court representatives	¹⁰ 212	5	0.50	530	106
Electronic Data Transfer of Juvenile Justice Records.	Key site personnel	212	5	0.03	35	7
Comparison and Sector Study: Education						
Teacher Questionnaire (TQ)	Teacher	212	5	0.50	530	106
School Administrator Questionnaire (SAQ).	School administrators	212	5	0.50	530	106
Electronic Data Transfer of Education Records.	Key site personnel	212	5	0.03	35	7
Comparison and Sector Study: Child Welfare						
Child Welfare Sector Study Questionnaire—Intake (CWSQ-I).	Care coordinators	212	1	0.50	106	21
Child Welfare Sector Study Questionnaire—Follow-Up (CWSQ-F).	Care coordinators	212	4	0.50	424	85
Electronic Data Transfer of Child Welfare Records.	Key site personnel	212	5	0.03	35	7
Sustainability Study						
Sustainability Survey: Brief Form.	Project Director	79	2	0.17	26	5
Sustainability Survey	Providers ¹¹	126	2	0.75	189	38
	Caregiver ¹¹	42	2	0.75	63	13

PHASE VI ESTIMATE OF RESPONDENT BURDEN—Continued

[Note: Total burden is annualized over a 5-year period]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	5-year average annual burden hours
CQI Initiative Evaluation						
CQI Baseline Survey, Web-Based.	Key site personnel	208	1	0.50	104	21
CQI Monitoring Survey, Web-Based.	Key site personnel	208	2	0.50	208	42
CQI Local Focus Group Guide.	Key site personnel	30	2	1.00	60	12
CQI National Focus Group Guide.	National TA providers	20	2	1.00	40	8
Alumni Networking Study						
Networking and Collaboration Survey.	Key site personnel	248	2	0.50	248	50
Alumni Network Web Site Satisfaction Survey.	Key site personnel, National TA providers, Branch staff.	458	2	0.25	229	46
Services and Costs Study						
Flex Funds Data Dictionary/ Tool.	Local programming staff compiling/entering administrative data on children/youth.	¹² 1,306	¹³ 3	0.03	129	26
Services and Costs Data Dictionary/Data Entry Application.	Local evaluator, staff at partner agencies, and programming staff compiling/entering service and cost records on children/youth.	5,541	¹⁴ 100	0.05	27,705	5,541
Summary of Annualized Burden Estimates for 5 Years						
	Number of distinct respondents	Number of responses per respondent	Average 5-year burden per response (hours)	Total annual burden (hours)		
Caregivers	5,541	0.9	2.2	10,959		
Youth	3,624	0.9	1.0	3,261		
Providers/Administrators	598	10.8	1.0	6,593		
Total Summary	9,763	13	.....	20,812		

¹ An average of 23 stakeholders in up to 26 grant communities will complete the System of Care Assessment interview. These stakeholders will include site administrative staff, providers, agency representatives, family representatives, and youth.

² Number of respondents across 26 grantees (5223), in addition to 318 children/families from the comparison sample. Average based on a 5 percent attrition rate at each data collection point.

³ Number of responses per respondent is five over the course of the study (once every 6 months for 24 months, with one baseline/intake response, and 4 follow-up responses).

⁴ Approximate number of caregivers with children over age 5, based on Phase IV data submitted as of 12/08. Also includes 318 children/families from the comparison sample.

⁵ Approximate number of caregivers with children 3 and older, based on Phase IV data submitted as of 12/08. Also includes 318 children/families from the comparison sample.

⁶ Approximate number of caregivers with either: (1) children served at the roughly 7 early childhood-focused communities, for whom the instrument is required; or (2) children aged 0 to 12 at other communities, where the instrument is optional (we estimate that 1/3 of caregivers will be administered the instrument when it is optional). Estimates are based on Phase IV data submitted as of 12/08.

⁷ Approximate number of caregivers with either: (1) children served at the roughly 7 early childhood-focused communities, for whom the instrument is required; or (2) children aged 0 to 5 at other communities, where the instrument is optional (we estimate that 1/3 of caregivers will be administered the instrument when it is optional). Estimates are based on Phase IV data submitted as of 12/08.

⁸ Based on Phase IV finding that approximately 63 percent of the children in the evaluation were 11 years old or older. Also includes 318 children/families from the comparison sample.

⁹ With the exception of the MSSC-R, respondents only complete Service Experience Study measures at follow-up points. See Footnote #3 for the explanation about the average number of responses per respondent.

¹⁰ Approximate number of children/families in each sector, for the Sector and Comparison Study. This includes cases within the communities, as well as within the comparison sample.

¹¹ For each community, 1 respondent will be a caregiver and 3 respondents will be administrators/providers.

¹² Assumes that each community will use flexible funds expenditures on average for approximately one quarter of the children/youth enrolled.

¹³ Assumes that three expenditures, on average, will be spent on each child/youth receiving flexible fund benefits.

¹⁴ Assumes that each child/youth in system of care communities and in the comparison sample will have 100 service episodes, on average.

Written comments and recommendations concerning the proposed information collection should be sent by August 28, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: July 27, 2009.

Elaine Parry,

Director, Office of Program Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase V (OMB No. 0930-0280)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is responsible for the

National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program, which collects data on child mental health outcomes, family life, and service system development and performance. Data will be collected on 30 service systems and roughly 8,810 children and families.

The data collection for this evaluation will be conducted for a 3-year period. The core of service system data will be collected twice (every 18 to 24 months) during the 3-year evaluation period. A sustainability survey will be conducted in selected years. Service delivery and system variables of interest include the following: Maturity of system of care development; adherence to the system of care program model; services received by youth and their families, and the costs of those services; and consumer service experience.

The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Child and family outcomes of interest will be collected at intake and during subsequent follow-up interviews at six-month intervals. Client service experience information is collected at these follow-up interviews. Measures included in an outcome interview are determined by the type of assessment (intake or follow-up), child's age, and whether the respondent is the caregiver or a youth.

The outcome measures include the following: Child symptomatology and functioning, family functioning, material resources, and caregiver strain. The caregiver interview package includes the Caregiver Information Questionnaire, Child Behavior Checklist, Behavioral and Emotional Rating Scale (BERS), Education Questionnaire, Columbia Impairment Questionnaire, Living Situations

Questionnaire, Family Life Questionnaire, and Caregiver Strain Questionnaire at intake, and also includes the Multi-service Sector Contacts Form, Cultural Competence and Service Provision Questionnaire and the Youth Services Survey (a national outcome measurement tool) at follow-up assessments. Caregivers of children under age 6 complete the Vineland Screener to assess development, and do not complete the BERS. The Youth Interview package includes the Youth Information Questionnaire, Revised Children's Manifest Anxiety Scale, Reynolds Depression Scale, BERS (youth version), Delinquency Survey, Substance Use Survey, GAIN-Quick: Substance Dependence Scale, and Youth Services Survey (youth version).

The evaluation also includes three special studies: (1) An evidence-based practices study that examines the effects of various factors on the implementation and use of evidence-based treatments and approaches in system of care communities; (2) A cultural and linguistic competence study that examines the extent to which the cultural and linguistic characteristics of communities influence program implementation and provider adaptation of evidence-based treatments, and provider service delivery decisions based on provider culture and language; and (3) an evaluation of the communities' use of reports produced by the national evaluation for continuous quality improvement. The national evaluation measures address the national outcome measures for mental health programs as currently established by SAMHSA.

Table 1 summarizes which national evaluation components are unchanged from the original 2006 submission and which are new or changed.

TABLE 1—STUDY COMPONENT AND INSTRUMENT REVISIONS FOR PHASE V RE-SUBMISSION

	New or changed for 2009 resubmission	No change	Nature of change
System of Care Assessment			
Site Visit Tables	X	
Interview Protocols	X	
Inter-Agency Collaboration Scale (IACS)	X	

TABLE 1—STUDY COMPONENT AND INSTRUMENT REVISIONS FOR PHASE V RE-SUBMISSION—Continued

	New or changed for 2009 resubmission	No change	Nature of change
Longitudinal Child and Family Outcome Study			
Caregiver Information Questionnaire (CIQ-I)	X	.....	Question 39a skip pattern revised.
Caregiver Information Questionnaire (CIQ-F)	X	.....	Question 39d list of medications updated. Question 39a skip pattern revised. Question 39d list of medications updated.
Caregiver Strain Questionnaire (CGSQ) .....	.....	X	
Child Behavior Checklist (CBCL)/Child Behavior Checklist 1½–5 (CBCL 1½–5).	.....	X	
Education Questionnaire—Revised (EQ-R)	X	.....	Slight wording change to interviewer note and the term “day care” changed to “childcare.”
Living Situations Questionnaire (LSQ) .....	.....	X	
Family Life Questionnaire (FLQ) .....	.....	X	
Behavioral and Emotional Rating Scale—Second Edition—Parent Rating Scale (BERS-2C).	.....	X	
Columbia Impairment Scale (CIS) .....	.....	X	
Vineland Screener (VS) .....	.....	X	
Delinquency Survey—Revised (DS-R) .....	.....	X	
Behavioral and Emotional Rating Scale—Second Edition, Youth Rating Scale (BERS-2Y).	.....	X	
GAIN-Quick Substance Related Issues (GAIN Quick-R).	.....	X	
Substance Use Survey—Revised (SUS-R) .....	.....	X	
Revised Children’s Manifest Anxiety Scales (RCMAS).	.....	X	
Reynolds Adolescent Depression Scale—Second Edition (RADS-2).	.....	X	
Youth Information Questionnaire (YIQ-I) .....	.....	X	
Youth Information Questionnaire (YIQ-F) .....	.....	X	
Service Experience Study			
Multi-Sector Service Contacts Questionnaire—Re- vised (MSSC-R).	X	.....	Slight modification to Card 4, and Cards 6 and 7 are new.
Evidence-Based Practices Experience Measure (EBPEM).	.....	X	
Cultural Competence and Service Provision Ques- tionnaire (CCSP).	.....	X	
Youth Services Survey for Families (YSS-F) .....	.....	X	
Youth Services Survey (YSS) .....	.....	X	
Services and Costs Study			
Flex Funds Data Dictionary	X	.....	New.
Services and Costs Data Dictionary	X	.....	New.
Sustainability Study			
Sustainability Survey .....	.....	X	
Continuous Quality Improvement (CQI) Initiative Evaluation			
CQI Initiative Survey	X	.....	New.
CQI Initiative Interview Guide	X	.....	New.
Evidence-Based Practices Study			
System-level Implementation Factors Discussion Guide.	X	.....	New.
Service-level Implementation Factors Discussion Guide.	X	.....	New.
Consumer-level Implementation Factors Discussion Guide.	X	.....	New.
Cultural and Linguistic Competence Study			
CCIOSAS—Beneficiaries of Self-Assessment Find- ings Focus Group Guide—Staff and Partners.	X	.....	New.
CCIOSAS—Beneficiaries of Self-Assessment Find- ings Focus Group Guide—Caregivers.	X	.....	New.

TABLE 1—STUDY COMPONENT AND INSTRUMENT REVISIONS FOR PHASE V RE-SUBMISSION—Continued

	New or changed for 2009 resubmission	No change	Nature of change
CCIOSAS—Beneficiaries of Self-Assessment Findings Focus Group Guide—Youth.	X	.....	New.
CCIOSAS—Participants in Self-Assessments Focus Group Guide—Staff and Partners.	X	.....	New.
CCIOSAS—Participants in Self-Assessments Focus Group Guide—Caregivers.	X	.....	New.
CCIOSAS—Participants in Self-Assessments Focus Group Guide—Youth.	X	.....	New.
CCIOSAS—Users of Self-Assessment Findings Focus Group Guide—Staff and Partners.	X	.....	New.
CCIOSAS—Users of Self-Assessment Findings Focus Group Guide—Caregivers.	X	.....	New.
CCIOSAS—Users of Self-Assessment Findings Focus Group Guide—Youth.	X	.....	New.
CCIOSAS—Telephone Interview—Staff and Partners.	X	.....	New.
CCEBPS—Managers of EBP Process Focus Group Guide.	X	.....	New.
CCEBPS—Providers of EBP Focus Group Guide ...	X	.....	New.
CCEBPS—Family Focus Group Guide	X	.....	New.
CCEBPS—Youth Focus Group Guide	X	.....	New.
CCEBPS—Telephone Interview	X	.....	New.

Internet-based technology will be used for data entry and management, and for collecting data using Web-based surveys. The average annual respondent burden, with detail provided about burden contributed by specific

measures, is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take for

each response, and the total average annual burden for each category of respondent and for all categories of respondents combined.

TABLE 2—DETAILED ESTIMATE OF RESPONDENT BURDEN

[Note: Total burden is annualized over a 3-year period.]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	3-year average annual burden hours
System of Care Assessment						
Interview Guides and Data Collection Forms.	Key site informants.	1 630	1	1.00	630	210
Interagency Collaboration Scale (IACS).	Key site informants.	630	1	0.13	82	27
Longitudinal Child and Family Outcome Study						
Caregiver Information Questionnaire (CIQ-IC).	Caregiver	² 8,810	1	0.283	2,493	831
Caregiver Information Questionnaire Followup (CIQ-FC).	Caregiver	8,810	³ 2	0.200	3,524	1,175
Caregiver Strain Questionnaire (CGSQ).	Caregiver	8,810	3	0.167	4,414	1,471
Child Behavior Checklist (CBCL)/ Child Behavior Checklist 1½–5 (CBCL 1½–5).	Caregiver	8,810	3	0.333	8,801	2,934
Education Questionnaire—Revised (EQ-R).	Caregiver	8,810	3	0.333	8,801	2,934
Living Situations Questionnaire (LSQ).	Caregiver	8,810	3	0.083	2,194	731
The Family Life Questionnaire (FLQ)	Caregiver	8,810	3	0.050	1,322	441
Behavioral and Emotional Rating Scale—Second Edition, Parent Rating Scale (BERS-2C).	Caregiver	⁴ 7,488	3	0.167	4,193	1,398
Columbia Impairment Scale (CIS)	Caregiver	⁵ 8,369	3	0.083	2,084	695
The Vineland Screener (VS)	Caregiver	⁶ 1,321	3	0.250	330	110

TABLE 2—DETAILED ESTIMATE OF RESPONDENT BURDEN—Continued

[Note: Total burden is annualized over a 3-year period.]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	3-year average annual burden hours
Delinquency Survey—Revised (DS-R).	Youth	⁷ 5,286	3	0.167	2,648	883
Behavioral and Emotional Rating Scale—Second Edition, Youth Rating Scale (BERS-2Y).	Youth	5,286	3	0.167	2,648	883
Gain-Quick Substance Related Issues (Gain Quick-R).	Youth	5,286	3	0.083	1,316	439
Substance Use Survey—Revised (SUS-R).	Youth	5,286	3	0.100	1,586	529
Revised Children's Manifest Anxiety Scales (RCMAS).	Youth	5,286	3	0.050	793	264
Reynolds Adolescent Depression Scale—Second Edition (RADS-2).	Youth	5,286	3	0.050	793	264
Youth information Questionnaire—Baseline (YIQ-I).	Youth	5,286	1	0.167	883	294
Youth information Questionnaire—Follow-up (YIQ-F).	Youth	5,286	2	0.167	1,766	589
Service Experience Study						
Multi-Sector Service Contacts—Revised (MSSC-R).	Caregiver	8,810	⁸ 2	0.250	4,405	1,468
Evidence-Based Practice Measure (EBPEM).	Caregiver	8,810	2	0.167	2,943	981
Cultural Competence and Service Provision Questionnaire (CCSP).	Caregiver	8,810	2	0.167	2,943	981
Youth Services Survey—Family (YSS-F).	Caregiver	8,810	2	0.117	2,062	687
Youth Services Survey (YSS)	Youth	5,286	2	0.083	877	292
Services and Costs Study						
Flex Funds Data Dictionary	Local staff compiling/entering data.	⁹ 2,670	¹⁰ 3	0.033	218	73
Services and Costs Data Dictionary	Local staff compiling/entering data.	¹¹ 10,680	¹² 100	0.033	29,073	9,691
Sustainability Study						
Sustainability Survey—Caregiver	¹³ Caregiver	52	2	0.75	78	26
Sustainability Survey—Provider	¹³ Provider/Administrator.	156	2	0.75	234	78
CQI Benchmarking Initiative Evaluation						
CQI Initiative Survey	Key community staff.	150	1	0.5	75	25
CQI Initiative Interview Guide	Key community staff.	50	1	1.0	50	17
Evidence-Based Practices Study						
The Implementation Factors Discussion Guide.	SOC leadership team member.	90	1	0.75	68	23
The Implementation Factors Discussion Guide.	Provider	60	1	0.75	45	15
The Implementation Factors Discussion Guide.	Caregivers	30	1	0.5	15	5
Cultural and Linguistic Competence Study						
CCIOSAS—Beneficiaries of Self-Assessment Findings.	Provider	40	1	1.0	40	13
CCIOSAS—Beneficiaries of Self-Assessment Findings.	Administrators/Managers.	20	1	1.5	30	10

TABLE 2—DETAILED ESTIMATE OF RESPONDENT BURDEN—Continued

[Note: Total burden is annualized over a 3-year period.]

Instrument	Respondent	Number of respondents	Total average number of responses per respondent	Hours per response	Total burden hours	3-year average annual burden hours
CCIOSAS—Beneficiaries of Self-Assessment Findings.	Caregivers	40	1	0.75	30	10
CCIOSAS—Beneficiaries of Self-Assessment Findings.	Youth	40	1	0.75	30	10
CCIOSAS—Participants in Self-Assessments.	Provider	40	1	1.0	40	13
CCIOSAS—Participants in Self-Assessments.	Administrators/Managers.	20	1	1.5	30	10
CCIOSAS—Participants in Self-Assessments.	Caregivers	16	1	0.75	12	4
CCIOSAS—Participants in Self-Assessments.	Youth	16	1	0.75	12	4
CCIOSAS—Users of Self-Assessment Findings.	Provider	40	1	1.0	40	13
CCIOSAS—Users of Self-Assessment Findings.	Administrators/Managers.	20	1	1.5	30	10
CCIOSAS—Users of Self-Assessment Findings.	Caregivers	16	1	0.75	12	4
CCIOSAS—Users of Self-Assessment Findings.	Youth	16	1	0.75	12	4
CCIOSAS—Telephone Interview	Providers	2	1	1.0	2	0.67
CCIOSAS—Telephone Interview	Administrators/Managers.	3	1	1.0	3	1
CCEBPS—Managers of EBP Process.	Providers	16	1	1.0	16	5
CCEBPS—Managers of EBP Process.	Administrators/Managers.	20	1	1.5	30	10
CCEBPS—Providers of EBP	Providers	40	1	1.0	40	13
CCEBPS—Families and Youth	Caregivers	40	1	0.75	30	10
CCEBPS—Families and Youth	Youth	40	1	0.75	30	10
CCEBPS—Telephone Interview	Providers	2	1	1.0	2	0.67
CCEBPS—Telephone Interview	Administrators/Managers.	3	1	1.0	3	1

TABLE 2—ESTIMATE OF RESPONDENT BURDEN (CONTINUED)

	Number of distinct respondents	Number of responses per year per respondent	Average annual burden per response (hours)	Total annual burden (hours)
Summary of Annualized Burden Estimates for 3 Years				
Caregivers	8,810	2.46	2.36	51,147
Youth	5,286	2.56	0.99	13,397
Community staff	870	72.22	0.86	54,035
Total Summary	14,996	6.54	.....	118,579
Total Annual Average Summary	4,989	2.18	.....	39,526

¹ An average of 21 constituents in up to 30 grant communities will complete the System of Care Assessment interview. These constituents will include site administrative staff, providers, agency representatives, family representatives, and youth.

² Number of respondents across 30 grantees. Average based on a 5 percent attrition rate at each data collection point.

³ Average number of responses per respondent is a weighted average of the possible numbers of responses per respondent for communities beginning data collection in FY2007 and FY2008. The maximum numbers of responses per respondent are for 24 communities beginning data collection in FY2007, 1 follow-up data collection point remaining for children/youth recruited in year 2 (of grant community funding), 3 for children/youth recruited in year 3, 4 for children/youth recruited in year 4, and 4 for children/youth recruited in year 5. The maximum numbers of responses per respondent are, for 6 communities beginning data collection in FY2008, 3 follow-up data collection points remaining for children/youth recruited in year 2 (of grant community funding), 5 for children/youth recruited in year 3, 6 for children/youth recruited in year 4, and 4 for children/youth recruited in year 5.

⁴ Approximate number of caregivers with children over age 5, based on Phase V data submitted as of 12/08.

⁵ Approximate number of caregivers with children 3 and older, based on Phase V data submitted as of 12/08.

⁶ Approximate number of caregivers with children 5 or under, based on Phase V data submitted as of 12/08.

⁷ Based on Phase III and IV finding that approximately 60 percent of the children/youth in the evaluation were 11 years old or older.

⁸ Respondents only complete Service Experience Study measures at follow-up points. See Footnote #3 for the explanation about the average number of responses per respondent.

⁹ Staff will enter data on flexible funds expenditures into a Web-based application or will recode existing data on flexible funds expenditures to match the Flex Funds Data Dictionary format. Each community will use flexible funds expenditures on average for approximately one-quarter of the estimated 356 children/youth enrolled, suggesting a total of 89 children/youth will receive services from flexible funds per community. Thus, there will be data entered for $89 \times 30 = 2,670$ children/youth using the Flex Funds Data Dictionary.

¹⁰ Assumes that three expenditures, on average, will be spent on each child/youth receiving flexible fund benefits.

¹¹ Staff will collect paper-based forms from agencies and enter them into a Web-based application or will extract data from agencies' existing data systems. Staff will recode data to match the Services and Costs Data Dictionary format. Service and costs records will be compiled for all $356 \times 30 = 10,680$ children/youth enrolled.

¹² Assumes that each child/youth will have 100 service episodes, on average, during his/her time in a system of care.

¹³ This survey will be administered in 5 communities funded in 2006, 25 communities funded in 2005, 2 communities funded in 2000, and 20 communities funded in 1999. For each community, one respondent will be a caregiver and three respondents will be administrators/providers.

Written comments and recommendations concerning the proposed information collection should be sent by August 31, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: July 27, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9-18315 Filed 7-30-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-43, CMS-1763, CMS-R-194 and CMS-R-296]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease; *Use:* Effective July 1, 1973, individuals with End Stage Renal Disease (ESRD) became entitled to Medicare. Because this entitlement has a different set of requirements, the existing applications for Medicare were not sufficient to capture the information needed to determine Medicare entitlement under the ESRD provisions of the law. The Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease, was designed to capture all the information needed to make a Medicare entitlement determination; Form Numbers: CMS-43 (OMB#: 0938-0800; *Frequency:* Reporting—Once; Affected Public: Individuals or households; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 25989. (For policy questions regarding this collection contact Naomi Rappaport at 410-786-2175. For all other issues call 410-786-1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and/or Supplementary Medical Insurance; *Use:* The Social Security Act (the Act) allows a Medicare enrollee to voluntarily terminate Supplementary Medical Insurance (Part B) and/or the premium Hospital Insurance (premium-Part A) coverage by filing a written request with CMS or the Social Security Administration (SSA). The Act also stipulates when coverage will end based upon the date the request was filed. Because Medicare is recognized as a valuable protection against the high cost of medical and hospital bills, when an individual wishes to voluntarily terminate Part B and/or premium Part A, CMS and SSA requests the reason that an individual wishes to terminate coverage to ensure that the individual understands the ramifications of the decision. The Request for Termination of Premium Hospital and/or Supplementary Medical Insurance,

provides a standardized form to satisfy the requirements of law as well as allowing both agencies to protect the individual from an inappropriate decision; Form Numbers: CMS-1763 (OMB#: 0938-0025; *Frequency:* Reporting—Once; Affected Public: Individuals or households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,831. (For policy questions regarding this collection contact Naomi Rappaport at 410-786-2175. For all other issues call 410-786-1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedures and Criteria and Supporting Regulations in 42 CFR 412.106; *Use:* Section 1886(d)(5)(F) of the Social Security Act established the Medicare disproportionate share adjustment (DSH) for hospitals, which provides additional payment to hospitals that serve a disproportionate share of the indigent patient population. This payment is an add-on to the set amount per case CMS pays to hospitals under the Medicare Inpatient Prospective Payment System (IPPS).

Under current regulations at 42 CFR 412.106, in order to meet the qualifying criteria for this additional DSH payment, a hospital must prove that a disproportionate percentage of its patients are low income using Supplemental Security Income (SSI) and Medicaid as proxies for this determination. This percentage includes two computations: (1) The "Medicare fraction" or the "SSI ratio" which is the percent of patient days for beneficiaries who are eligible for Medicare Part A and SSI and (2) the "Medicaid fraction" which is the percent of patient days for patients who are eligible for Medicaid but not Medicare. Once a hospital qualifies for this DSH payment, CMS also determines a hospital's payment adjustment; Form Numbers: CMS-R-194 (OMB#: 0938-0691; *Frequency:* Reporting—Occasionally; Affected Public: Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:*

400. (For policy questions regarding this collection contact JoAnn Cerne at 410-786-4530. For all other issues call 410-786-1326.)

4. Type of Information Collection Request: Revision of a currently approved Collection; **Title of Information Collection:** Home Health Advance Beneficiary Notice (HHABN); **Use:** Home health agencies (HHAs) are required to provide written notice to Medicare beneficiaries under various circumstances involving the initiation, reduction, or termination of services. The vehicle used in these situations is the Home Health Advance Beneficiary Notice (HHABN). The notice is designed to ensure that beneficiaries receive complete and useful information regarding potential financial liability or any changes made to their plan of care (POC) to enable them to make informed consumer decisions. The notice must provide clear and accurate information about the specified services and, when applicable, the cost of services when Medicare denial of payment is expected by the HHA. **Form Number:** CMS-R-296 (OMB#: 0938-0781); **Frequency:** Reporting—Hourly, Daily, Weekly, Monthly, Yearly, Quarterly, Semi-annually, Biennially, Once and Occasionally; **Affected Public:** Business or other for-profits and Not-for-profit institutions; **Number of Respondents:** 9024; **Total Annual Responses:** 12,349,787; **Total Annual Hours:** 1,028,737. (For policy questions regarding this collection contact Evelyn Blaemire at 410-786-1803. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on August 31, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974, e-mail: OIRA_submission@omb.eop.gov.

Dated: July 23, 2009.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9-18379 Filed 7-30-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10191]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Medicare Parts C and D Universal Audit Guide; **Use:** Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR parts 422 and 423 Medicare Part D plan sponsors and Medicare Advantage organizations are required to comply with all Medicare Parts C and D program requirements. 42 CFR 422.502 describes CMS' regulatory authority to evaluate, through inspection or other means, Medicare Advantage Part C organizations. These records include books, contracts, medical records, patient care documentation and other records that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable. 42 CFR 423.503 states that CMS must oversee a Part D plan

sponsor's continued compliance with the requirements for a Part D plan sponsor. § 423.514 states that the Part D plan sponsor must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, statistics regarding areas such as cost of operations, patterns of utilization availability, accessibility, and acceptability of services.

The explosive growth of these sponsoring organizations has forced CMS to update its current auditing strategy to ensure we continue to obtain meaningful audit results. As a result, CMS' audit strategy will reflect a move away from routine audits to more targeted, data-driven and risk-based audits. CMS will also focus on high-risk areas that have the greatest potential for beneficiary harm. The goal of the audits will be the earliest possible detection and correction of issues and improvement in quality and performance of Part D sponsors and Medicare Advantage organizations.

To accomplish these goals, we have combined all Part C and Part D audit elements into one universal guide which will also promote consistency, effectiveness and reduce financial and time burdens for both CMS and Medicare-contracting entities. Please refer to the crosswalk document for a list of changes. **Form Number:** CMS-10191 (OMB#: 0938-1000); **Frequency:** Reporting—Yearly; **Affected Public:** Business or other for-profits and Not-for-profit institutions; **Number of Respondents:** 195; **Total Annual Responses:** 195; **Total Annual Hours:** 24,180. (For policy questions regarding this collection contact Laura Dash at 410-786-8623. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 29, 2009*:

1. Electronically. You may submit your comments electronically to <http://www.regulations.gov>. Follow the

instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS-10078), Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 23, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9-18378 Filed 7-30-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0352]

Preparation for International Cooperation on Cosmetics Regulations Meetings in Tokyo, Japan; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "International Cooperation on Cosmetics Regulations (ICCR)—Preparation for ICCR—3 Meetings in Tokyo, Japan" to provide information and receive comments on the International Cooperation on Cosmetics Regulations (ICCR) as well as the upcoming meetings in Tokyo, Japan. The topics to be discussed are the topics for discussion at the forthcoming ICCR steering committee meeting. The purpose of the meeting is to solicit public input prior to the next steering committee and expert working group meetings in Tokyo, Japan, scheduled for the week of September 7, 2009.

Date and Time: The meeting will be held on September 2, 2009, from 1:30 p.m. to 3 p.m.

Location: The meeting will be held in University Station, rm. 2073, 4300 River Rd., College Park, MD 20740.

Contact Person: All participants must register with Mary Morrison, Office of the Commissioner (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: mary.morrison@fda.hhs.gov, FAX: 301-827-0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material and requests to make oral presentation, to the contact person by August 30, 2009.

If you need special accommodations due to a disability, please contact Mary Morrison (see *Contact Person*) at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI-35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The purpose of the multilateral framework on the ICCR is to pave the way for the removal of regulatory obstacles to international trade while maintaining global consumer protection.

ICCR is a voluntary international group of cosmetics regulatory authorities from the United States, Japan, the European Union, and Canada. These regulatory authority members will enter into constructive dialogue with their relevant cosmetics' industry trade associations. Currently, the ICCR members are Health Canada; the European Directorate General for Enterprise and Industry; the Ministry of Health, Labor and Welfare of Japan; and the U.S. Food and Drug Administration. All decisions made by the consensus will be compatible with the laws, policies, rules, regulations, and directives of the respective administrations and governments. Members will implement and/or promote actions or documents within their own jurisdictions and seek convergence of regulatory policies and practices. Successful implementation will require input from stakeholders.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by August 30, 2009, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses,

telephone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on the Internet at <http://www.fda.gov/Cosmetics/InternationalActivities/ConferencesMeetingsWorkshops/InternationalCooperationonCosmeticsRegulationsICCR/default.htm>.

Dated: July 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-18321 Filed 7-30-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Insulin Binding and Signaling.

Date: August 20, 2009.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7799, ls38z@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Immunology in Liver Disease.

Date: October 21, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7682, pateldg@nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies.

Date: November 4, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7682, pateldg@nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18223 Filed 7-30-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Parasitic Opportunistic Infections in AIDS.

Date: August 5, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892. (301) 435-1165. walkermc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Competitive Revisions.

Date: August 6, 2009.

Time: 11:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301-435-1137. guerriej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Musculoskeletal Rehabilitation Sciences.

Date: August 6, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892. 301-496-8551. holdenjo@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DIG Conflict Applications.

Date: August 7, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205,

MSC 7814, Bethesda, MD 20892. 301-435-1501. morrisr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pharmacotherapy.

Date: August 11-12, 2009.

Time: 11 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892. 301-435-1224. lewisdeb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA Special Emphasis Panel N.

Date: August 13, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892. 301-435-2514. stassid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biological Chemistry and Macromolecular Biophysics.

Date: August 20-21, 2009.

Time: 10:55 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892. (301) 435-1727. schneidd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology—ARRA CR.

Date: August 20, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892. 301-435-1715. nga@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18360 Filed 7-30-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0664]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held September 16, 2009, from 8:30 a.m. to 3:15 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. The hotel telephone number is 301-948-8900.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-6793, FAX: 301-827-6776, e-mail:

nicole.vesely@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you

should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss biologics license application (BLA) 12-5338, clostridial collagenase, Auxilium Pharmaceuticals, Inc., for the proposed treatment of advanced Dupuytren's disease. Dupuytren's disease is a condition in which the tendons of the hand that help move the fingers of the hand become thickened and scarred.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 1, 2009. Oral presentations from the public will be scheduled between approximately 12:45 p.m. to 1:45 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 24, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 25, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole

Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 23, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9-18356 Filed 7-30-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0664]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 8, 2009, from 8 a.m. to 5 p.m.

Location: The Inn and Conference Center, University of Maryland University College (UMUC), 3501 University Blvd. East, Adelphi, Md. The hotel telephone number is 301-985-7300.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, 301-827-7001, fax: 301-827-6776, e-mail:

paul.tran@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572) in the Washington, DC area, code 3014512531. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a

previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss an efficacy supplement for new drug application (NDA) 022-128, maraviroc 300 milligram tablets, Pfizer, Inc., proposing a new indication for the treatment of antiretroviral-naïve patients with chemokine (c-c motif) receptor 5 (CCR5—tropic human immunodeficiency virus (HIV).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 24, 2009. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 16, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 17, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to

accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 21, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9-18355 Filed 7-30-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Foreign Assembler's Declaration (With Endorsement by Importer)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0031.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Assembler's Declaration (with Endorsement by Importer). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 28712) on June 17, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 31, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1651-0031.

Form Number: None.

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 2,730.

Estimated Annual Burden per Respondent: 110.77 hours.

Estimated Total Annual Burden Hours: 302,402.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: July 27, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-18373 Filed 7-30-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2009, the interest rates for overpayments

will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

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

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined

by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2009-17, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2009, and ending on September 30, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2009, and ending December 31, 2009.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Over-payments (Eff. 1-1-99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Over-payments (Eff. 1-1-99) (percent)
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	093009	4	4	3

Dated: July 27, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9-18371 Filed 7-30-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5280-N-29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only," recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not

a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208-5399; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305 (These are not toll-free numbers).

Dated: July 23, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 07/31/2009

Suitable/Available Properties

Building

Alaska

Tanana Fire Station Airport
Tanana AK 99777
Landholding Agency: GSA
Property Number: 54200930002
Status: Excess
GSA Number: 9-I-AK-821
Comments: 2776 sq. ft., off-site use only

Utah

Portion/Clearfield Fed. Center
Clearfield UT 84016
Landholding Agency: GSA
Property Number: 54200930003
Status: Excess
GSA Number: 7-G-UT-414-4
Directions: Bldgs. 2, C-6, C-7, Lot 1, D5 & Wareyard

Comments: 4 bldgs/approximately 402,535 sq. ft. with land, to be vacated 11/09

Washington

Manufactured Home
1500 S. Keyes Rd, Lot B
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200930002
Status: Unutilized
Comments: 1067 sq. ft. double-wide, off-site use only

Land

Idaho

8.9 acres
Portion of Tract E & F
Rupert ID 83350
Landholding Agency: Interior
Property Number: 61200930001
Status: Unutilized

Comments: agricultural production, access by dirt road

Unsuitable Properties

Building

Alaska

Federal Building 240 Front Street
Nome AK
Landholding Agency: GSA
Property Number: 54200930001
Status: Excess
GSA Number: 9-G-AK-820
Reasons: Within 2000 ft. of flammable or explosive material

California

Bldg. 01474
Naval Air Weapons
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200930001
Status: Excess
Reasons: Secured Area
Bldgs. 2246, 2247, 5632T Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77200930002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Virginia

Bldgs. 113, 3088 Naval Amphibious
Little Creek
Norfolk VA 23521
Landholding Agency: Navy
Property Number: 77200930004
Status: Unutilized
Reasons: Secured Area
6 Bldgs.
Naval Station
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77200930005
Status: Excess
Directions: FRP14, FRP15, FRP33, P17, P64, LP69
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Land

Hawaii

1,100 sq. ft./Land
Marine Corps Training
Area Bellows
Keolu Hills HI
Landholding Agency: Navy
Property Number: 77200930006
Status: Unutilized
Reasons: Secured Area

New York

10,000 sq. ft./Land
Marine Corps Rsv Training Ctr
Brooklyn NY 11234
Landholding Agency: Navy
Property Number: 77200930003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

[FR Doc. E9-17970 Filed 7-30-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000-L1990000.PP0000]

Extension of Approved Information Collection, OMB Control Number 1004-0114

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) extend approval for the paperwork requirements in 43 CFR parts 3830 through 3838, which pertain to unpatented mining claims, mill sites, and tunnel sites. The Office of Management and Budget (OMB) previously approved this information collection activity under the control number 1004-0114.

DATES: You must submit your comments to the BLM at the address below on or before September 29, 2009. The BLM is not obligated to consider any comments postmarked or received after the above date.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401-LS, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004-0114. You may also comment by e-mail at: *Jean_Sonneman@blm.gov*. Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact Sonia Santillan, Mineral Leasing Specialist, Bureau of Land Management, Division of Solid Minerals, (202) 452-0398 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1-800-877-8330, 24 hours a day, seven days a week, to contact Ms. Santillan. You may also contact Ms. Santillan to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3521), require that interested members of the public and affected agencies be provided an opportunity to comment on

information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR parts 3830 through 3838. The BLM will request that the OMB approve this information collection activity for a 3-year term.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the

public comments will accompany the BLM's submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Recordation of Location Notices and Mining Claims; Payment of Fees (43 CFR parts 3830–3838).

Forms:

- Form 3830–2, Maintenance Fee Waiver; and
- Form 3830–3, Notice of Intent to Locate a Lode or Placer Mining Claims.

OMB Control Number: 1004–0114.

Abstract: This notice pertains to information collections that are necessary for the recordation of unpatented mining claims, mill sites, and tunnel sites; the annual

maintenance of such claims and sites; the collection of statutory location and maintenance fees; and the adjudication of mineral rights. The information collections covered by this notice are found at 43 CFR parts 3830 through 3838, and in the forms listed above.

Frequency: On occasion.

Estimated Number and Description of Respondents: 224,420.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 31,135 hours. The following chart details the individual components and respective hour burden estimates of this information collection request:

Regulation 43 CFR part (a)	Estimated number of responses annually (b)	Estimated time per response (minutes) (c)	Estimated hours annually (b × c) (d)
3830—Locating, Recording, and Maintaining Mining Claims or Sites	111,274	8	14,837
3832—Locating Mining Claims or Sites	1,800	8	240
3833—Recording Mining Claims and Sites	1,800	8	240
3834—Required Fees for Mining Claims or Sites	100,000	8	13,333
3835—Waivers from Annual Maintenance Fees (Form No. 3830–2)	5,675	20	1,892
3836—Annual Assessment Work Requirements for Mining Claims	1,800	8	240
3837—Acquiring a Delinquent Co-Claimant's Interests in a Mining claim or Site	1,800	8	240
3838—Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stockraising Homestead Act (SRHA) Lands (Form No. 3830–3)	271	25	113
Totals	224,420	93	31,135

Estimated Reporting and Recordkeeping "Non-Hour Cost"

Burden: The currently approved annual non-hour cost burden for Control Number 1004–0114 is \$6,775. All of the non-hour cost burdens are for non-refundable filing fees.

The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E9–18338 Filed 7–30–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2009–N151; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by August 31, 2009.

ADDRESSES: Submit written data or comments to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the

requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (see **ADDRESSES**) or by telephone at 303-236-4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Mike Phillips, Turner Endangered Species Fund, Bozeman, Montana, TE-219757. The applicant requests a permit to take black-footed ferret (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Catherine Ortega, Ft. Lewis College, San Juan Institute of Natural Resources, Durango, Colorado, TE-220822. The applicant requests a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: David Johnson, Nelson Consulting, Inc., Durango, Colorado, TE-220648. The applicant requests a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Katie Fessler, ZooAmerica, North American Wildlife Park, Hershey, Pennsylvania, TE-220820. The applicant requests a permit to possess black-footed ferret (*Mustela nigripes*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing its survival and recovery.

Applicant: Brian Graeb, U.S. Geological Survey, Biological Resources Division, South Dakota Coop Unit, Brookings, South Dakota, TE-047249. The applicant requests a permit amendment to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: July 23, 2009.

Noreen E. Walsh,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E9-18286 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB0200000.L51100000.GN0000.LVEMCF020000; 9-08807; TAS: 14X5017]

Notice of Availability of Draft Environmental Impact Statement for the Round Mountain Expansion Project, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) Battle Mountain District, Tonopah Field Office has prepared a Draft Environmental Impact Statement (EIS) for the Round Mountain Expansion Project in Nye County, Nevada, and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS for the Round Mountain Expansion Project, Nye County, Nevada, within 45 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Comments on the Draft EIS may be submitted by the following methods:

- *BLM Web site:* www.blm.gov/nv/st/en/fo/battle_mountain_field.html.
- *Fax:* (775) 482-7810;
- *E-mail:* NV-E-mail Tonopah Field Office@blm.gov; or mail:
- *BLM, Attn:* Field Manager, P.O. Box 911, Tonopah, NV 89049.

Copies of the Draft EIS for the Round Mountain Expansion Project, Nye County, Nevada, are available in the BLM Battle Mountain District, Tonopah Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Eric Williams, 775-482-7800.

SUPPLEMENTARY INFORMATION: Round Mountain Gold Corporation, which is a joint venture of Kinross Gold Corporation and Barrick Gold Corporation, proposes to expand its

Round Mountain Mine, an existing open-pit gold mining and processing operation. The proposed Round Mountain Expansion Project is located in:

Mount Diablo Meridian, Nevada

T. 9 N., R. 43 E.,
 Sec. 1, 2, 3, 10, 11, 12, 14 and 15
 T. 9 N., R. 44 E.,
 Sec. 6
 T. 10 N., R. 43 E.,
 Sec. 11, 12, 13, 14, 23, 24, 25, 26, 34, 35 and 36
 T. 10 N., R. 44 E.,
 Sec. 4, 5, 6, 7, 8, 17, 18, 19, 20, 29, 30 and 31
 T. 11 N., R. 43 E.,
 Sec. 25 and 36
 T. 11 N., R. 44 E.,
 Sec. 28, 29, 30, 31, 32 and 33
 The area described comprises 15,395 acres, more or less.

The proposed project would increase the existing Round Mountain mine plan boundary by 3,122 acres to a total of 10,385 acres; expand the Round Mountain pit by 209 acres to approximately 1,289 acres; expand the dewatering operations by 1,325 gallons per minute (gpm) to a maximum rate of 7,525 gpm; conduct underground mining operations within the Round Mountain Pit; expand the north waste rock dump by 700 acres to approximately 1,919 acres; construct the new north dedicated leach pad with a footprint of approximately 538 acres, increase the daily production capacity of the Round Mountain mill from 11,000 tons per day to 22,000 tons per day; and increase tailings disposal capacity from a currently authorized 677 acres to approximately 1,563 acres.

Development in the Gold Hill area would include delineating a Gold Hill project boundary of approximately 4,928 acres; excavating an open pit with a footprint of approximately 222 acres; creating two waste rock dumps with combined footprints of approximately 552 acres; constructing and operating a heap leach facility and lined solution ponds with a footprint of approximately 300 acres and constructing a 1.1 mile transportation and utility corridor of about 66.2 acres between the Round Mountain area and the Gold Hill area. The primary method of processing low-grade ore in the Gold Hill area would be heap leaching.

Depending on economics, the Gold Hill operation may be developed either concurrently with the Round Mountain operation or sequentially as mining in the Round Mountain area approaches completion. Construction and operation of the Round Mountain Expansion Project is projected to begin in early 2010 followed by an estimated 13 years

of active mining and concurrent reclamation and an additional five years for ore processing and final reclamation.

The Draft EIS addresses environmental issues identified by the BLM and other Federal and state agencies, as well as comments made during the public scoping period in 2006. A range of action alternatives have been developed and analyzed to address the concerns and issues that were identified. The Draft EIS analyzes the environmental effects of the proposed action and alternatives, including the No Action Alternative.

The alternatives include processing all Gold Hill ore in the Gold Hill area rather than trucking some ore to Round Mountain for processing (Gold Hill area processing alternative); constructing an overpass rather than a grade crossing at the intersection of the transportation and utility corridor and County Road 875 (County Road Overpass Alternative) and completing mining at Round Mountain under current BLM authorizations (No Action Alternative). Other alternatives considered, and the rationale for their elimination from detailed analysis, are also discussed. Mitigation measures have been identified, as needed, to minimize potential environmental impacts. The Draft EIS includes an analysis of cumulative impacts to all resources and land uses, including an evaluation of potential impacts to Native American traditional values. Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be made available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identification information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 43 CFR 3809.

Thomas J. Seley,

Manager, Tonopah Field Office.

[FR Doc. E9-18265 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-840-1610-DQ]

Notice of Availability of Canyons of the Ancients National Monument Proposed Resource Management Plan and Final Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Canyons of the Ancients National Monument.

DATES: The BLM planning regulations (43 CFR 1610.5-2) state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register**.

ADDRESSES: Copies of the Canyons of the Ancients National Monument PRMP/FEIS have been sent to affected Federal, Tribal, state, and local government agencies and to interested parties. Copies of the PRMP/FEIS are available for public review at:

- Anasazi Heritage Center, 27501 Highway 184, Dolores, CO 81323
- Dolores Public Lands Center, 29211 Highway 184, Dolores, CO 81323
- San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301
- Dolores Public Library, 420 Railroad Ave., Dolores, CO 81323
- Cortez Public Library, 202 N. Park, Cortez, CO 81321
- Mancos Public Library, 111 N. Main, Mancos, CO 81328
- Dolores County Extension Office, 409 N. Main, Dove Creek, CO 81324
- Durango Public Library, 1188 E. 2nd Ave., Durango, CO 81301

Interested persons may also review the PRMP/FEIS on the Internet at <http://www.blm.gov/rmp/canm/>. All protests must be in writing and mailed to the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Heather Musclow, Monument Planner, Canyons of the Ancients National Monument, 27501 Highway 184, Dolores, CO 81323; Phone: (970) 882-5632.

SUPPLEMENTARY INFORMATION: The planning area is located in southwest Colorado in Dolores and Montezuma Counties. The plan provides a framework to guide subsequent management decisions on approximately 166,000 acres managed by the BLM. Within the Monument boundary, there are approximately 400 acres of National Park Service lands (Hovenweep National Monument) and 17,560 acres of private inholdings. The Canyons of the Ancients National Monument is currently being managed under the BLM 1985 San Juan/San Miguel RMP and the Interim Guidance provided after the National Monument was established. The PRMP/FEIS will provide the management direction for the areas within the National Monument under BLM management.

Comments on the Draft RMP/EIS received from the public and the internal BLM review were considered and incorporated as appropriate into the proposed plan. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the Proposed PRMP/FEIS may be found in the Dear Reader Letter of the Canyons of the Ancients National Monument PRMP/FEIS and at 43 CFR 1610.5-2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy of the protest and it will receive full consideration. If you wish to provide the BLM with such advance notification, please fax protests to the attention of the BLM protest coordinator at 202-452-5112, and e-mails to Brenda.Hudgens-Williams@blm.gov.

All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While

you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sally Wisely,

Colorado State Director.

[FR Doc. E9-18233 Filed 7-30-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT-92000-09-L13200000-EL0000-24-1A00, UTU86038]

Notice of Federal Competitive Coal Lease Sale, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale, Miller Canyon Tract, Coal Lease Application UTU-86038.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM) Utah State Office will offer certain coal resources described below as the Miller Canyon Tract (UTU-86038) in Emery County, Utah, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sale notices in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 1 p.m., Thursday, September 3, 2009. The sealed bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Thursday, September 3, 2009.

The BLM cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that the envelope contains a bid for Coal Lease Sale UTU-86038, and is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the Utah State Office, BLM, in the Monument Conference Room, Fifth Floor, 440 West 200 South, Salt Lake City, Utah. Sealed bids clearly marked "Sealed Bid for UTU-86038—Not to be opened before 1 p.m., Thursday, September 3, 2009" can be hand delivered to the cashier, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah, or may be mailed

to the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155. **FOR FURTHER INFORMATION CONTACT:** Stan Perkes, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101-1345 or telephone 801-539-4036.

SUPPLEMENTARY INFORMATION: This Coal Lease Sale is being held in response to a lease by application (LBA) submitted by Consolidation Coal Company to BLM on February 7, 2008. All coal LBAs submitted to BLM for processing on or after November 7, 2005, are subject to cost recovery on a case-by-case basis (See 43 CFR 3000.10(d)(1), 70 FR 58872, October 7, 2005). The cost recovery rules implemented for coal LBAs at 43 CFR 3473.2(f) (70 FR 58876, October 7, 2005) require the applicant who nominates a tract for a competitive lease sale to pay the processing fee on a case-by-case basis as described in 43 CFR 3000.11 prior to publication of the sale notice. Consolidation Coal Company paid the BLM a processing fee in the amount of \$20,130. The successful bidder must pay to BLM the cost recovery amount of all costs BLM incurs processing the coal lease sale and additionally must pay all processing costs that BLM incurs after the date of the sale notice leading to lease issuance (See 43 CFR 3473.2(f)). If the successful bidder is someone other than the applicant, BLM will refund to the applicant the processing fee specified in this sale notice. If there is no successful bidder, the applicant remains responsible for all processing fees.

The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah, approximately three miles south of Emery, Utah, on private lands with federally-administered minerals:

T. 22 S., R. 6 E., SLM, Emery County, Utah
Sec. 23, S½SW¼;
Sec. 26, NW¼NW¼.

Containing approximately 120.00 acres in Emery County, Utah.

The Miller Canyon coal tract has one minable coal bed, known as the "I" coal bed. The minable portions of the "I" coal bed in this area are around 12 feet in thickness. The "I" coal bed, within the tract, contains approximately 561,000 tons of recoverable high-volatile B bituminous coal. The coal quality in the "I" coal bed on an "as received basis" is as follows: 12,179 Btu/lb., 6.07 percent moisture, 8.37 percent ash, 38.89 percent volatile matter, 47.24 percent fixed carbon, and 1.08 percent sulfur. The Department of the Interior has established a minimum bid of \$100 per acre, or fraction thereof. The minimum bid is not intended to

represent fair market value (FMV). The Miller Canyon Tract may be leased to the qualified bidder of the highest cash amount, provided that the high bid equals or exceeds the FMV for the tract as determined by the authorized officer after the sale.

The BLM held a public hearing and requested comments on the Environmental Assessment (EA) and the FMV of the Miller Canyon Tract on January 21, 2009. The BLM prepared the Finding of No Significant Impact (FONSI), Decision Record (DR)/Decision Notice (DN). The BLM signed the FONSI/DR March 2, 2009. No appeals of the BLM decision to lease were filed during the appeal period that ended on April 3, 2009.

The lease that may be issued as a result of this offering will provide for payment of an annual rental of \$3 per acre, a royalty rate of 12.5 percent of the value of coal mined by surface methods, and a royalty of 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3-2, and the terms and conditions of the proposed coal lease, is available from BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155 or in the Public Room (Room 500), 440 West 200 South, Salt Lake City, Utah 84101. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room (Room 500).

Approved: May 22, 2009.

Selma Sierra,

State Director.

[FR Doc. E9-18307 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY-957400-09-L14200000-BJ0000-TRST]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 10, and the survey of the subdivision of section 11, and the metes and bounds surveys of certain parcels, Township 1 South, Range 4 East, of the Wind River Meridian, Wyoming, Group No. 787, was accepted July 27, 2009.

The plat and field notes representing the dependent resurvey of a portion of the Second Standard Parallel North, through Range 2 East, the subdivisional lines and adjusted meanders of the right bank of South Fork Owl Creek, and the survey of the subdivision of section 35, Township 9 North, Range 2 East, of the Wind River Meridian, Wyoming, Group No. 788, was accepted July 27, 2009.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 9, and the metes and bounds survey of Parcel A, section 9, Township 1 South, Range 2 East, of the Wind River Meridian, Wyoming, Group No. 789, was accepted July 27, 2009.

Copies of the preceding described plats and field notes are available to the public at a cost of \$1.10 per page.

Dated: July 27, 2009.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E9-18287 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Kaw Nation Alcohol Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Kaw Nation Alcohol Control Ordinance. The Ordinance regulates and controls the

possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sherry Lovin, Tribal Government Services Officer, Southern Plains Regional Office, WCD Office Complex, PO Box 368, Anadarko, OK 73005, Telephone: (405) 247-1534, Fax (405) 247-9240; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Kaw Nation Executive Council adopted its Alcohol Control Ordinance by Resolution No. 07-62 on November 27, 2007. The purpose of this Ordinance is to govern the sale, possession, and distribution of alcohol within tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Alcohol Control Ordinance of the Kaw Nation Executive Council was duly adopted by the Council on November 27, 2007.

Dated: July 23, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

The Kaw Nation Alcohol Control Ordinance reads as follows:

Kaw Nation Alcohol Control Ordinance Article I. Introduction

Section 1.1. Title

This Ordinance shall be known as the "Kaw Nation Alcohol Control Ordinance."

Section 1.2. Authority

This Ordinance is enacted pursuant to the Act of August 15, 1953. Public Law

83-277, 67 Stat. 586, 18 U.S.C. 1161 and Article II, § 4 of the Constitution of the Kaw Nation.

Section 1.3. Purpose

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol on Tribal lands of the Kaw Nation. The enactment of this Ordinance will enhance the ability of the Kaw Nation to control all such alcohol-related activities within the jurisdiction of the Tribe and will provide an important source of revenue for the continued operation and strengthening of the Kaw Nation and the delivery of important governmental services.

Section 1.4. Application of Federal Law

Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. 1154 and other statutes), except when in conformity both with the laws of the State and the Tribe (18 U.S.C. 1161). As such, compliance with this Ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

Section 1.5. Administration of Ordinance

The Executive Council, through its powers vested under Article II, § 4 of the Constitution of the Kaw Nation and this Ordinance, delegates to the Alcohol Regulatory Authority the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include, but are not limited to, the following actions:

A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees, fines and other penalties;

B. Execute all necessary documents; and

C. Perform all matters and actions incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

Section 1.6. Sovereign Immunity Preserved

A. The Tribe is immune from suit in any jurisdiction except to the extent that the Executive Council of the Kaw Nation expressly and unequivocally waives such immunity by approval of such written resolution.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Kaw Nation or the Alcohol Regulatory Authority as an agency of the Kaw Nation.

Section 1.7. Applicability

This Ordinance shall apply to all commercial enterprises located within Tribal lands consistent with applicable Federal Liquor Laws.

Section 1.8. Computation of Time

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Ordinance, the day of the act, event, or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term "legal holiday" shall mean all legal holidays under Tribal or Federal law. All documents mailed shall be deemed served at the time of mailing.

Section 1.9. Liberal Construction

Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

Section 1.10. Collection of Applicable Fees, Taxes, or Fines

The Alcohol Regulatory Authority shall have the authority to collect all applicable and lawful fees, taxes, and or fines from any person or Licensee as imposed by this Ordinance. The failure of any Licensee to deliver applicable taxes collected on the sale of Alcoholic Beverages shall subject the Licensee to penalties, including, but not limited to the revocation of said License.

Article II. Declaration of Public Policy

Section 2.1. Matter of Special Interest

The manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the jurisdiction of the Kaw Nation are matters of significant concern and special interest to the Tribe. The Executive Council hereby declares that the policy of the Kaw Nation is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, possession and sale of Alcoholic Beverages for commercial purposes and to promote temperance in the use and consumption of Alcoholic Beverages by increasing the Tribe's control over such activities on Tribal lands.

Section 2.2. Federal Law

The introduction of Alcohol within the jurisdiction of the Tribe is currently prohibited by Federal law (18 U.S.C. 1154), except as provided for therein, and the Tribe is expressly delegated the

right to determine when and under what conditions Alcohol, including Alcoholic Beverages, shall be permitted thereon (18 U.S.C. 1161).

Section 2.3. Need for Regulation

The Tribe finds that the Federal Liquor Laws prohibiting the introduction, manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the Tribal lands has proven ineffective and that the problems associated with same should be addressed by the laws of the Tribe, with all such business activities related thereto subject to the taxing and regulatory authority of the Alcohol Regulatory Authority.

Section 2.4. Geographic Locations

The Tribe finds that the introduction, manufacture, distribution, possession, sale, and consumption of Alcohol, including Alcoholic Beverages, shall be regulated under this Ordinance only where such activity will be conducted within or upon Tribal lands.

Section 2.5. Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

A. "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, including, but not limited to Alcoholic Beverages as defined herein, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for purposes of consumption by humans.

B. "Alcohol Regulatory Authority" means the tribal entity authorized by the Executive Council to administer the Kaw Nation Alcohol Control Ordinance.

C. "Alcoholic Beverage(s)" when used in this Ordinance means, and shall include any liquor, beer, spirits, or wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the State of Oklahoma. Alcoholic Beverages include all forms of "low-point beer" as defined under the laws of the State of Oklahoma.

D. "Applicant" means any person who submits an application to the Alcohol Regulatory Authority for an Alcoholic Beverage License and who has not yet received such a License.

E. "Constitution" means the Constitution of the Kaw Nation.

F. "Executive Council" means the duly elected legislative body of the Kaw Nation authorized to act in and on all matters and subjects upon which the Tribe is empowered to act, now or in the future.

G. "Federal Liquor Laws" means all laws of the United States of America that apply to or regulate in any way the introduction, manufacture, distribution, possession, or sale of any form of Alcohol, including, but not limited to 18 U.S.C. 1154 & 1161.

H. "Legal Age" means twenty-one (21) years of age.

I. "License" or "Alcoholic Beverage License" means a license issued by the Alcohol Regulatory Authority authorizing the introduction, manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes under the provisions of this Ordinance.

J. "Licensee" means a person or commercial enterprise that holds an Alcoholic Beverage License issued by the Alcohol Regulatory Authority and includes any employee or agent of the Licensee.

K. "Liquor store" means any business, store, or commercial establishment at which Alcohol is sold and shall include any and all businesses engaged in the sale of Alcoholic Beverages, whether sold as packaged or by the drink.

L. "Manufacturer" means any person engaged in the manufacture of Alcohol, including, but not limited to the manufacture of Alcoholic Beverages.

M. "Oklahoma Liquor License" means any license or permit issued by the State of Oklahoma, including any agency, subdivision, or county thereof, regulating any form of Alcohol, including, but not limited to any form of Alcoholic Beverage. Any license or permit issued for the sale or distribution of "low-point beer", as defined under Oklahoma law, shall be considered an "Oklahoma Liquor License" under this Ordinance.

N. "Ordinance" means this Kaw Nation Alcohol Control Ordinance, as hereafter amended.

O. "Package" or "packaged" means the sale of any Alcoholic Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or location designated on the seller's License.

P. "Public place" means and shall include any tribal, county, State, or Federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and

business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, "public place" shall also include any privately owned business property or establishment that is designed for or may be regularly used by more persons other than the owner of the same, but shall not include the private, family residence of any person.

Q. "Sale(s)", "sell", or "sold" mean the exchange, barter, traffic, furnishing, or giving away for commercial purpose of any Alcoholic Beverage by any and all means, by whatever name commonly used to describe the same, by any commercial enterprise or person to another person.

R. "Tribal Court" means the Courts of the Kaw Nation, as established under the Constitution of the Kaw Nation, Article V, § 1.

S. "Tribal land(s)" shall mean and reference the geographic area that includes all land included within the definition of "Indian country" as established and described by Federal law and that is under the jurisdiction of the Kaw Nation, including, but not limited to all lands held in trust by the Federal government, located within the same, as are now in existence or may hereafter be added to.

T. "Tribal law" means the Constitution of the Kaw Nation and all laws, ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

U. "Tribe" shall mean the Kaw Nation.

Article III. Sales of Alcoholic Beverages

Section 3.1. Prohibition of the Unlicensed Sale of Alcoholic Beverages

This Ordinance prohibits the introduction, manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes, other than where conducted by a Licensee in possession of a lawfully issued License in accordance with this Ordinance. The Federal Liquor Laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to all penalties and provisions of any and all Federal and or Tribal laws.

Section 3.2. License Required

A. Any and all sales of Alcoholic Beverages conducted upon Tribal lands shall be permitted only where the seller: (i) Holds a current Alcoholic Beverage License, duly issued by the Alcohol

Regulatory Authority; and (ii) prominently and conspicuously displays the License on the premises or location designated on the license.

B. A Licensee has the right to engage only in those activities involving Alcoholic Beverage expressly authorized by such License in accordance with this Ordinance.

Section 3.3. Sales for Cash

All sales of Alcoholic Beverages conducted by any person or commercial enterprise upon Tribal lands shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity, except that this provision does not prohibit the payment of same by use of credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

Section 3.4. Personal Consumption

All sales of Alcoholic Beverages shall be for the personal use and consumption of the purchaser and or his/her guest(s) of Legal Age. The re-sale of any Alcoholic Beverage purchased within or upon Tribal lands by any person or commercial enterprise not licensed as required by this Ordinance is prohibited.

Section 3.5. Tribal Enterprises

No employee or operator of a commercial enterprise owned by the Tribe shall sell or permit any person to open or consume any Alcoholic Beverage on any premises or location, or any premises adjacent thereto, under his or her control, unless such activity is properly licensed as provided in this Ordinance.

Article IV. Licensing

Section 4.1. Eligibility

Only Applicants operating upon Tribal lands shall be eligible to receive a License for the sale of any Alcoholic Beverage under this Ordinance.

Section 4.2. Application Process

A. The Alcohol Regulatory Authority may cause a License to be issued to any Applicant as is it may deem appropriate, but not contrary to the best interests of the Tribe and its Tribal members. Any Applicant that desires to receive any Alcoholic Beverage License, and that meets the eligibility requirements pursuant to this Ordinance, must apply to the Alcohol Regulatory Authority for the desired class of License. Any such person as may be empowered to make such application, shall: (i) Fully and accurately complete the application

provided by the Alcohol Regulatory Authority; (ii) pay the Alcohol Regulatory Authority such application fee as may be required; and (iii) submit such application to the Alcohol Regulatory Authority for consideration.

B. All application fees paid to the Alcohol Regulatory Authority are nonrefundable upon submission of any such application. Each application shall require the payment of a separate application fee.

Section 4.3. Term and Renewal of Licenses

A. The term of all Licenses issued under this Ordinance shall be for a period not to exceed one (1) year from the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and/or regulations hereafter adopted by the Alcohol Regulatory Authority.

B. Each License may be considered for renewal by the Alcohol Regulatory Authority annually upon the Licensee's submission of a new application and payment of all fees. Such renewal application shall be submitted to the Alcohol Regulatory Authority at least sixty (60) days and no more than ninety (90) days prior to the expiration of an existing License. If a License is not renewed prior to its expiration, the Licensee shall cease and desist all activity as permitted under the License, including the sale of any Alcoholic Beverages, until the renewal of such License is properly approved by the Alcohol Regulatory Authority.

Section 4.4. Classes of Licenses

The Alcohol Regulatory Authority shall have the authority to issue the following classes of Alcoholic Beverage License:

A. "Retail On-Site General License" authorizing the Licensee to sell Alcoholic Beverages at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where Alcoholic Beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. "Retail On-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

C. "Retail Off-Site General License" authorizing the Licensee to sell

Alcoholic Beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

D. "Retail Off-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

E. "Manufacturer's License" authorizing the Applicant to manufacture Alcoholic Beverages for the purpose of wholesale to retailers on or off Tribal lands, but not authorizing the sale of Alcoholic Beverages at retail.

F. "Temporary License" authorizing the sale of Alcoholic Beverages on a temporary basis for a specific premises or location temporarily occupied by the Licensee for a picnic, social gathering, or similar occasion. A Temporary License is only valid for the limited time as designated on the License, which shall not exceed thirty (30) days, and may not be renewed upon expiration. A new application must be submitted for each such License.

Section 4.5. Application Form and Content

An application for any License shall be made to the Alcohol Regulatory Authority and shall contain at least the following information:

A. The name and address of the Applicant, including the names and addresses of all of the principal officers, directors, managers, and other employees with primary management responsibility related to the sale of Alcoholic Beverages;

B. The specific area, location, and/or premise(s) for which the License is applied;

C. The hours that the Applicant will sell the Alcoholic Beverages;

D. For Temporary Licenses, the dates for which the License is sought to be in effect;

E. The class of Alcoholic Beverage License applied for, as set forth in Section 4.4 herein;

F. Whether the Applicant has an Oklahoma Liquor License;

G. A sworn statement by the Applicant to the effect that none of the Applicant's officers, directors, managers, and or employees with primary management responsibility related to the sale of Alcoholic Beverages, have ever been convicted of a felony under the law of any jurisdiction, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

H. The application shall be signed and verified by the Applicant under

oath and notarized by a duly authorized representative.

Section 4.6. Public Hearing

A. Upon receipt of an application for issuance or renewal of a License, and the payment of any fees required by the Alcohol Regulatory Authority, the Alcohol Regulatory Authority shall set the consideration of such application for a public hearing. Notice of the time and place of such hearing shall be mailed to the Applicant and provided to the public at least twenty (20) calendar days before the date of the hearing. Notice shall be mailed to the Applicant by prepaid U.S. mail at the address listed in the application. Notice shall be provided to the public by publication in a newspaper of general circulation within the jurisdiction of the Tribe. The notice published in the newspaper shall include: (i) The name of the Applicant; (ii) whether the hearing will consider a new License issuance or renewal of an existing License; (iii) the class of License applied for; and (iv) an address and general description of the area where the Alcoholic Beverages will be or have been sold.

B. At such hearings, the Alcohol Regulatory Authority shall hear from any person who wishes to speak for or against the application, subject to the limitation in paragraph (C) of this section, and any other limitations herein.

C. The Alcohol Regulatory Authority shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 4.7. Action on the Application

The Alcohol Regulatory Authority shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Alcohol Regulatory Authority shall have the authority to deny, approve, or approve with conditions, the application, consistent with this Ordinance and the laws of the Tribe. Upon approval of an application, the Alcohol Regulatory Authority shall issue a License to the Applicant in a form to be approved from time to time by the Alcohol Regulatory Authority.

Section 4.8. Denial of License or Renewal

An application for a new License or License renewal may be denied for one or more of the following reasons.

A. The Applicant materially misrepresented facts contained in the application;

B. The Applicant is currently not in compliance with this Ordinance or any other Tribal or Federal laws;

C. Granting of the License, or renewal thereof, would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

D. The Applicant has failed to complete the application properly or has failed to tender the appropriate fee.

E. A verdict or judgment has been entered against or a plea of nolo contendere has been entered by an Applicants' officer, director, manager, or any other employee with primary management responsibility related to the sale of Alcoholic Beverages, to any offense under Tribal, Federal, or State laws prohibiting or regulating the sale, use, possession or giving away of Alcoholic Beverages.

Section 4.9. Temporary Denial

If the application is denied solely on the basis of § 4.8(D), the Alcohol Regulatory Authority shall, within fourteen (14) days of such action, deliver in person or by mail a written notice of temporary denial to the Applicant. Such notice of temporary denial shall: (i) Set forth the reason(s) for denial; and (ii) state that the temporary denial will become a permanent denial if the reason(s) for denial are not corrected within fifteen (15) days following the mailing or personal delivery of such notice.

Section 4.10. Cure

If an Applicant is denied a License, the Applicant may cure the deficiency and resubmit the application for consideration. Each re-submission will be treated as a new application for License or renewal of a License, and the appropriate fee shall be due upon re-submission.

Section 4.11. Investigation.

Upon receipt of an application for the issuance or renewal of a License, the Alcohol Regulatory Authority shall make a thorough investigation to determine whether the Applicant and the premises or location for which a License is applied for qualifies for a License, and whether the provisions of this Ordinance have been complied with. The Alcohol Regulatory Authority shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

Section 4.12. Procedures for Appealing a Denial or Condition of Application

Any Applicant for a License, or Licensee, who believes the denial of their License, request for renewal, or condition imposed on their License was wrongfully determined may appeal the decision to the Alcohol Regulatory Authority in accordance with § 4.15 of

this Ordinance and with the Alcohol Regulatory Authority Rules and Regulations. The Alcohol Regulatory Authority's decision on the appeal shall be considered a final decision by the Kaw Nation and shall not be appealed to the Tribal Court.

[As amended by Resolution 09–34 on March 20, 2009.]

Section 4.13. Revocation of License

The Alcohol Regulatory Authority may initiate action to revoke a License whenever it is brought to the attention of the Alcohol Regulatory Authority that a Licensee:

A. Has materially misrepresented facts contained in any License application;

B. Is not in compliance with this Ordinance or any other Tribal or Federal laws material to the issue of Alcohol licensing;

C. Failed to comply with any condition of a License, including failure to pay taxes on the sale of Alcoholic Beverages or failure to pay any fee required under this Ordinance;

D. Has had a verdict, or judgment entered against, or has had a plea of nolo contendere entered by any of its officers, directors, managers or any employees with primary responsibility over the sale of Alcoholic Beverages, as to any offense under Tribal, Federal or State laws prohibiting or regulating the sale, use, or possession, of Alcoholic Beverages;

E. Failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the premises or location designated in the License, or any adjacent area under their control, within a reasonable time after receipt of a notice to make such corrections has been mailed or personally delivered by the Alcohol Regulatory Authority; or

F. Has had their Oklahoma Liquor License suspended or revoked.

Section 4.14. Initiation of Revocation Proceedings

Revocation proceedings may be initiated by either: (i) The Alcohol Regulatory Authority, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (ii) by any person who files a complaint with the Alcohol Regulatory Authority. The complaint shall be in writing and signed by the maker. Both the complaint and resolution shall state facts showing that there are specific grounds under this Ordinance which would authorize the Alcohol Regulatory Authority to revoke the License(s). The Alcohol Regulatory Authority shall cause the consideration of such revocation to be set for a public

hearing before the Alcohol Regulatory Authority on a date no later than thirty (30) days from the Alcohol Regulatory Authority's receipt of a complaint or adoption of a resolution. Notice of the time, date, and place of such hearing shall be provided to the Licensee and the public in the same manner as set forth in § 4.6 herein. The notice of such hearing shall state that the Licensee has the right to file a written response to the complaint or resolution with the Alcohol Regulatory Authority, verified under oath and signed by the Licensee, no later than ten (10) days prior to the hearing date.

Section 4.15. Revocation Hearing

Any hearing held on any complaint shall be held under such rules and regulations as the Alcohol Regulatory Authority shall prescribe. Both the Licensee and the person filing the complaint shall have the right to present witnesses to testify and to present written documents in support of their positions to the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall render its decision within sixty (60) days after the date of the hearing. The decision of the Alcohol Regulatory Authority shall be considered a final decision by the Kaw Nation.

[As amended by Resolution 09–34 on March 20, 2009.]

Section 4.16. Delivery of License

Upon revocation of a License, the Licensee shall forthwith deliver their License to the Alcohol Regulatory Authority.

Section 4.17. Transferability of Licenses

Alcoholic Beverage Licenses shall be issued to a specific Licensee for use at a single premises or location (business enterprise) and shall not be transferable for use by any other premises or location. Separate Licenses shall be required for each of the premises of any Licensee having more than one premises or location where the sale, distribution, or manufacture of Alcoholic Beverages may occur.

Section 4.18. Posting of License

Every Licensee shall post and keep posted its License(s) in a prominent and conspicuous place(s) on the premises or location designated in the License. Any License posed on a premises or location not designated in such License shall not be considered valid and shall constitute a separate violation of this Ordinance.

Article V. Powers of Enforcement

Section 5.1. Alcohol Regulatory Authority

In furtherance of this Ordinance, the Alcohol Regulatory Authority shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

A. To adopt and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands of the Kaw Nation;

B. To employ such persons as may be reasonably necessary to perform all administrative and regulatory responsibilities of the Alcohol Regulatory Authority hereunder. All such employees shall be employees of the Tribe;

C. To issue Licenses permitting the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands;

D. To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of Licenses hereunder;

E. To deny applications and renewals for Licenses and revoke issued Licenses as provided in this Ordinance;

F. To bring such other actions as may be required to enforce this Ordinance;

G. To prepare and deliver such reports as may be required by law or regulation; and

H. To collect taxes, fees, and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of the same.

Section 5.2. Right of Inspection

Any premises or location of any commercial enterprise licensed to manufacture, distribute, or sell Alcoholic Beverages pursuant to this Ordinance shall be open for inspection by the Alcohol Regulatory Authority for the purpose of insuring the compliance or noncompliance of the Licensee with all provisions of this Ordinance and any applicable Tribal laws or regulations.

Section 5.3. Limitation on Powers

In the exercise of its powers and duties under this Ordinance, agents, employees, or any other affiliated persons of the Alcohol Regulatory Authority shall not, whether individually or as a whole:

A. Accept any gratuity, compensation, or other thing of value from any Alcoholic Beverage wholesaler, retailer, or distributor, or from any Applicant or Licensee; or

B. Waive the sovereign immunity of the Kaw Nation, or of any agency, commission, or entity thereof without the express written consent by resolution of the Executive Council of the Kaw Nation.

Article VI. Taxes

Section 6.1. Excise Tax

There is hereby levied and shall be collected a tax on each retail and or wholesale sale of Alcoholic Beverages on Tribal lands in the amount of one percent (1%) of the wholesale or retail sales price. All such taxes collected by a Licensee from the sale of such Alcoholic Beverages shall be paid to the Alcohol Regulatory Authority quarterly. The Alcohol Regulatory Authority shall deposit such funds into a separate account under exclusive authority of the Alcohol Regulatory Authority. This tax rate may be adjusted as requested by the Alcohol Regulatory Authority and approved by written resolution of the Executive Council.

Section 6.2. Taxes Due

All taxes collected on the sale of Alcoholic Beverages under this Ordinance are due to the Alcohol Regulatory Authority from a Licensee on the 15th day of the month following the end of the calendar quarter for which taxes are due.

Section 6.3. Delinquent Taxes

Past due taxes shall accrue interest at the rate of two percent (2%) per month until paid.

Section 6.4. Reports

Along with the payment of taxes imposed hereby, the Licensee shall submit a quarterly report and accounting of all income from the sale, distribution, and or manufacture of Alcoholic Beverages within Tribal lands, and for all taxes collected under this Ordinance.

Section 6.5. Audit

All Licensees are subject to the review or audit of their books and records relating to the sale of Alcoholic Beverages hereunder by the Alcohol Regulatory Authority. Such review or audit may be performed periodically by Alcohol Regulatory Authority's agents or employees at such times as in the opinion of the Alcohol Regulatory Authority such review or audit is appropriate to the proper enforcement of this Ordinance.

Article VII. Rules, Regulations, and Enforcement

Section 7.1. Manufacture, Sale, or Distribution Without License

Any person who manufactures, distributes, sells, or offers for sale or distribution, any Alcoholic Beverage in violation of this Ordinance, or who operates any commercial enterprise on Tribal lands that has Alcoholic Beverages for sale or in their possession without a proper License properly posted, as required in Section 4.18, shall be in violation of this Ordinance.

Section 7.2. Unlawful Purchase

Any person who purchases any Alcoholic Beverage on Tribal lands from a person or commercial enterprise that does not have a License to manufacture, distribute, or sell Alcoholic Beverages properly posted shall be in violation of this Ordinance.

Section 7.3. Intent To Sell

Any person who keeps, or possesses, or causes another to keep or possess, upon his person or any premises within his control, any Alcoholic Beverage, with the intent to sell or to distribute the same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

Section 7.4. Sale to Intoxicated Person

Any person who knowingly sells or serves an Alcoholic Beverage to a person who is visibly intoxicated shall be in violation of this Ordinance.

Section 7.5. Public Conveyance

Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to consume any Alcoholic Beverage in any such public conveyance shall be in violation of this Ordinance.

Section 7.6. Age of Consumption

No person under the age of twenty-one (21) years may possess or consume any Alcoholic Beverage on Tribal lands, and any such possession or consumption shall be in violation of this Ordinance.

Section 7.7. Serving Underage Person

No person shall sell or serve any Alcoholic Beverage to a person under the age of twenty-one (21) or permit any such person to possess or consume any Alcoholic Beverages on the premises or on any premises under their control. Any Licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every Alcoholic Beverage sold or served and or consumed by such an underage person.

Section 7.8. False Identification

Any person who purchases or who attempts to purchase any Alcoholic Beverage through the use of false, or altered identification that falsely purports to show such person to be over the age of twenty-one (21) years shall be in violation of this Ordinance.

Section 7.9. Documentation of Age

Any seller or server of any Alcoholic Beverage shall be required to request proper and satisfactory documentation of age of any person who appears to be thirty-five (35) years of age or younger. When requested by a seller or server of Alcoholic Beverages, every person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph prior to the purchase or delivery of any Alcoholic Beverage. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

A. Drivers License or personal identification card issued by any State department of motor vehicles or tribal or Federal government agency;

B. United States active duty military credentials; or

C. Passport.

Any seller, server, or person attempting to purchase an Alcoholic Beverage, who does not comply with the requirements of this section shall be in violation of this Ordinance and subject to civil penalties, as determined by the Alcohol Regulatory Authority.

Section 7.10. General Penalties

Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation, except as provided herein. The Alcohol Regulatory Authority may adopt by resolution a separate written schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general public health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) per violation limitation set forth above. The civil penalties provided for herein shall be in addition to any criminal penalties that may be imposed under any other Tribal, Federal, or State laws.

Section 7.11. Initiation of Action

Any violation of this Ordinance shall constitute a public nuisance. The Alcohol Regulatory Authority may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance. The Alcohol Regulatory Authority shall not be required to post any form of bond in such action.

Section 7.12. Contraband; Seizure; Forfeiture

A. All Alcoholic Beverages held, owned, or possessed within Tribal lands by any person, commercial enterprise, or Licensee operating in violation of this Ordinance are hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

B. Seizure of contraband as defined in this Ordinance shall be done by the Alcohol Regulatory Authority, with the assistance of law enforcement upon request, and all such contraband seized shall be inventoried and maintained by the Alcohol Regulatory Authority pending a final order of the Alcohol Regulatory Authority. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received therefrom be maintained by law enforcement pending a final order of the Alcohol Regulatory Authority. The proceeds from such a sale are subject to forfeiture in lieu of the seized contraband.

C. Within ten (10) days following the seizure of such contraband, a hearing shall be held by the Alcohol Regulatory Authority, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

D. Notice of the hearing of at least five (5) days shall be given to the person from whom the property was seized and the owner, if known. If the owner is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on Tribal lands. The notice shall describe the property seized, and the time, place, and cause of seizure, and list the name and place of residence, if known, of the person from whom the property was seized. If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Alcohol Regulatory Authority shall thereupon enter a judgment of forfeiture, and all such contraband shall become the property of the Kaw Nation. If upon the hearing the evidence does

not warrant forfeiture, the seized property shall be immediately returned to the owner. The decision of forfeiture may be appealed in accordance with the procedures as set forth in § 4.15 and the appeal decision of the Alcohol Regulatory Authority shall be considered a final decision by the Kaw Nation. Further such seizures as described in this section shall not exceed an amount of \$5,000.00 as set forth in 25 U.S.C. 1302(7).

[As amended by Resolution 09-34 on March 20, 2009.]

Article VIII. Nuisance and Abatement*Section 8.1. Nuisance*

Any room, house, building, vehicle, structure, premises, or other location where Alcoholic Beverages are sold, manufactured, distributed, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal, Federal, or State laws related to the transportation, possession, distribution or sale of Alcoholic Beverages, and including all property kept therein, or thereon, and used in, or in connection with such violation is hereby declared to be a nuisance upon any second or subsequent violation of the same.

Section 8.2. Action To Abate Nuisance

Upon a determination by the Alcohol Regulatory Authority that any such place or activity is a nuisance under any provision of this Ordinance, the Tribe or the Alcohol Regulatory Authority may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the such injunctive relief, or until the owner, lessee or tenant shall: (i) Give bond of no less than Twenty-Five Thousand dollars (\$25,000) to be held by the Alcohol Regulatory Authority and be conditioned that any further violation of this Ordinance or other Tribal laws will result in the forfeiture of such bond; and (ii) pay of all fines, costs and assessments against him/her/it. If any condition of the bond is violated, the bond shall be forfeit and the proceeds recoverable by the Alcohol Regulatory Authority through an order of the Tribal Court. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance.

Article IX. Revenue and Reporting*Section 9.1. Use and Appropriation of Revenue Received*

All fees, taxes, payments, fines, costs, assessments, and any other revenues collected by the Alcohol Regulatory Authority under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance. Any excess funds shall be subject to and available for appropriation by the Alcohol Regulatory Authority to the Tribe for essential governmental and social services related to drug and alcohol education, counseling, treatment, and law enforcement.

Section 9.2. Audit

The Alcohol Regulatory Authority and its handling of all funds collected under this Ordinance is subject to review and audit by the Tribe as part of the annual financial audit of the Alcohol Regulatory Authority.

Section 9.3. Reports

The Alcohol Regulatory Authority shall submit to the Executive Council a quarterly report and accounting of all fees, taxes, payments, fines, costs, assessments, and all other revenues collected and expended pursuant to this Ordinance.

Article X. Miscellaneous*Section 10.1. Severability*

If any provision or application of this Ordinance is found invalid and or unenforceable by a court of competent jurisdiction, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances.

Section 10.2. Construction

Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Kaw Nation.

Section 10.3. Effective Date

This Ordinance shall be effective upon: (i) Adoption by written resolution of the Executive Council; (ii) certification by the Secretary of the Interior; and (iii) publication in the **Federal Register**. This Ordinance shall be recorded in the office of the Clerk of the Tribal Court upon publication in the **Federal Register**.

Section 10.4. Prior Law Repealed

Any and all prior enactments of the Kaw Nation that are inconsistent with the provisions of this Ordinance are hereby rescinded.

Section 10.5. Amendment

This Ordinance may only be amended by written resolution approved by the Executive Council.

[FR Doc. E9-18294 Filed 7-30-09; 8:45 am]

BILLING CODE 4310-4J-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 18, 2009.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by August 17, 2009.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

MARYLAND**Baltimore County**

Baltimore County Jail, 222 Courthouse Court, Towson, 09000644

Kent County

Still Pond Historic District, Still Pond Rd., Old Still Pond Rd., Main St., Medders Rd., Maple Ave., Trustee St., Still Pond, 09000645

MASSACHUSETTS**Norfolk County**

Sea Street Historic District, Roughly bounded by Bridge, North, Neck Sts., Crescent Rd., Pearl St. and rear of Standish St., Weymouth, 09000646

Plymouth County

Tarklin School, 245 Summer St., Duxbury, 09000647

MISSOURI**Cape Girardeau County**

Old Appleton Bridge, Main St. over Apple Creek, Old Appleton, 09000648

Perry County

Old Appleton Bridge, Main St. over Apple Creek, Old Appleton, 09000648

NEBRASKA**Douglas County**

Northern Natural Gas Building, 2223 Dodge St., Omaha, 09000649

Merrick County

Nelson Farm, Address Restricted, Central City, 09000650

NEW JERSEY**Burlington County**

Zurburgg Mansion, 531 Delaware Ave., Delanco, 09000651

Hunterdon County

Lebanon Historic District, Main St., Cherry St., Brunswick Ave., Maple St., High St., Lebanon Borough, 09000652

Sussex County

Casper and Abraham Shafer Grist Mill Complex, 928 Main St., Stillwater Township, 09000653

NEW YORK**Chenango County**

Emmanuel Episcopal Church Complex, 37 W. Main St., Norwich, 09000654

Monroe County

Linden-South Historic District, 25-272 Linden St., both sides; 809-835 South Ave., odd numbers only, Rochester, 09000655

Suffolk County

Foster-Meeker House, 101 Mill Rd., Westhampton Beach, 09000656

Tompkins County

Rogues Harbor Inn, 2079 E. Shore Dr., Lansing, 09000657

NORTH CAROLINA**Edgecombe County**

Rocky Mount Central City Historic District (Boundary Increase and Decrease), Portions of 26 blocks on Main, Washington, Church, Battle, Hammond, Hill, Howard, Ivy, Gay, Goldleaf, and Thomas Sts., Rocky Mount, 09000659

Greene County

Snow Hill Historic District (Boundary Increase), W. Harper St. between W. 6th St. and W. 4th St., Snow Hill, 09000658

Nash County

Rocky Mount Central City Historic District (Boundary Increase and Decrease), Portions of 26 blocks on Main, Washington, Church, Battle, Hammond, Hill, Howard, Ivy, Gay, Goldleaf, and Thomas Sts., Rocky Mount, 09000659

Person County

Roxboro Cotton Mill, 115 Lake Dr., Roxboro, 09000660

Wake County

Carolina Coach Garage and Shop, 510 E. Drive St., Raleigh, 09000661

Wayne County

Yelverton, Dred and Ellen, House, 1979 NC 222 E., Fremont, 09000662

TENNESSEE**Greene County**

Maden Hall Farm, 3225 Kingsport Highway, Greeneville, 09000667

VIRGINIA**Culpeper County**

South East Street Historic District, S. E., E. Asher, E. Chandler, and Page Sts., and Culpeper National Cemetery, Culpeper, 09000663

Loudoun County

Rock Hill Farm, 20775 Airmont Rd., Bluemont, 09000664

Petersburg Independent city

Atlantic Coast Line Railroad Commercial and Industrial Historic District, 200-300 W. Washington, 4-42 S. Market, 100-100 Perry, 200-300 block W. Wythe, 200 block Brown Sts., Petersburg, 09000665

Roanoke County

Anderson-Doosing Farm, 7474 VA 785, Catawba, 09000666

[FR Doc. E9-18359 Filed 7-30-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places; Weekly Listing of Historic Properties**

Pursuant to (36 CFR 60.13(b, c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from June 1 to June 6, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202-371-2229; by phone, 202-354-2255; or by e-mail, Edson_Beall@nps.gov.

Dated: July 27, 2009.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

KEY: State, County, Property Name, Address/
Boundary, City, Vicinity, Reference
Number, Action, Date, Multiple Name

ARIZONA

Pima County

Aldea Linda Residential Historic District,
4700–5000 block E. Calle Jabali, E. 22nd
St., 1100 block S. Swan Rd., Tucson,
09000371, Listed, 6/05/09

ARKANSAS

Clay County

Rector Commercial Historic District,
Bounded by St. Louis and Southwestern
Railroad tracks on the E. and S., S. Dodd
on the W., 3rd St. on the N., Rector,
09000369, Listed, 6/01/09

Pulaski County

Lee, Robert E., School, 3805 W. 12th St.,
Little Rock, 09000370, Listed, 6/02/09

CALIFORNIA

Humboldt County

Sweasey Theater—Loew's State Theater, 412
G St., Eureka, 09000372, Listed, 6/05/09

ILLINOIS

Kankakee County

Bradley, B. Harley, House and Stable, 701 S.
Harrison Ave., Kankakee, 09000374,
Listed, 6/02/09

MINNESOTA

Crow Wing County

Franklin Junior High School, 1001 Kingwood
St., Brainerd, 09000406, Listed, 6/04/09

NEW YORK

Chenango County

Eaton Family Residence—Jewish Center of
Norwich, 72 S. Broad St., Norwich,
09000375, Listed, 6/04/09

Erie County

E. & B. Holmes Machinery Company
Building, 55–59 Chicago St., Buffalo,
09000376, Listed, 6/02/09

NORTH CAROLINA

Mecklenburg County

Davidson Historic District, Bounded by N.
Main and Beaty Sts., Catawba Ave. Mock
and Concord Rds., Pat Stough and
Dogwood Lns., Davidson College,
Davidson, 09000381, Listed, 6/01/09

Wake County

Wendell Boulevard Historic District, Wendell
Blvd., Mattox St., Old Zebulon Rd., Buffalo
St. and Main St., Wendell, 09000382,
Listed, 6/03/09 (Wake County MPS)

NORTH DAKOTA

Billings County

Custer Military Trail Historic Archaeological
District, Address Restricted, Medora
vicinity, 08001293, Listed, 6/05/09

PENNSYLVANIA

Berks County

Alleghany Mennonite Meetinghouse, 39
Horning Rd., Brecknock Township,
09000384, Listed, 6/06/09

Franklin County

Kennedy, Robert, Memorial Presbyterian
Church, 11799 Mercersburg Rd.,
Montgomery, 09000385, Listed, 6/06/09

Philadelphia County

Center City West Commercial Historic
District (Boundary Increase), Roughly
bounded by the Center City West Historic
District, S. 15th St., Locust St. and S.
Sydenham St., Philadelphia, 09000388,
Listed, 6/01/09

SOUTH CAROLINA

Aiken County

Immanuel School, 120 York St. NE, Aiken,
09000389, Listed, 6/03/09

Greenville County

Fountain Inn High School, 315 N. Main St.,
Fountain Inn, 09000390, Listed, 6/03/09

VIRGINIA

Amherst County

Fairview, 2416 Lowesville Rd., Amherst,
09000391, Listed, 6/03/09

Danville Independent City

Schoolfield School Complex, 31 Baltimore
Ave., Danville, 09000392, Listed, 6/03/09

Floyd County

West Fork Furnace, VA 605, Floyd,
09000414, Listed, 6/05/09

Fredericksburg Independent City

Idlewild, 1501 Gateway Blvd.,
Fredericksburg, 09000415, Listed, 6/08/09

Gloucester County

Ware Neck Store and Post Office, 6495 VA
629, Ware Neck, 09000393, Listed, 6/03/09

Mathews County

B. Williams & Co. Store, 1030 Williams
Wharf Rd., Mathews vicinity, 09000394,
Listed, 6/03/09

Nelson County

Pharsalia, 2325 Pharsalia Rd., Tyro,
09000395, Listed, 6/03/09

Northumberland County

Bluff Point Graded School No. 3, 2595 Bluff
Point Rd., Kilmarnock, 09000396, Listed,
6/03/09

[FR Doc. E9–18358 Filed 7–30–09; 8:45 am]

BILLING CODE P

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 701–TA–457 and 731–
TA–1153 (Final)]**

**Certain Tow-Behind Lawn Groomers
and Parts Thereof From China**

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain tow-behind lawn groomers and parts thereof, provided for in subheadings 8432.40.00, 8432.80.00, 8432.90.00, 8479.89.98, 8479.90.94, and 9603.50.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).²

Background

The Commission instituted these investigations effective June 24, 2008, following receipt of a petition filed with the Commission and Commerce by Agri-Fab, Inc., Sullivan, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain tow-behind lawn groomers and parts thereof from China were being subsidized by the government of China and being sold at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. 1671b(b) and 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 13, 2009 (74 FR 10964). The hearing was held in Washington, DC, on June 16, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Vice Chairman Pearson finds that the domestic industry is threatened with material injury by reason of subject imports.

the Secretary of Commerce on July 27, 2009. The views of the Commission are contained in USITC Publication 4090 (July 2009), entitled *Certain Tow-Behind Lawn Groomers and Parts Thereof from China: Investigation Nos. 701-TA-457 and 731-TA-1153 (Final)*.

By order of the Commission.

Issued: July 27, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9-18251 Filed 7-30-09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-617]

In the Matter of Certain Digital Television Products and Certain Products Containing Same and Methods of Using Same; Order: Denial of Motion for a Stay of Exclusion Order and Cease and Desist Orders

The Commission instituted this investigation on November 15, 2007, based on a complaint filed by Funai Electric Co., Ltd. of Japan and Funai Corporation of Rutherford, New Jersey (collectively "Funai") against several respondents including Vizio, Inc. of Irvine, California ("Vizio"); AmTran Technology Co., Ltd. of Taiwan ("AmTran"); Syntax-Brilliant Corporation of Tempe, Arizona ("SBC"); Taiwan Kolin Co., Ltd. of Taiwan ("Taiwan Kolin"); Proview International Holdings, Ltd. of Hong Kong ("Proview International"); Proview Technology (Shenzhen) Co., Ltd. of China ("Proview Shenzhen"); Proview Technology, Ltd. of Garden Grove, California ("Proview Technology"); TPV Technology, Ltd. of Hong Kong ("TPV Technology"); TPV International (USA), Inc. of Austin, Texas ("TPV USA"); Top Victory Electronics (Taiwan) Co., Ltd. of Taiwan ("Top Victory"); and Envision Peripherals, Inc. of Fremont, California ("Envision"). 72 FR 64240 (2007). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital television products and certain products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 6,115,074 ("the '074 patent") and 5,329,369.

On April 10, 2009, the Commission terminated this investigation with a finding of violation of Section 337 as to

the '074 patent. The Commission determined that the appropriate form of relief is (1) a limited exclusion order under 19 U.S.C. 1337(d)(1) prohibiting the unlicensed entry of certain digital television products and certain products containing the same that infringe one or more of claims 1, 5, and 23 of the '074 patent, and are manufactured abroad by or on behalf of, or imported by or on behalf of, Vizio, AmTran, SBC, Taiwan Kolin, Proview International, Proview Shenzhen, Proview Technology, TPV Technology, TPV USA, Top Victory, and Envision; and (2) cease and desist orders directed to Vizio, SBC, Proview Technology, TPV USA, and Envision.

On June 2, 2009, respondents Vizio, AmTran, TPV Technology, TPV USA, Top Victory, and Envision (collectively "Respondents") filed a motion to stay the limited exclusion and cease and desist orders pending appeal of the Commission's determination to the U.S. Court of Appeals for the Federal Circuit. Funai and the Commission investigative attorney ("IA") filed responses opposing the motion on June 12, 2009. On June 18, 2009, Respondents filed a motion for leave to file a joint reply in support of their motion to stay. The IA filed an opposition to this motion on June 29, 2009.

Upon consideration of this matter, the Commission hereby *orders* that:

1. Respondents' motion to stay enforcement of the limited exclusion order and cease and desist orders pending appeal is *denied*.
2. Respondents' motion for leave to file a joint reply in support of motion to stay enforcement of the limited exclusion order and cease and desist order pending appeal is *denied*.
3. Notice of this Order and a Commission Opinion to be issued at a later date shall be served on the parties to this investigation.

By order of the Commission.

Issued: July 28, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9-18329 Filed 7-30-09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-466 and 731-TA-1162 (Preliminary)]

Wire Decking From China

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured, by reason of imports from China of wire decking, provided for in subheading 9403.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 5, 2009, a petition was filed with the Commission and Commerce by

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

AWP Industries, Inc., Frankfort, KY; ITC Manufacturing, Inc., Phoenix, AZ; J&L Wire Cloth, Inc., St. Paul, MN; Nashville Wire Products Mfg. Co., Inc., Nashville, TN; and Wireway Husky Corp., Denver, NC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of wire decking from China. Accordingly, effective June 5, 2009, the Commission instituted countervailing duty investigation No. 701-TA-466 and antidumping duty investigation No. 731-TA-1162 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 11, 2009 (74 FR 27823). The conference was held in Washington, DC, on June 26, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 20, 2009. The views of the Commission are contained in USITC Publication 4092 (July 2009), entitled *Wire Decking from China: Investigation Nos. 701-TA-466 and 731-TA-1162 (Preliminary)*.

By order of the Commission.

Issued: July 27, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9-18252 Filed 7-30-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on July 21, 2009, a proposed Consent Decree in *United States v. Princeton Gamma-Tech, Inc., et al.* (D.N.J.) No. 91-809 (AET), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought the recovery of response costs pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C.

9607(a), from certain Defendants for response costs incurred at the Rocky Hill Municipal Wellfield Superfund Site and the Montgomery Township Housing Development Superfund Site (the "Sites"), located in Somerset County, New Jersey. Pursuant to the proposed Consent Decree, Frederick Van Cleef and Cornelius DeCicco ("Settling Defendants") will pay to the United States \$234,500 in reimbursement of past and future response costs incurred by the United States with respect to the Sites. In addition, the Settling Defendants will pay \$155,000 to the State of New Jersey in reimbursement of past and future response costs and natural resources damages related to the Sites. The proposed Consent Decree provides the Settling Defendants with a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Princeton Gamma-Tech, Inc., et al.* (D.N.J.) No. , D.J. Ref. 90-11-2-290.

The consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Clarkson S. Fisher Federal Building and U.S. Courthouse, 402 E. State Street, Trenton, New Jersey 08608 (contact AUSA Irene Dowdy), and at U.S. EPA Region II, 290 Broadway, New York, New York 10007-1866 (contact Amelia Wagner). During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$13.25 (25 cents per

page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-18268 Filed 7-30-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on July 21, 2009, a proposed Consent Decree in *United States v. Princeton Gamma-Tech, Inc., et al.* (D.N.J.) No. 91-809 (AET), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought the recovery of response costs pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. 9607(a), from Defendants for response costs incurred at the Rocky Hill Municipal Wellfield Superfund Site and the Montgomery Township Housing Development Superfund Site (the "Sites"), located in Somerset County, New Jersey. Pursuant to the proposed Consent Decree, the Settling Defendants will pay to the United States \$1,842,500 in reimbursement of past and future response costs incurred by the United States with respect to the Sites. In addition, the Settling Defendants will pay \$907,500 to the State of New Jersey in reimbursement of past and future response costs and natural resources damages related to the Sites. The proposed Consent Decree provides the Settling Defendants with a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Princeton Gamma-Tech, Inc., et al.* (D.N.J.) No., D.J. Ref. 90-11-2-290.

The consent decree may be examined at the Office of the United States Attorney, District of New Jersey,

Clarkson S. Fisher Federal Building and U.S. Courthouse, 402 E. State Street Trenton, New Jersey 08608 (contact AUSA Irene Dowdy), and at U.S. EPA Region II, 290 Broadway, New York, New York 10007-1866 (contact Amelia Wagner). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$14.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-18267 Filed 7-30-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125-0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 102, page 25773, on May 29, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 31, 2009. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR 29, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: A party who appeals a decision of a USCIS officer to the Board of Immigration Appeals (Board). Other: None. Abstract: A party affected by a decision of a USCIS officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR-29 and

submit it to the USCIS office having administrative control over the record of proceeding in order to exercise its regulatory right to appeal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 2,971 respondents will complete the form annually with an average of thirty minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1485.5 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 28, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-18318 Filed 7-30-09; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: 2009-2010 BJS Survey of Campus Law Enforcement Agencies.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 29, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Brian A. Reaves, (202) 616-3287, Bureau of Justice Statistics, Office of

Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or Brian.Reaves@usdoj.gov.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information:

(1) *Type of Information Collection:* New information collection, 2009–2010 BJS Survey of Campus Law Enforcement Agencies (CLEA).

(2) *The Title of the Form/Collection:* 2009–2010 BJS Survey of Campus Law Enforcement Agencies.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form label is CJ-44C, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Universities and Colleges. The purpose of the CLEA project is to provide detailed statistical information on police and security agencies serving university and college campuses. The project will collect information from campus police and security agencies on functions performed, number and type (*sworn vs. nonsworn*) of officers employed, arrest jurisdiction, patrol coverage, operating budget, race and gender of officers, screening methods used for hiring new officers, education and training requirements for officers, salaries and special pay for officers, weapons authorized for use by officers, type and number of vehicles operated, use of in-field and fixed-site computers, community policing activities,

emergency preparedness activities, type and coverage of mass notification systems being used, special units/programs operated, and clearance rates for part I offenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collected from 1,500 campus law enforcement agencies, including approximately 1,300 agencies serving 4-year campuses, and 200 agencies serving 2-year campuses. Annual cost to the respondents is based on the number of hours involved in providing information from agency records. Public reporting burden for this collection of information is estimated to average 3 hours per data collection form. The estimate of hour burden is based on prior BJS surveys of law enforcement agencies that collected similar types of data.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden associated with this collection is 4,500 hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, PRA, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 28, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-18319 Filed 7-30-09; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 27, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov website at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Mary Beth Smith-Toomey on 202-693-

4223 (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—VETS, 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: Veterans' Employment and Training Service.

Type of Review: Revision of an existing OMB Control Number.

Title of Collection: Jobs for Veterans State Grants Reports.

OMB Control Number: 1293-0009.

Affected Public: State, Local and Tribal governments.

Total Estimated Number of Respondents: 4,199.

Total Estimated Annual Burden Hours: 32,650.

Total Estimated Annual Costs Burden: \$0.

Description: The DOL Veterans' Employment and Training Service (VETS) administers funds for the multi-year Jobs for Veterans' State Grants (JVSG) to each State, the District of Columbia, Puerto Rico and the Virgin Islands on an annual basis on a fiscal year cycle. These forms are used to facilitate the identification of required programmatic and financial data provided by States requesting and expending funds and for monitoring the

grants, making quarterly adjustments and reporting results to Congress. The use of program-specific standard formats helps to ensure that requested data can be provided in a uniform way, reporting burdens are minimized, the impact of collection requirements on respondents are properly assessed, collection instruments are clearly understood by respondents, and the information is easily consolidated for posting in accordance with statutory requirements. For additional information, see related notice published at Volume 74 FR 15005 on April 2, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-18258 Filed 7-30-09; 8:45 am]

BILLING CODE 4510-79-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto.

The Council will meet at least four times each year.

The terms of five members of the Council expire on November 14, 2009. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) actuarial counseling; (4) investment counseling; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans, to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Larry Good, ERISA Advisory Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N-5623, Washington, DC 20210, or to good.larry@dol.gov. Recommendations must be submitted on or before September 15, 2009. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Recommendations should include the position for which the nominee is recommended and the nominee's contact information. The recommendation also must state that the candidate will accept appointment to the Council if offered.

Nominees will be contacted to provide information on their political affiliation. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of 15-20 days per year.

Signed at Washington, DC this 27th day of July 2009.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9-18316 Filed 7-30-09; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification; Amendment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; amendment.

SUMMARY: The Mine Safety and Health Administration (MSHA) published a document in the **Federal Register** of May 20, 2009, concerning a petition for modification of an existing safety standard at 30 CFR 75.503 (30 CFR 18.35). The petitioner requests that Docket number M-2009-008-C be amended to reflect the correct company name of Excel Mining LLC, Mine No. 3, MSHA No. 15-08079.

FOR FURTHER INFORMATION CONTACT:

Barbara Barron, 202-693-9447 or Roslyn Fontaine, 202-693-9475.

Amendment

The **Federal Register** of May 20, 2009, page 23745, third column, should be amended to read: Excel Mining, LLC.

Dated: July 28, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9-18314 Filed 7-30-09; 8:45 am]

BILLING CODE 4510-43-P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy [ONDCP].

ACTION: Notice of appointments.

Heading: Appointment of Members of Senior Executive Services Performance Review Board.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Terry Zobeck, Ms. Michele Marx, Mr. Robert Denniston, and Ms. Martha Gagne.

FOR FURTHER INFORMATION CONTACT:

Please direct any questions to Linda V. Priebe, Deputy General Counsel (202) 395-6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Deputy General Counsel.

[FR Doc. E9-18289 Filed 7-30-09; 8:45 am]

BILLING CODE 3180-02-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454, 50–455, 50–456, and 50–457; NRC–2009–0331]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66 issued to Exelon Generation Company, LLC (the licensee) for operation of the Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois and to Facility Operating License Nos. NPF–72 and NPF–77 issued to the licensee for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would permanently revise Technical Specification (TS) 5.5.9, “Steam Generator (SG) Program,” to exclude portions of the tube below the top of the SG tubesheet from periodic SG tube inspections and plugging or repair. In addition, this amendment proposes to revise the wording of reporting requirements in TS 5.6.9, “Steam Generator (SG) Tube Inspection Report.” The amendment application dated June 24, 2009, contains sensitive unclassified non-safeguards information (SUNSI).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission’s regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator (SG) inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR), postulated steam line break (SLB), feedwater line break (FLB), locked rotor and control rod ejection accident evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model D5 SGs has shown that axial loading of the tubes is negligible during an SSE.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in draft Regulatory Guide (RG) 1.121, “Bases for Plugging Degraded PWR Steam Generator Tubes,” and TS 5.5.9, are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the SG tubes consistent with the performance criteria of TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-secondary leakage flow through a postulated tube that has been pulled out of the tubesheet

is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a SGTR.

Primary-to-secondary leakage from tube degradation in the tubesheet area during operating and accident conditions is restricted due to contact of the tube with the tubesheet. The leakage is modeled as flow through a porous medium through the use of the Darcy equation. The leakage model is used to develop a relationship between operational leakage and leakage at accident conditions that is based on differential pressure across the tubesheet and the viscosity of the fluid. A leak rate ratio was developed to relate the leakage at operating conditions to leakage at accident conditions. Since the fluid viscosity is based on fluid temperature and it is shown that for the most limiting accident, the fluid temperature does not exceed the normal operating temperature and therefore the viscosity ratio is assumed to be 1.0. Therefore, the leak rate ratio is a function of the ratio of the accident differential pressure and the normal operating differential pressure.

The leakage factor of 1.93 for Braidwood Station Unit 2 and Byron Station Unit 2, for a postulated SLB/FLB, has been calculated as shown in Table 9–7 of WCAP–17072–P. However, EGC Braidwood Station Unit 2 and Byron Station Unit 2 will apply a factor of 2.03 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). The leakage factor of 2.03 is a bounding value for all SG model designs, both hot and cold legs, in Table 9–7 of WCAP–17072–P. Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. The assumed accident induced leak rate limit is 0.5 gallons per minute at room temperature (gpmRT) for the faulted SG and 0.218 gpmRT for the unfaulted SGs for accidents that assume a faulted SG. These accidents are the SLB and the locked rotor with a stuck open PORV. The assumed accident induced leak rate limit for accidents that do not assume a faulted SG is 1.0 gpmRT for all SGs. These accidents are the locked rotor and control rod ejection.

No leakage factor will be applied to the locked rotor or control rod ejection transients due to their short duration, since the calculated leak rate ratio is less than 1.0.

The TS 3.4.13 operational leak rate limit is 150 gallons per day (gpd) (0.104 gpmRT) through any one SG. Consequently, there is sufficient margin between accident leakage and allowable operational leakage. The maximum accident leak rate ratio for the Model D5 design SGs is 1.93 as indicated in WCAP–17072–P Table 9–7. However, EGC will use the more conservative value of 2.03 accident leak rate ratio for the most limiting SG model design identified in WCAP–17072–P Table 9–7. This results in significant margin between the conservatively estimated accident leakage and the allowable accident leakage (0.5 gpmRT).

For the CM assessment, the component of leakage from the prior cycle from below the

H* distance will be multiplied by a factor of 2.03 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.03 and compared to the observed operational leakage.

Based on the above, the performance criteria of NEI-97-06, Revision 2, and draft RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of the applicable accidents previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the permanent alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change defines the safety significant portion of the SG tube that must be inspected and repaired. WCAP-17072-P identifies the specific inspection depth below which any type tube degradation has no impact on the performance criteria in NEI 97-06, Revision 2, "Steam Generator Program Guidelines."

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. NEI 97-06, and draft RG 1.121 are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. Draft RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. Draft RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This draft RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, WCAP-17072-P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage as described in WCAP-17072-P shows that significant margin exists between an acceptable level of leakage during normal operating conditions that ensures meeting the SLB accident-induced leakage assumption and the TS leakage limit of 150 gpd.

Based on the above, it is concluded that the proposed changes do not result in any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch, TWB-05-B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington,

DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the Chief, Rulemaking and Directives Branch at 301-492-3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

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 should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the

requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or 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 in 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 an exemption 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/requestor should 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/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/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 is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. 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 hearing request/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 Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the Presiding Officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

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, unless an NRC regulation or other law requires submission of such information. 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 submissions.

For further details with respect to this license amendment application, see the application for amendment dated June 24, 2009, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Attorney for Licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI 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, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCMailCenter.Resource@nrc.gov, respectively.¹ The request must include the following information:

a. A description of the licensing action with a citation to this Federal Register notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action;

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten 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) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the

information or documents requested.² Any protective order issued shall provide that the petitioner must file SUNSI contentions 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 contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,³ and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff, the NRC staff shall briefly state the reasons for the denial. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI (including with respect to standing) by filing a challenge within five (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.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

² If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

³ Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

¹ See footnote 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 under these procedures should be submitted as described in this paragraph.

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 2.311.⁴

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, 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.

Dated at Rockville, Maryland, this 27th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) in This Proceeding

Day	Event
0	Publication of Federal Register notice, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
20	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 need 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).
25	If NRC staff finds no "need" for SUNSI or 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.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
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 consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. 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 contentions by that later deadline.
A+53 (Contention receipt +25).	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9-18367 Filed 7-30-09; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0608]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG-4015, Preparation of Environmental

Reports for Nuclear Power Plant License Renewal Applications.

FOR FURTHER INFORMATION CONTACT:
Jennifer Davis, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-3835 or e-mail to Jennifer.Davis@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make

available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications," is temporarily identified by its task number, DG-4015, which should be mentioned in all related correspondence. DG-4015 is

⁴ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (August 28, 2007;

72 FR 49139). 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 requests submitted to the NRC staff under these procedures.

proposed Revision 1 of Regulatory Guide 4.2, Supplement 1, dated September 2000. This guidance document provides general procedures for the preparation of environmental reports (ER), which are submitted as part of an application for the renewal of a nuclear power plant operating license in accordance with Title 10, Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," of the *Code of Federal Regulations* (10 CFR part 54). This regulatory guide amends Supplement 1 to Regulatory Guide 4.2, "Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses," issued September 2000. Use of this regulatory guide will help to ensure the completeness of the information provided in the ER, assist staff of the NRC and others in locating pertinent information, and facilitate the environmental review process. However, the NRC does not require conformance with the procedures, which are provided for guidance only.

II. Further Information

The NRC staff is soliciting comments on DG-4015. Comments may be accompanied by relevant information or supporting data and should mention DG-4015 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Mail Stop: TWB-05-B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

2. *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0608]. Address questions about NRC dockets to Carol Gallagher,

301-492-3668; e-mail Carol.Gallagher@nrc.gov.

3. *Fax comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492-3446.

Requests for technical information about DG-4015 may be directed to the NRC contact, Jennifer Davis at (301) 415-3835 or e-mail to Jennifer.Davis@nrc.gov.

Comments would be most helpful if received by October 14, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-4015 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML091620409.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to pdr.resource@nrc.gov.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 17th day of July 2009.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9-18009 Filed 7-30-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0608]

Notice of Availability of the Draft Revision to Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Revision 1, NUREG-1437 and Public Meetings

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC) has published and is issuing for public comment a draft revision to *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (GEIS), Revision 1, NUREG-1437. The draft GEIS, Revision 1 provides the technical basis for the 10-year update of Appendix B to Subpart A of Part 51—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant in accordance with 10 CFR part 51.

The draft revised GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://adamswebsearch.nrc.gov/dologin.htm>. The Accession Number for the draft revised GEIS is ML090220654. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail at pdr.resource@nrc.gov.

Comments on the draft revised GEIS should be submitted no later than October 14, 2009.

Written comments may be submitted by one of the following methods:

E-mail comments to: The Federal e-Rulemaking Portal at <http://www.regulations.gov>; search Docket ID NRC-2008-0608. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Michael Lesar, Chief, Rulemaking and Directives Branch, Mailstop TWB-05-B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All comments received by the Commission will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS. Comments submitted in writing or in electronic form will be made available to the public in their

entirety on the Federal Government's rulemaking Web site <http://www.regulations.gov>. Please note that personal information, such as name, address, telephone, e-mail address, etc., will not be removed from your submission.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

The NRC will hold four public meetings to receive comments on the draft GEIS one in each of the NRC regions. The meetings will be held on the following dates and locations: September 15, 2009, DoubleTree Atlanta Perimeter, 6120 Peachtree Dunwoody Road, Atlanta, Georgia 30328; September 17, 2009, Boston Marriott Newton, 2345 Commonwealth Avenue, Newton, Massachusetts 02466; September 22, 2009, Hyatt Westlake Plaza, 880 South Westlake Boulevard, Westlake Village, California 91361; and September 24, 2009, DoubleTree Oak Brook, 1909 Spring Road, Oak Brook, Illinois 60523. The regional public meetings will start at 7 p.m. and will continue until 10 p.m., or until all members of the public have had an opportunity to present comments.

In addition, one rulemaking meeting will be held on October 1, 2009, at NRC Headquarters, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852. The October 1st meeting will be webstreamed to maximize the potential to include interested stakeholders via the NRC's Web site at <http://www.nrc.gov/public-involve/public-meetings/webcast-live.html>. The NRC Headquarters meeting will begin at 1 p.m.

The primary purpose for the meetings is to provide the public with an opportunity to comment on the draft revised GEIS. Each public meeting will be transcribed to record all comments. Written comments may also be submitted for the record at each of the meetings. The public meetings will begin with a brief overview of the draft revision and summary of the major environmental impact issues that were addressed in the draft GEIS revision. Members of the public are also invited to attend an informational open house two hours before the start of each regional public meeting. The NRC staff will be on hand to answer questions about the GEIS revision, and provide

general information about the NRC and the license renewal program.

Members of the public interested in presenting oral comments at the public meetings may pre-register by contacting Jennifer Davis, the NRC Project Manager at 1-800-368-5642, extension 3835, or by e-mail at LRGEISUpdate@nrc.gov, by September 9, 2009. The public may also register to provide oral comments up to 15 minutes before the start of each public meeting. The amount of time allowed for individual oral comments may be limited to afford time for everyone to speak, and will also depend on the number of persons who pre-register. If special accommodations or equipment are needed at the public meeting, the need should be brought to Ms. Davis's attention no later than September 1, 2009, to provide sufficient time for the NRC staff to accommodate the request.

Concurrent with the GEIS revision, the NRC is also publishing the revised Regulatory Guide (RG) 4.2, Supplement 1, Revision 1, *Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications*; and revised NUREG-1555, Supplement 1, Revision 1, *Standard Review Plans for Environmental Reviews for Nuclear Power Plants (ESRP)*. Comments submitted on RG 4.2, Supplement 1, Revision 1, and ESRP, Supplement 1, Revision 1, will also be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Davis, Project Manager, Environmental Review Branch, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O-11F1, Washington, DC 20555-0001. Ms. Davis may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 23rd day of July 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9-18010 Filed 7-30-09; 8:45 am]

BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11822 and #11823]

Wyoming Disaster #WY-00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster

for the State of Wyoming dated 07/24/2009.

Incident: Flash Flooding.

Incident Period: 07/03/2009.

DATES: *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: Natrona.

Contiguous Counties:

Wyoming: Albany, Carbon, Converse, Fremont, Johnson, Washakie.

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 11822 6 and for economic injury is 11823 0.

The State which received an EIDL Declaration # is Wyoming.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 24, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-18282 Filed 7-30-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration #11798 and #11799]****Kansas Disaster #KS-00034****AGENCY:** U.S. Small Business Administration.**ACTION:** Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA-1848-DR), dated 06/24/2009.

Incident: Severe Winter Storm and Record and Near Record Snow.

Incident Period: 03/26/2009 through 03/29/2009.

Effective Date: 07/24/2009.

Physical Loan Application Deadline Date: 08/24/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 03/24/2010.

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 Kansas, dated 06/24/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Morris.

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. E9-18229 Filed 7-30-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION**[Release No. 34-60387; File No. SR-BATS-2009-025]****Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled "Orders and Modifiers"**

July 24, 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 20, 2009, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled "Orders and Modifiers," to eliminate the ability of Exchange Users to execute market orders on the Exchange outside of Regular Trading Hours.⁵

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**

The purpose of the proposed rule change is to amend BATS Rule 11.9(a)(2) to eliminate the ability of Exchange Users to execute market

orders on the Exchange during the Exchange's Pre-Opening or After Hours Trading Session.⁶ Although the Exchange imposes certain limitations on how far away from the prevailing market a market order can be executed at any time,⁷ the Exchange does currently permit the execution of market orders outside of Regular Trading Hours. The Exchange believes that completely preventing any execution of a BATS market order outside of Regular Trading Hours will help to avoid the execution of such an order at a price that is significantly worse than the price that the User expected to receive based on pricing for a security at the time such market order was initially submitted to the Exchange. Thus, the Exchange believes that the proposal will provide additional protection for those Users that submit market orders to the Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁸ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,⁹ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the price that a User expects to receive based on pricing for a security at the time an order is initially received by the Exchange. Also, this proposal is consistent with existing exchange rules that make clear that market orders are rejected outside of regular trading hours on such exchanges.¹⁰ Accordingly, the modifications to BATS Rule 11.9 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

⁶ As set forth in BATS Rule 1.5(r), the Pre-Opening Session lasts from 8 a.m. until 9:30 a.m. Eastern Time. As set forth in BATS Rule 1.5(c), the After Hours Trading Session lasts from 4 until 5 p.m. Eastern Time.

⁷ See BATS Rule 11.9(a)(2).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See, e.g., NYSE Arca Equities Rule 7.34(d)(1)(C) and (d)(3)(B); ISE Rule 2102, Supplementary Material .01.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ As set forth in BATS Rule 1.5(w), Regular Trading Hours last from 9:30 a.m. until 4:00 p.m. Eastern Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ 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. BATS believes that waiver of the 30-day operative delay will allow the Exchange to more promptly implement the changes to its system to reject market orders outside of Regular Trading Hours even if such orders would otherwise execute. BATS expects to have technological changes in place to support the proposed rule change on July 24, 2009, and believes that benefits to Exchange Users expected from the proposed rule change should not be delayed.¹⁵ In addition, the Commission notes that the proposed rule change is consistent with the rules of other exchanges that prohibit the execution of market orders outside of regular trading

hours.¹⁶ Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2009-025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-BATS-2009-025. 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2009-025 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18228 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60380; File No. SR-OCC-2009-12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Cash-Settled Foreign Currency Index Options

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 12, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act² and Rule 19b-4(f)(1)³ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would clarify that index options cleared by OCC may include options on foreign currency indexes, including options on the International Securities Exchange ("ISE") Leveraged USD Basket Index.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(i).

³ 17 CFR 240.19b-4(f)(1).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ *Id.*

¹⁵ See SR-BATS-2009-025, Item 7.

¹⁶ See *supra* note 10.

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISE has proposed for trading cash-settled foreign currency index options ("Currency Index Options") on the ISE USD Leveraged Basket Index ("ISE FX Index"). In its rule filing, ISE states that the ISE FX Index, which is a foreign currency index, tracks two times the performance, relative to the U.S. Dollar, of a basket of the official currencies associated with the other "Group of 10" countries ("G-10").⁵ The ISE FX Index was created by ISE and will be maintained and calculated by an index calculation agent based on a methodology developed by ISE. The ISE FX Index is intended as a benchmark for investors interested in the performance of the US Dollar versus the currencies of other G-10 countries. OCC may clear options on other foreign currency indexes in the future.

Currency Index Options are similar to other index options cleared by OCC. Therefore, OCC believes that the provisions of its By-Laws and Rules governing index options, as they are currently in effect, are sufficient to support the clearance and settlement of Currency Index Options. The purpose of this rule change is to make a purely technical amendment to the definition of "index component" in Article XVII of the By-Laws to make it more transparent that index options cleared by OCC may include options on foreign currency indexes.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it is designed to promote the

prompt and accurate clearance and settlement of transactions in, including exercises of, foreign currency index options, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change accomplishes this purpose by applying the same rules and procedures to these transactions as OCC applies to transactions in other index options. The proposed rule change is not inconsistent with the existing rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(f)(1)⁷ promulgated thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. However, OCC will not begin to clear and settle foreign currency index options until distribution of a supplement to the options disclosure document, Characteristics and Risks of Standardized Options, addressing such options. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2009-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-12 and should be submitted on or before August 21, 2009.

⁴ The Commission has modified parts of these statements.

⁵ Although there are eleven countries in the G-10, because several of these countries are members of the European Union and use the Euro as their currency. As a result, there are only seven currencies associated with the G-10: US Dollar, Euro, Japanese Yen, British Pound, Canadian Dollar, Swiss Franc and Swedish Krona.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18273 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60379; File No. SR-NYSEArca-2009-62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services

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 1, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will be effective and operative upon filing. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend the Schedule to reflect new transaction pricing. The Exchange proposes to eliminate the facilitation fee charged to firms who facilitate their customer order flow. Currently, the Firm Facilitation Fee is \$0.15. The Firm Facilitation Fee applies to any transaction involving a firm's proprietary trading account, which has a customer of that same firm on the contra side of the transaction. The Exchange also proposes to reduce the Broker Dealer and Firm Manual fee from \$0.26 to \$0.25.

The proposed fees are part of the Exchange's ongoing effort to offer attractive transaction rates, and will become operative on July 1, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Arca.

The Exchange believes the reduced Firm Facilitation Fee is equitable because it applies uniformly to all similarly situated users, specifically firms facilitating customer order flow. Reduction of the fee to zero also follows precedent currently in place on other exchanges that have established fee caps.⁵ The Exchange believes this proposal is in fact more equitable than fee caps attainable only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month. This treatment favors larger

firms capable of reaching the established fee cap. In comparison to fee caps, this proposed change creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume.

The fee reduction is also consistent with the current fee schedule and industry precedent that allows for different rates to be charged for different order types originated by dissimilarly classified market participants. The Exchange, along with other options exchanges, currently applies different rates to firms facilitating their own customer order flow as opposed to solicited orders. The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants. For example, under the Exchange's current fee schedule, the customer side of a firm facilitation trade is \$0.00, while the facilitation side is currently \$0.15. The current \$0.15 Facilitation Fee is \$0.11 less than the \$0.26 charged for manual broker dealer executions and \$0.02 less than the market maker non-directed fee of \$0.17. These differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow. The Exchange believes that reducing the Firm Facilitation Fee to zero follows existing precedent for rate differentials and further encourages firms to facilitate customer order flow, thereby assisting customers in their attempt to transact in the options markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR-Phlx-2009-12) (increasing the Firm-Related Equity Option and Index Option Cap to \$75,000 and exclude JBO participants).

19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca only upon its members.

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. In addition, the Commission seeks comment generally on whether the proposed elimination of the firm facilitation fee is equitable as that term is used in Section 6(b)(4) of the Act. Specifically:

1. Do you agree with the Exchange's claim that the proposed rule change "creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume"?

2. The Exchange further argues that "this proposal is in fact more equitable than fee caps only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month." Do you believe that the Exchange's argument is valid, given that the fee caps applied by other options exchanges apply to firm proprietary orders generally, while the Exchange is proposing to eliminate fees only for one particular type of proprietary order (firm facilitation orders)?

3. The Exchange notes that, under its current fee schedule and industry practice, different types of market participants are often assessed different transaction fees. The Exchange has proposed to widen the differential between the fees charged to firms for facilitation transactions and the fees charged to other market participants (besides customers, who pay zero) to participate in the same transactions. Is widening the differential in this manner equitable as that term is used in Section 6(b)(4) of the Act? At what point would

the differential become so large as to be inequitable?

4. Does it impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act and prohibited under Section 6(b)(4) of the Act to charge firms facilitating a customer order no fees and charge other non-customer members? If so, please explain how.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-62 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18272 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60378; File No. SR-NYSEAmex-2009-38]

Self-Regulatory Organizations; NYSE Amex, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Implementing the Schedule of Fees and Charges for Exchange Services

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 1, 2009, NYSE Amex, LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will be effective and operative upon filing. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend the Schedule to reflect new transaction pricing and extend the waiver of the Cancellation Fee. The Exchange proposes to reduce the Firm Facilitation Fee to \$0.00. Currently, the Firm Facilitation Fee is \$0.15. The Firm Facilitation Fee applies to any transaction involving a firm's proprietary trading account, which has a customer of that same firm on the contra side of the transaction. The Exchange proposes to reduce the Broker Dealer and Firm Manual fee from \$0.26 to \$0.25. The Exchange also proposes to reduce the Broker Dealer and Firm Electronic Fee from \$0.50 to \$0.15. Finally, the Exchange proposes to extend the waiver of the Cancellation Fee until August 1, 2009.

The proposed fees are part of the Exchange's ongoing effort to offer attractive transaction rates, and will become operative on July 1, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex.

The Exchange believes the reduced Firm Facilitation Fee is equitable because it applies uniformly to all similarly situated users, specifically firms facilitating customer order flow. Reduction of the fee to zero also follows precedent currently in place on other exchanges that have established fee caps.⁵ The Exchange believes this proposal is in fact more equitable than fee caps attainable only by large broker dealer firms. For example, certain large broker dealers are capable of reaching

the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month. This treatment favors larger firms capable of reaching the established fee cap. In comparison to fee caps, this proposed change creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume.

The fee reduction is also consistent with the current fee schedule and industry precedent that allows for different rates to be charged for different orders types originated by dissimilarly classified market participants. The Exchange, along with other options exchanges, currently applies different rates to firms facilitating their own customer order flow as opposed to solicited orders. The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants. For example, under the Exchange's current fee schedule, the customer side of a firm facilitation trade is \$0.00, while the facilitation side is currently \$0.15. The current \$0.15 Facilitation Fee is \$0.11 less than the \$0.26 charged for manual broker dealer executions and \$0.02 less than the market maker non-directed fee of \$0.17. These differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow. The Exchange believes that reducing the Firm Facilitation Fee to zero follows existing precedent for rate differentials and further encourages firms to facilitate customer order flow, thereby assisting customers in their attempt to transact in the options markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex only upon its members.

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. In addition, the Commission seeks comment generally on whether the proposed elimination of the firm facilitation fee is equitable as that term is used in Section 6(b)(4) of the Act. Specifically:

1. Do you agree with the Exchange's claim that the proposed rule change "creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume"?

2. The Exchange further argues that "this proposal is in fact more equitable than fee caps only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month." Do you believe that the Exchange's argument is valid, given that the fee caps applied by other options exchanges apply to firm proprietary orders generally, while the Exchange is proposing to eliminate fees only for one particular type of proprietary order (firm facilitation orders)?

3. The Exchange notes that, under its current fee schedule and industry practice, different types of market participants are often assessed different transaction fees. The Exchange has proposed to widen the differential between the fees charged to firms for facilitation transactions and the fees charged to other market participants (besides customers, who pay zero) to

⁵ See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR-Phlx-2009-12)(increasing the Firm-Related Equity Option and Index Option Cap to \$75,000 and excluding JBO participants).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

participate in the same transactions. Is widening the differential in this manner equitable as that term is used in Section 6(b)(4) of the Act? At what point would the differential become so large as to be inequitable?

4. Does it impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act and prohibited under Section 6(b)(4) of the Act to charge firms facilitating a customer order no fees and charge other non-customer members? If so, please explain how.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2009-38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEAmex-2009-38 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18271 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60384; File No. SR-NASDAQ-2009-071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; 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, The NASDAQ Stock Market LLC (the "Exchange" or "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 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 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 underlined and proposed deletions are in brackets.

* * * * *

4757. Book Processing

(a) System orders shall be executed through the Nasdaq Book Process set forth below:

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(1)-(3) No Change.

(4) 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) and (c) Not applicable. [sic]

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 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's currently approved, but not yet operational, anti-internalization functionality that would

cancel the later entered of interacting orders from the same MPID. Nasdaq 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 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 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 notes that similar functionality has previously [sic] approved for other markets.⁷

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-BATS-2009-022 and SR-NYSEArca-2009-058.

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(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 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-071 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-2009-071. 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

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).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. 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-2009-071 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18274 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60385; File No. SR-NYSEAmex-2009-26]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving Proposed Rule Change To Charge a \$500 Monthly Fee to Recipients of the NYSE Amex Order Imbalance Information Datafeed

July 24, 2009.

I. Introduction

On June 5, 2009, the NYSE Amex LLC ("NYSE Amex" 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 proposed rule change to charge a \$500 monthly fee to recipients of the NYSE Amex Order Imbalance Information datafeed. The proposed rule change was published for comment in the **Federal Register** on June 24, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to charge a \$500 monthly fee to recipients of the NYSE Amex Order Imbalance Information datafeed. NYSE Amex Order Imbalance Information provides real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. The Exchange provides this information for issues that are likely to be of particular trading interest at the opening or closing.

Currently, the Exchange provides this datafeed at no cost. The instant filing is submitted to establish a \$500 monthly fee for receipt of the NYSE Amex Order Imbalance Information datafeed. This proposed \$500 monthly fee to recipients of the NYSE Amex Order Imbalance Information datafeed applies whether the recipient receives the datafeed directly from the Exchange or indirectly from an intermediary. The fee entitles the datafeed recipient to make displays of that information available to an unlimited number of subscribers for no extra charge. The Exchange is not proposing to impose an end-user or display service fee on those subscribers.

The Exchange states that the \$500 monthly fee would allow vendors to redistribute NYSE Amex Order Imbalance Information: (1) Without having to differentiate between professional subscribers and nonprofessional subscribers; (2) without having to account for the extent of access to data; (3) without having to procure contracts with its subscribers for the benefit of the Exchange; and (4) without having to report the number of its subscribers.

The Exchange believes that the fee enables the investment community that has an interest in the receipt of order imbalance information to contribute to the Exchange's operating costs in a manner that is appropriate for this market data product.

In setting the level of the NYSE Amex Order Imbalance Information Product fee, the Exchange states that it took into consideration several factors, including:

- (1) The fees that other Exchanges are charging for similar services⁴;
- (2) consultation with some of the entities that the Exchange anticipates

⁴ New York Stock Exchange LLC imposes an access fee of \$500 per month for its order imbalance datafeed. Nasdaq OMX includes order imbalance information in its Nasdaq TotalView datafeed. Nasdaq OMX imposes end-user charges on both professional and nonprofessional subscribers that receive TotalView, as well as an array of monthly distribution charges that are significantly higher than the charge that NYSE Amex is proposing in this proposed rule change.

will be the most likely to take advantage of the proposed service;

(3) the contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service; and

(4) the contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations.

The Exchange believes that the proposed NYSE Amex Order Imbalance Information fee would reflect an equitable allocation of its overall costs to users of its facilities.

The Exchange believes that the level of the fee is consistent with the approach set forth in the approval order issued by the Commission related to ArcaBook fees.⁵ The Exchange submits that the NYSE Amex Order Imbalance Information datafeed constitutes "non-core data"; *i.e.*, the Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes this product voluntarily. In addition, the Exchange believes that both types of the competitive forces that the Commission described in the NYSE Arca Order are present: (i) The Exchange has a compelling need to attract order flow; and (ii) the product competes with a number of alternative products.

The Exchange states that it must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as the NYSE Amex Order Imbalance Information datafeed. The Exchange hopes that NYSE Amex Order Imbalance datafeed will enable vendors to distribute NYSE Amex order imbalance information widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and 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.⁶ In particular, the

⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order").

⁶ In approving this proposed rule change, the Commission notes that it has considered the

¹³ 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 Release No. 60122 (June 17, 2009), 74 FR 30184.

Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)⁸ that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁰ adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹¹

Under this proposal, the Exchange would charge a \$500 monthly fee to recipients of the NYSE Amex Order Imbalance Information datafeed. The \$500 monthly fee would allow vendors to redistribute NYSE Amex Order Imbalance Information: (1) Without having to differentiate between professional subscribers and nonprofessional subscribers; (2) without having to account for the extent of access to data; (3) without having to procure contracts with its subscribers for the benefit of the Exchange; and (4) without having to report the number of its subscribers.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core

market data fees.¹² In the NYSE Arca Order, the Commission stated that “when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”¹³ It noted that the “existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”¹⁴ If an exchange “was subject to significant competitive forces in setting the terms of a proposal,” the Commission will approve a proposal unless it determines that “there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.”¹⁵

There are a variety of alternative sources of information that impose significant competitive pressures on the NYSE Amex in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE Amex’s compelling need to attract order flow, imposed significant competitive pressure on the NYSE Amex to act equitably, fairly, and reasonably in setting the terms of its proposal. In addition, the Commission recently determined that NYSE was subject to significant competitive forces in setting fees for a substantially similar non-core market data product—NYSE Order Imbalance Information datafeed.¹⁶

Because the NYSE Amex was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR–NYSEAmex–2009–26) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18275 Filed 7–30–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60377; File No. SR–FINRA–2009–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Amended, Relating to the Reporting of Over-the-Counter Transactions in Equity Securities Executed Outside Normal Market Hours

July 23, 2009.

I. Introduction

On May 8, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to amend FINRA trade reporting rules relating to over-the-counter transactions in equity securities executed outside normal market hours to (1) require that any trades executed during the hours that a FINRA Facility (the Alternative Display Facility (“ADF”), a Trade Reporting Facility (“TRF”) or the OTC Reporting Facility (“ORF”)) is closed be reported within 15 minutes of the opening of the Facility, *i.e.*, 8:15 a.m. Eastern Time; and (2) conform the trade reporting requirements applicable to “outside normal market hours” transactions across FINRA Facilities. On May 29, 2009, FINRA filed Amendment No. 1 to the proposed Rule Change. The proposed rule change was published for comment in the **Federal Register** on June 9, 2009.³ The Commission received no comment letters on the proposed rule change.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 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 Release No. 60022 (June 1, 2009), 74 FR 27361 (“Notice”).

proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 17 CFR 242.603(a).

¹¹ NYSE Amex is an exclusive processor of NYSE Amex depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

¹² Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

¹³ *Id.* at 74771.

¹⁴ *Id.* at 74782.

¹⁵ *Id.* at 74781.

¹⁶ See Securities Exchange Act Release No. 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (SR–NYSE–2008–132).

This order approves the proposed rule change as amended.

II. Description of the Proposed Rule Change

FINRA is proposing to amend the trade reporting rules⁴ to require that trades executed during the hours that the FINRA Facility is closed be reported within 15 minutes of the opening of the facility (*i.e.*, 8:15 a.m. Eastern Time for all FINRA Facilities). Specifically, members would be required to report as follows: (1) Trades executed between midnight and 8 a.m. must be reported by 8:15 a.m. on trade date, and (2) trades executed between the close of the FINRA Facility (*i.e.*, either 6:30 p.m. or 8 p.m.) and midnight must be reported on an “as/of” basis the following business day by 8:15 a.m. These trades would be designated with the unique trade report modifier to denote their execution outside normal market hours. Any such trades not reported by 8:15 a.m. would be marked with the “outside normal market hours trade reported late” modifier.

FINRA also is proposing certain amendments to conform the requirements for reporting “outside normal market hours” trades across FINRA Facilities. First, under current rules and system functionality, members are not permitted to submit to the FINRA/Nasdaq TRF and ORF a trade report with the “outside normal market hours” modifier during normal market hours. For example, if a member executes a trade at 9:29:00 a.m. and reports the trade at 9:30:15 a.m. (in compliance with the 90-second reporting requirement under FINRA rules), the FINRA/Nasdaq TRF and ORF will reject the trade report; the trade cannot be reported, and will not be disseminated, until after 4 p.m. By contrast, the ADF and FINRA/NYSE TRF permit the submission of trade reports with the “outside normal market hours” modifier throughout the day. With this change, the trade described in the example above can be reported to the ADF or FINRA/NYSE TRF and disseminated at 9:30:15 a.m.

Accordingly, FINRA is proposing to amend Rules 6380A(a)(2)(A) and (a)(2)(C) relating to the FINRA/Nasdaq TRF and Rules 6622(a)(3)(A) and (a)(3)(C)(i) relating to the ORF to delete the requirement that “outside normal market hours” transactions that are not reported by 9:30 a.m. be reported after 4 p.m. The proposed amendments are identical to the text of current Rules

6282(a)(2)(A) and (a)(2)(B)(i) relating to the ADF.

Additionally, FINRA is proposing conforming changes to Rules 6380B(a)(2)(A) and (C) relating to the FINRA/NYSE TRF. Today, members submit trade reports with the “outside normal market hours” modifier to the FINRA/NYSE TRF throughout the day. However, FINRA stated that when the rules for this TRF were originally adopted, these provisions inadvertently were based on the rules relating to the FINRA/Nasdaq TRF, rather than the ADF. Thus, FINRA stated that the proposed amendments for the FINRA/NYSE TRF do not represent a departure from current member reporting practices and systems functionality.⁵

In this regard, FINRA also is proposing to amend Rules 6380A(a)(2)(D), 6380B(a)(2)(D) and 6622(a)(3)(C)(ii) to require expressly that “as/of” reports submitted pursuant to these provisions include the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours. The proposed amendments conform to the text of current Rule 6282(a)(2)(C)(ii).

Second, FINRA is proposing to amend Rules 6282(a), 6380A(a), 6380B(a) and 6622(a) to consolidate the provisions relating to late trade reporting and make clear that trades that are required to be reported on trade date, but are not reported on trade date, must be reported on an “as/of” basis on a subsequent date (T+N) and shall be designated as late. This requirement applies to trades executed during normal market hours, as well as those “outside normal market hours” trades that are required by rule to be reported on trade date (*i.e.*, trades executed between midnight and 9:30 a.m. and between 4 p.m. and the close of the FINRA Facility at either 6:30 or 8 p.m.). The proposed amendments also would make clear the requirement that “outside normal market hours” trades that are required to be reported on an “as/of” basis the following business day (T+1), but are not reported T+1, must be reported on a subsequent date (T+N) and shall be designated as late.⁶ Accordingly, FINRA is proposing to amend Rules 6380A(a)(2)(B), 6380B(a)(2)(B) and 6622(a)(3)(B) to delete the duplicative requirement that transactions not reported by 8 p.m. on trade date must be reported on an “as/of” basis the following business day (T+1).

⁵ See Notice, *supra*, note 3.

⁶ FINRA is proposing to amend paragraph (a)(1) and adopt new paragraph (a)(6) of Rule 6282 to conform to Rules 6380A(a)(4), 6380B(a)(4) and 6622(a)(5).

Third, FINRA is proposing certain technical, non-material changes to conform the text of the rules relating to the reporting of trades executed outside normal market hours across FINRA Facilities. For example, FINRA is proposing to amend Rule 6282(a)(2) relating to the ADF and Rule 6622(a)(3) relating to the ORF to delete the specific references to the “.T” trade report modifier. This conforms to the trade reporting rules relating to the TRFs, as well as the other provisions of the ADF trade reporting rules, which do not refer to specific trade report modifier labels.⁷ Additionally, FINRA is proposing to renumber the subparagraphs in Rule 6282(a)(2) relating to the ADF and Rule 6622(a)(3) relating to the ORF to conform to the numbering of the subparagraphs in Rules 6380A(a)(2) and 6380B(a)(2) relating to the TRFs.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will enhance market transparency by ensuring that these “outside normal market hours” trades are reported and disseminated closer to the actual execution time rather than reported at some later time during the trading day. As a result, market participants will have better information about the time of execution for such trades. For example, under current rules, a trade with the “outside normal market hours” modifier that is reported and disseminated at 9:20 a.m. could have been executed and reported real-time at 9:20 a.m., or it could have been executed at some point between midnight and the opening of the FINRA Facility at 8 a.m. There is currently nothing to distinguish a trade executed and reported at 9:20 a.m. from a trade executed between midnight and 8 a.m.

⁷ See, *e.g.*, Rules 6282(a)(4), 6380A(a)(2) and (5) and 6380B(a)(2) and (5).

⁸ 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).

⁹ 15 U.S.C. 78o-3(b)(6).

⁴ See Rules 6282(a)(2)(B); 6380A(a)(2)(C) and (D); 6380B(a)(2)(C) and (D); and 6622(a)(3)(C).

and reported at 9:20 a.m. Under the proposed rule change, a trade executed between midnight and 8 a.m. that is reported at 9:20 a.m. would be marked late, thus distinguishing it from a trade executed and reported real-time at 9:20 a.m. The Commission believes that this change will enhance market transparency by eliminating systematically imposed delays in the reporting of "outside normal market hours" trades to the FINRA/Nasdaq TRF and ORF.

The Commission believes that by conforming the reporting requirements and systems functionality with respect to "outside normal market hours" trades across FINRA Facilities, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail.¹⁰

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-FINRA-2009-031), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

¹⁰ The Commission notes that in connection with these changes to the trade reporting rules FINRA is also moving language from Rule 6282(a)(1) to Rule 6282(a)(6) concerning patterns or practices of late trade reporting. Rule 6282(a)(1) currently states that "[a] pattern or practice of late trade reporting without exceptional circumstances shall be considered conduct inconsistent with high standards of commercial honor and just equitable principles of trade violation of Rule 2010." The change FINRA is proposing would replace the word "shall" with "may," and applies the lower standard not only to a pattern or practice of late trade reporting outside of normal market hours, but to a pattern or practice of late trade reporting during normal market hours. Rule 6282 concerns transactions reported only to TRACS, and FINRA has informed the Commission staff that the change is designed to make the rule consistent with the FINRA/NASDAQ, FINRA/NYSE, and OTC Trade Reporting Facilities, all of which currently have the identical language to proposed Rule 6282(a)(6). Telephone call between Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA, and Kathy England, Assistant Director, Commission, May 29, 2009. The Commission expects FINRA to continue pursuing violations of its trade reporting rules and to continue, as appropriate, charging violations of Rule 2010 (Standards of Commercial Honor and Principles of Trade). The Commission notes that it has routinely upheld appeals from FINRA disciplinary actions when FINRA has charged respondents with violations of Rule 2010 based solely on an underlying violation of another SRO rule. See e.g., Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999), Exchange Act Release No. 41628 (July 20, 1999).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18270 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60386; File No. SR-OCC-2009-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Clearance and Settlement of Treasury Futures Contracts

July 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 1, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish parameters for OCC to clear and settle futures contracts based on U.S. Treasury Notes and Bonds ("Treasury Futures").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to establish new provisions to OCC's rules in order for OCC to provide clearance and settlement services for Treasury Futures transactions that are proposed to be traded by ELX Futures LP. ("ELX"), an electronic futures market that was designated as a contract market by the Commodity Futures Trading Commission ("CFTC") on May 22, 2009.⁴ Under the terms of its clearing agreement with ELX dated December 5, 2008,⁵ OCC will operate as the exclusive provider of clearance and settlement services through physical delivery for Treasury Futures and other futures, futures options, or commodity options that may be traded on ELX. As such, ELX will send OCC matched trade data so that OCC can margin the contracts and inform ELX members their payment and securities delivery obligations.

1. Delivery of Underlying Treasury Securities

As detailed in proposed modifications to Chapter 13 of its Rules, OCC clearing members may satisfy their delivery obligations with respect to Treasury Futures by delivering different treasury securities provided the securities meet certain specifications. Since there is not an established delivery date to deliver the underlying treasury securities, OCC proposes to permit a seller of Treasury Futures to elect to deliver on any business day during the delivery month, which, in the case of certain Treasury Futures, includes up to the third business day of the following month.

Delivery of the treasury securities underlying Treasury Futures will be effected directly between OCC clearing members rather than through the facilities of OCC. The delivery process will occur over a period of three business days and will be initiated by the submission of a delivery intent by the clearing member holding a short position in the Treasury Futures. After a delivery intent is submitted to OCC, OCC will assign the delivery intent to an open long position in Treasury Futures beginning with long positions with the oldest trading date. On the second business day of the delivery process, the delivering clearing members will be

⁴ Commodity Futures Trading Commission Release No. 5662-09 (May 28, 2009).

⁵ The clearing agreement is attached as Exhibit 5A to OCC's rule filing with the Commission. OCC states that the clearing agreement is generally similar to corresponding agreements between OCC and other futures exchanges.

required to submit invoices identifying the specific treasury securities to be delivered and the amounts the receiving clearing members must pay in settlement of the actual deliveries. On the second business day following the submission of a delivery intent, the treasury securities will be delivered and payment will be made through the correspondent banks of the delivering and receiving clearing members.

2. Settlement Failure

OCC is also proposing to add rules to Chapter 13 to address the direct settlement between clearing members for the delivery of the underlying treasury securities upon maturity of the Treasury Futures and to address failure to complete settlement. Specifically, in the event that either the delivering clearing member or the receiving clearing member with respect to a physically-settled futures contract believes that a failure to settle has occurred without proper cause, such clearing member will need to notify OCC of such failure by a set cut-off time. Then, OCC will determine whether delivery has in fact failed and if necessary determine the damages.

OCC's transactional guarantee will be limited to paying reasonable damages as determined by OCC in accordance with Rule 1308B. Rule 1308B provides that in the event of such a failure OCC will make payment to the non-defaulting clearing member in an amount equal to the damages incurred by the non-defaulting clearing member from such failure as determined by OCC. Such damages would be charged by OCC to the defaulting clearing member. OCC is proposing to add provisions to its By-Laws addressing inability to deliver underlying treasury securities similar to the provisions of Articles XIII of the By-Laws addressing the inability to deliver treasury securities upon the exercise of options on treasury securities.

OCC states that the proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act⁶ because the changes are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. The changes accomplish this purpose by applying substantially the same rules and procedures to transactions in

Treasury Futures as OCC applies to transactions in security futures and securities options. The proposed rule change is not inconsistent with any rules of OCC including any rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(4)⁸ thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-OCC-2009-13 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 No. SR-OCC-2009-13. 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 OCC's principal office and on OCC's Web site at http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp. 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-OCC-2009-01 and should be submitted on or before August 21, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18279 Filed 7-30-09; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2009-0033]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(4).

⁹ 17 CFR 200.30-3(a)(12).

ACTION: Notice of upcoming panel teleconference meeting.

DATES: August 31, 2009, 12 p.m.–2 p.m. (EDT).

Call-in number: 1–866–244–4637,
Conference ID: 1367805.

Leader/Host: Debra Tidwell-Peters.

SUPPLEMENTARY INFORMATION:

Type of meeting: The teleconference meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel provides independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel advises the Agency on creating an occupational information system tailored specifically for SSA's disability programs and adjudicative needs.

Advice and recommendations will relate to SSA's disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: We will post the agenda for the meeting on the Internet at http://www.ssa.gov/oidap/meeting_information.htm at least one week prior to the start date and you can receive it electronically by e-mail or by fax, upon request. We will keep records of all proceedings and they will be available for public inspection by appointment at the Panel office.

Contact Information: Anyone requiring information regarding the Panel should contact the Panel staff by: Mail addressed to the Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, Operations Building, 3–E–26, Baltimore, MD 21235, fax to (410) 597–0825, or e-mail to OIDAP@ssa.gov.

Debra Tidwell-Peters,

Designated Federal Officer.

[FR Doc. E9–18320 Filed 7–30–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6718]

Culturally Significant Object Imported for Exhibition Determinations: “Dutch Utopia: American Artists in Holland, 1880–1914”

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object in the exhibition: “Dutch Utopia: American Artists in Holland, 1880–1914,” imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Telfair Museum of Art, Savannah, Georgia, from on or about October 1, 2009, until on or about January 10, 2010; Taft Museum of Art, Cincinnati, Ohio, from on or about February 5, 2010, until on or about May 2, 2010; Grand Rapids Art Museum, Grand Rapids, Michigan, from on or about May 21, 2010, until on or about August 15, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 24, 2009.

C. Miller Crouch,

Acting Assistant Secretary, for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–18369 Filed 7–30–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6717]

Culturally Significant Object Imported for Exhibition Determinations: “Cezanne and American Modernism”

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object in the exhibition: “Cezanne and American Modernism,” imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Montclair Art Museum, Montclair, NJ, from on or about September 12, 2009, until on or about January 3, 2010; The Baltimore Museum of Art, Baltimore, MD, from on or about February 22, 2010, until on or about May 23, 2010, Phoenix Art Museum, Phoenix, AZ, from on or about July 3, 2010, until on or about September 26, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 24, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–18334 Filed 7–30–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6719]

Culturally Significant Objects Imported for Exhibition Determinations: "Arts of Ancient Viet Nam: From River Plain to Open Sea"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Arts of Ancient Viet Nam: From River Plain to Open Sea," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, TX, from on or about September 13, 2009, until on or about January 3, 2010; Asia Society, New York, NY, from on or about February 2, 2010, until on or about May 2, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202-453-8050)). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 24, 2009.

C. Miller Crouch,*Acting Assistant Secretary, for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9-18370 Filed 7-30-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6715]

Culturally Significant Objects Imported for Exhibition Determinations: "Leonardo da Vinci: Hand of the Genius"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Leonardo da Vinci: Hand of the Genius," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA, from on or about October 6, 2009, until on or about February 21, 2010; at the J. Paul Getty Museum, Los Angeles, CA, from on or about March 23 to on or about June 20, 2010; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 24, 2009.

C. Miller Crouch,*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9-18333 Filed 7-30-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2009-0121]

Notice of Request for Information Collection Approval**AGENCY:** Office of the Secretary, DOT.**ACTION:** Notice and requests for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the U.S. Department of Transportation (DOT) has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB), for renewal of a currently approved collection. The ICR describes the nature of the information collection and its expected cost and burden hours. OMB approved the form in 2006 with its renewal required by July 31, 2009. The **Federal Register** Notice with a 60-day comment period soliciting comments on the form renewal was published on May 22, 2009, [74 FR 24061]. No comments were received.

DATES: Comments on this notice must be received by August 31, 2009 and sent to DOT/OST Desk Officer, 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: Tami Wright, Associate Director, Compliance Operations Division (S-34), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, 202-366-9370 or (TTY) 202-366-0663.

SUPPLEMENTARY INFORMATION:

Form Title: Individual Complaint of Employment Discrimination (DOT F 1050-8)

OMB Control Number: 2105-0556.

Abstract: DOT will utilize the form to collect information necessary to process Equal Employment Opportunity (EEO) discrimination complaints filed by individuals who are not Federal employees and are applicants for employment with the Department. These complaints are processed in accordance with the Equal Employment Opportunity Commission's regulations, 29 CFR part 1614, as amended. DOT will use the form to: (a) Request requisite information from the applicant for processing his/her EEO employment discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An applicant's filing of an EEO employment complaint is solely voluntary. DOT estimates that it takes an applicant approximately one hour to complete the form.

Affected Public: Job applicants filing EEO employment discrimination complaints.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Annual Estimated Burden: 10 hours.

Frequency of Collection: An

applicant's filing of an EEO employment complaint is solely voluntary.

Comments are invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department, and (b) the accuracy of the Department's estimate of the burden of the proposed information collection, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Issued in Washington, DC on July 24, 2009.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E9-18238 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 18, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT-OST-2009-0163.

Date Filed: July 17, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 7, 2009.

Description: Application of TAP Portugal ("TAP") requesting an amendment to its foreign air carrier permit so that the authority granted by such permit will reflect the full extent of the rights of Community airlines under the Air Transport Agreement between the United States and the European Community and the Member States of the European Community specifically, TAP seeks blanket open skies authority to enable TAP to engage in: (i) Scheduled and charter foreign air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) scheduled and charter foreign air transportation of persons, property and mail between any point or points in any member of the European Common Aviation Area and any point or points in the United States; (iii) scheduled and charter all-cargo foreign air transportation between any point or points in the United States and any other point or points; (iv) other charters subject to the Department's regulations; (v) and transportation authorized by any additional route rights made available to European Community airlines in the future. TAP also requests exemption authority to the extent necessary to enable it to engage in the above described operations pending issuance of an amended foreign air carrier permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-18291 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35116]

R.J. Corman Railroad Company/ Pennsylvania Lines Inc.—Construction and Operation Exemption—In Clearfield County, PA

ACTION: Notice of Availability of the Final Scope of Study for the Environmental Impact Statement.

SUMMARY: On May 20, 2008, R.J. Corman Railroad Company/Pennsylvania Lines Inc. (RJCP) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for

authority to construct and operate an abandoned 10.8-mile rail line between Wallaceton Junction and Winburne in Clearfield County, Pennsylvania (the Western Segment) and to reactivate a connecting 9.3-mile line between Winburne and Gorton in Clearfield and Centre Counties, Pennsylvania (the Eastern Segment) that is currently being used for interim trail use, subject to the possible restoration of rail service (rail banking) pursuant to the Trails Act, 16 U.S.C. 1247(d). In total, the proposed project would involve the construction, rebuilding, and operation of approximately 20 miles of the former Beech Creek Rail Line to serve a new quarry, landfill, and industrial park being developed by Resource Recovery, LLC, near Gorton, Pennsylvania.¹

Because this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). On January 8, 2009, SEA published a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** announcing the start of the scoping process, the availability of the Draft Scope of Study, and the date/time/location for a public scoping meeting. Invitation letters for the public scoping meeting were mailed to 31 federal, state, and local agencies, as well as local elected officials. Additionally, an advertisement was placed in two local area newspapers, the Centre Daily Times and the Progress News, to announce the public scoping meeting.

Approximately 130 individuals attended the open-house scoping meeting held on February 10, 2009 at the Philipsburg-Osceola Area Senior High School in Philipsburg, Pennsylvania. In total, SEA received:

- 100 comments from individuals attending the open house meeting;
- 13 comment letters; and
- 17 individual comments filed electronically on the Board's Web site/e-mail.

¹ On July 27, 2009, the Board issued a decision finding that RJCP does not need construction authority under 49 U.S.C. 10901 or 49 U.S.C. 10502 to reactivate the rail banked Eastern Segment. Nevertheless, the environmental review process will encompass the entire 20 miles of proposed rail line (*i.e.*, both the Eastern and Western Segments), for the reasons discussed in the Draft Scope of Study and the Board's July 27th decision. *See R.J. Corman Railroad Company/Pennsylvania Lines Inc.—Construction and Operation Exemption—In Clearfield County, PA*, STB Finance Docket No. 35116 (STB served July 27, 2009).

Based on the comments received and further analysis, SEA has prepared the Final Scope of Study for the EIS, which is included in this notice.

Address for Further Information:

Written requests for further information on the proposed project should be directed to: Danielle Gosselin, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423.

Electronic requests may be made via the Board's Web site, <http://www.stb.dot.gov>, by clicking on the "E-FILING" link. Please refer to STB Finance Docket No. 35116 in all correspondence, including e-filings, addressed to the Board.

Environmental Review Process: The NEPA environmental review process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. Based on the information provided in RJCP's filing, and the project's potential to result in significant environmental impacts, SEA (the office within the Board responsible for preparing the Board's environmental documentation under NEPA, and related environmental statutes) has decided to prepare a full EIS. The EIS will include all of the environmental information necessary for the Board to take the hard look at environmental consequences required by NEPA.

On January 8, 2009, SEA issued a NOI to individuals and agencies potentially interested in or affected by the proposed project informing them of the Board's decision to prepare an EIS and to initiate the formal scoping process. In the NOI, SEA also made available the Draft Scope of Study and requested comments. A public scoping meeting was held and comments were received between January 8, 2009 and February 24, 2009. After carefully reviewing the public comments, SEA is issuing this Final Scope of Study for the EIS.

The Draft EIS will address the environmental issues and concerns identified during the scoping process and detailed in this Final Scope of Study. It will also include an analysis of project alternatives and preliminary recommendations for environmental mitigation measures.

The Draft EIS will be made available upon its completion for review and comment by the public, government agencies, and other interested parties. A public meeting will be held during the comment period for the Draft EIS. The details of the public meeting, including the specific format, location, and date, will be available in the Draft EIS. SEA will then prepare a Final EIS that

considers comments on the Draft EIS, sets forth any additional analyses, and makes final recommendations to the Board on appropriate mitigation measures. In reaching its decision in this case, the Board will take into account the full environmental record, including the Draft EIS, the Final EIS, and all timely environmental comments that are received.

Discussion: The principal issues raised by commenters during scoping are briefly outlined and responded to below. Many of the comments submitted raised the same or similar issues. Thus, SEA has used the plural term, "commenters" to refer to all persons submitting comments, including individuals.

Nature of the Public Scoping Meeting

A number of comments were submitted relating to the format of the public scoping meeting held on February 10, 2009. Several commenters expressed disappointment in the open-house/plans display meeting format used for the public scoping meeting. At the meeting, project personnel were staffed at display boards, and formal comment sheets were available. However, commenters indicated that they would have preferred a public meeting format with a formal project presentation followed by an audience-wide question and answer session. Many commenters noted that they did not feel as if they were able to effectively voice their concerns about the project.

The open-house/plans display style of public meeting that was held in this case is often used in the early stages of project development to allow more individual interaction between the project study team and the public. The format used here is particularly appropriate for public scoping meetings, where one of the primary reasons for the meeting is for the project study team to gather important project-related information from the public, rather than to present the findings of detailed studies, which would not have occurred yet in the early stages of a project. SEA recognizes the importance of providing opportunities for public comment. All interested parties, agencies, government entities, and members of the general public will have the opportunity to submit written comments upon release of the Draft EIS and prior to issuance of the Final EIS and to participate at the additional public meeting that will be held in the project area when the Draft EIS has been issued. Therefore, attendees at the public scoping meeting who were disappointed with the scoping meeting format will have

additional opportunities to express their views and concerns about this project as the environmental review process proceeds.

Proposed Action and Alternatives

Connected Action Issue

Many of the concerns that emerged through the scoping process involved Resource Recovery's proposed landfill, quarry and industrial park development near Gorton in Rush Township, Centre County, and the nature of the materials that would be transported by RJCP over the proposed rail line. In fact, the vast majority of comments received were related to Resource Recovery's proposed landfill itself. Commenters indicated that they oppose the proposed landfill. In addition, a number of commenters requested that the Board expand the scope of the EIS to include the development of the landfill. These commenters argued that the proposed rail line and the landfill development should be considered connected actions under 40 CFR 1508.25. Commenters maintained that without the landfill, the rail line would not be commercially feasible.

Based on the available information to date including additional information submitted by RJCP and information provided by the public, SEA has determined that expanding the scope of the EIS to include the landfill development as a connected action is not warranted. As indicated in the Draft Scope of Study, however, the landfill, quarry and industrial park will be appropriately examined in the Draft EIS as part of the cumulative impacts analysis for the proposed project. The Draft EIS will include further detailed discussion of this connected action issue as well.

Alternate Route to Munson

One commenter at the public scoping meeting suggested that an alternate route to Munson was available that would potentially avoid and minimize many of the socioeconomic, transportation and safety, noise, and land use impacts associated with RJCP's proposed Western Segment, which stretches 10.8 miles between Wallacetown and Winburne. The alternate alignment, known as the Munson Alternative, would utilize approximately 7 miles of the former Conrail right of way last referred to as the Philipsburg Industrial Track. This route would extend south from Munson to a point near Philipsburg. Like the rest of the Western Segment, the Philipsburg Industrial Track was also part of the "Clearfield Cluster" abandoned by Conrail in 1995

pursuant to ICC Docket No. AB-167 (Sub-No. 1146X). The alternate alignment follows the Western Segment west from Winburne to Munson, but then heads south over the former Philipsburg Industrial Track. At the southern end of the Philipsburg Industrial Track, a new 2,500-foot connection would be constructed to tie into RJCP's existing Wallaceton Subdivision line at or near milepost 24.62.

It appears that this alternate route would avoid and minimize a number of the potential environmental issues associated with RJCP's Western Segment by impacting significantly fewer adjacent homes and by crossing fewer public roads and private drives. According to RJCP, this alternate route would provide rail service to several new shippers. Operationally, this alternative alignment would require approximately 4.5 miles of additional travel over RJCP's active Wallaceton Subdivision (i.e., Wallaceton Junction to milepost 24.62 outside Philipsburg), but would involve slightly less construction activity (8 miles from Wallaceton to Munson reduced to 7 miles from Philipsburg to Munson plus ½ mile of new connecting track). Therefore, the Munson Alternative will be included for detailed study as part of the EIS alternatives analysis process.

Environmental Impact Categories

Transportation and Safety

Some commenters expressed concern about RJCP's planned transport of municipal solid waste over the proposed rail line, raising issues related to containment during transport, leakage during transport, and environmental damage/degradation associated with potential derailment. These issues will be included and evaluated as part of the transportation and safety section of the EIS.

Air Quality

Some commenters expressed concern about the potential for odors emanating from rail cars hauling municipal solid waste. To address these comments, the air quality scope of work has been revised to include a qualitative assessment of this issue.

Biological Resources

Some commenters expressed concern regarding the potential for vermin/vectors and disease associated with the transport of municipal solid waste. Based on these comments, the biological resources scope of work has been revised to include an evaluation of this issue.

Socioeconomics

Some commenters raised concerns about quality of life issues for residential property owners adjacent to the proposed rail line. Quality of life issues for adjacent property owners will be evaluated and presented as part of the study of potential socioeconomic impacts of the project in the EIS.

Final Scope of Study for the EIS

Proposed Action and Alternatives

The Proposed Action is the construction and operation of an abandoned 10.8-mile rail line between Wallaceton Junction and Winburne and the reactivation of 9.3 miles of currently rail banked line between Winburne and Gorton. The approximately 20 miles of track would allow RJCP to provide rail service to a proposed new landfill, quarry and industrial park being developed by Resource Recovery, LLC, near Gorton in Rush Township, Centre County, Pennsylvania. The anticipated train traffic would be two trains daily, with one train per day traveling in each direction. In addition to the Proposed Action, the EIS will analyze the potential impacts of two non-rail transportation options for the no-build alternative and a no-action alternative set forth below. Additionally, the Munson Alternative using the abandoned line of Conrail's former Philipsburg Industrial Track will be evaluated in the EIS.

Specifically, the reasonable and feasible alternatives that will be evaluated in the EIS are: (1) Construction and operation of the proposed rail line along the former Beech Creek line (including the alternate route to Munson using Conrail's former Philipsburg Industrial Track), (2) the no-build alternative option 1 involving the construction of a new interchange on Interstate 80, (3) the no-build alternative option 2, involving improving the existing local road system (i.e., road paving, bridge replacement etc.), and (4) the no-action alternative (i.e., status quo, no rail construction and reactivation or roadway improvements).

Environmental Impact Analysis

Proposed New Construction and Reactivation and Operation of Rail Banked Line

The EIS will address the proposed activities associated with the construction of new rail line, the reactivation of rail banked line and the operation of approximately 20 miles of rail line and potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze the potential impacts associated with the proposed project on both the human and natural environment, or in the case of the no-action alternative, the lack of these impacts. Impact areas to be addressed will include the following: Transportation and safety; land use; energy resources; air quality; noise; biological resources, including threatened and endangered species; water resources, including wetlands and other jurisdictional waters of the U.S.; socioeconomic as it relates to physical changes in the environment; recreation; environmental justice; geology and soils; and cultural/historic resources. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts of each alternative on each category, as outlined below.

1. Transportation and Safety

- The EIS will:
- a. Evaluate potential pedestrian and motor vehicle safety concerns at each public and private at-grade road crossing.
 - b. Include a "level of service" (LOS) analysis, focusing on average vehicle delay time for all grade crossings having an average daily traffic volume of 5,000 or more vehicles.
 - c. Include an assessment of any appropriate safety measures that should be erected at each crossing.
 - d. Assess the project's operational safety (including the potential for derailments), taking into account the proposed line's close proximity to residential structures.
 - e. Evaluate the project's consistency with local and regional transportation planning goals.
 - f. Assess the potential for increased wildfires in remote forested areas as a result of daily rail operations.
 - g. Propose mitigation measures to minimize or eliminate potential project-related impacts to safety, as appropriate.

2. Land Use

- The EIS will:
- a. Identify existing land uses that would be potentially impacted by the project.
 - b. Evaluate potential changes to property values of adjacent property owners that could result from the proposed project.
 - c. Evaluate the project's consistency with local and regional land use planning goals.
 - d. Propose mitigation measures to minimize or eliminate potential impacts to land use, as appropriate.

3. Energy Resources

The EIS will:

a. Describe the potential effects of the project on energy resources, recyclable commodities, and overall changes in energy efficiency.

b. Propose mitigation measures to minimize or eliminate potential impacts to energy resources, as appropriate.

4. Air Quality

The EIS will:

a. Quantitatively evaluate rail operation air emissions, if the project would affect a Class I or non-attainment or maintenance area as designated under the Clean Air Act.

b. Qualitatively evaluate the potential temporary air quality impacts that would result from the proposed rail line construction activities.

c. Qualitatively evaluate the potential for ambient odors that would be associated with the transport of municipal solid waste.

d. Propose mitigation measures to minimize or eliminate potential project-related impacts to air quality, as appropriate.

5. Noise/Vibration

The EIS will:

a. Quantitatively evaluate potential noise impacts, including the use of any auditory warning devices at public road crossings that would result from the proposed rail operations.

b. Qualitatively evaluate the temporary noise impact that would result from the proposed rail line construction activities.

c. Qualitatively evaluate potential vibration impacts to residences and businesses immediately adjacent to the proposed rail line.

d. Propose mitigation measures to minimize or eliminate potential project-related impacts to sensitive noise receptors, (locations where people may be adversely affected by project-related noise), as appropriate.

6. Biological Resources

The EIS will:

a. Evaluate the existing biological resources within the project area, including vegetative communities, terrestrial and aquatic habitats, and known wildlife species.

b. Evaluate potential impacts of this project on any Federal or state threatened and endangered plant or animal species.

c. Describe the proposed project's impact on any wildlife sanctuaries, refuges, national and state parks/forests, or state game lands.

d. Evaluate the potential for vermin/vectors for disease that would be

associated with the transport of municipal solid waste, as a result of this project.

e. Document all coordination and consultation that has been conducted with Federal and state agencies having jurisdiction over biological resources.

f. Propose mitigation measures to avoid, minimize or compensate for potential impacts to biological resources, as appropriate.

7. Water Resources

The EIS will:

a. Describe the existing surface water resources that have been identified within the project area, including all jurisdictional wetlands and waterways and their regulatory floodplains.

b. Evaluate project-related impacts to all jurisdictional surface water resources.

c. Evaluate project-related impacts to all groundwater resources and public water supplies.

d. Document the necessary Federal and state water resource/encroachment permitting requirements that would apply to the proposed project.

e. Propose mitigation measures to avoid, minimize or compensate for potential impacts to water resources, as appropriate.

8. Socioeconomics

The EIS will:

a. Summarize the existing local and regional socioeconomic conditions in the project area, including long-term population, housing and employment metrics.

b. Document the locations of existing community facilities and services that have been identified within the project area.

c. Evaluate the proposed project's potential impact to socioeconomic conditions/community facilities and services within the project area, including a discussion of any issues, such as employment gains and losses that would result from the proposed project.

d. Propose mitigation measures to avoid, minimize or compensate for potential impacts to regional socioeconomic factors, as appropriate.

9. Recreation

The EIS will:

a. Identify existing public and private recreational facilities within the project area (including the Snow Shoe Multi-Use Rail Trail), and evaluate the proposed project's impact to these recreational facilities.

b. Propose mitigation measures to avoid, minimize, or compensate for potential project-related impacts to recreational facilities, as appropriate.

10. Environmental Justice

The EIS will:

a. Evaluate the potential project impacts on local and regional minority and low-income populations.

b. Propose mitigation measures to minimize or eliminate potential project impacts on environmental justice populations, as appropriate.

11. Geology and Soils

The EIS will:

a. Describe the geologic and soil conditions within the project area, including the status of past and present coal mining operations.

b. Evaluate potential ways to avoid or construct through active surface mined areas, to the extent practicable.

c. Propose mitigation measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

12. Cultural/Historic Resources

The EIS will:

a. Document all historic resource eligibility and effect studies that have been conducted pursuant to Section 106 of the National Historic Preservation Act.

b. Document all coordination and consultation related to this project that has taken place with the state historic preservation officer.

c. Propose mitigation measures to minimize or eliminate potential project impacts to cultural/historic resources, as appropriate.

13. Cumulative and Indirect Impacts

The EIS will:

a. Address any identified potential cumulative impacts of the project, as appropriate. Cumulative impacts are the impacts on the environment which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions (for example, Resource Recovery, LLC's proposed new landfill, quarry and industrial park).

b. Address any identified potential indirect impacts of the project, as appropriate. Indirect impacts are impacts that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

Decided: July 28, 2009.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E9-18276 Filed 7-30-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Environmental Impact Statement:
Bexar County, TX**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1508.22 and 43 Texas Administrative Code § 2.5 (e)(2), the Federal Highway Administration, Texas Department of Transportation (TxDOT) and Alamo Regional Mobility Authority are issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to Loop 1604 in San Antonio, Texas, within Bexar County limits to enhance mobility and improve safety from FM 1957 to IH 35 North, a distance of approximately 32.35 miles in Bexar County Texas. Areas within the city of San Antonio are included in the project study area.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, District A, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701. Phone: 512-536-5950.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Texas Department of Transportation and the Alamo Regional Mobility Authority will prepare an EIS for transportation improvements to Loop 1604 from FM 1957 to IH 35 North, a distance of approximately 32.35 miles. The current Loop 1604 facility consists of a four-lane divided, partial access-controlled roadway from FM 1957 to State Highway (SH) 16 and a four-lane expressway with full access-controlled through travel lanes and parallel partially access-controlled lanes that interface among the through travel lanes, local land use, and connecting roadways from SH 16 to IH 35 North. Growth, development, and traffic congestion continue to increase along Loop 1604 from FM 1957 to IH 35 North. The project is needed as Loop 1604 does not currently meet present and future growth, development, and traffic demands creating inefficiencies in facility safety, mobility, and operation. The proposed purpose of the project is to improve safety within the Loop 1604 corridor, enhance mobility and operational efficiency, and to deliver and implement the benefits in an expeditious manner.

The currently proposed project, as included in the San Antonio-Bexar

County Metropolitan Planning Organization's Mobility 2030 Plan, is an added capacity project to add frontage roads and additional main lanes as follows: From SH 151 to 1.2 miles south of SH 16, expand to a 6 lane toll expressway with non-toll frontage roads and from 1.2 miles south of SH 16 to IH 35, expand the expressway lanes from 4 to 6 or 8 lanes with the new lanes being toll lanes. The Loop 1604 EIS will evaluate build and no-build alternatives, including those in the Mobility 2030 Plan. In addition to the build and no-build alternatives, Transportation System Management (TSM), Transportation Demand Management (TDM), transit, and tolled and non-tolled alternatives will also be considered. The EIS will study potential impacts from construction and routine operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvements), air and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States, impacts to historic and archeological resources, impacts to floodplain, socio-economic resources (including Environmental Justice and Limited English Proficiency population), indirect and cumulative impacts, land use, vegetation, wildlife, impacts to and/or potential displacement of residences and businesses, and aesthetic and visual resources.

Anticipated federal permits, pending selection of alternatives and field surveys may include, but are not limited to, the following: Section 106 (National Historic Preservation Act), Section 401/404 (Clean Water Act), and Section 7 (Endangered Species Act). A Project Coordination Plan will be provided in accordance with Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Title VI, Section 6002, Efficient Environmental Reviews for Project Decision Making, August 10, 2005, to facilitate and document the lead agencies; structure interaction with the public and other agencies and to inform the public and other agencies of how the coordination will be accomplished. The Project Coordination Plan will promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule,

level of detail for alternatives analysis, methodologies to be used in the environmental analysis, and the proposed process for coordination and communication.

This Project Coordination Plan is designed to be part of a flexible and adaptable process. The Project Coordination Plan will be available for public review, inputs, and comments at public meetings, including scoping meetings and hearings held, in accordance with the National Environmental Policy Act (NEPA) through the evaluation process, and upon request at the Alamo Regional Mobility Authority's office. Pursuant to 23 U.S.C. Chapter 1, Subchapter 1, Section 139 of SAFETEA-LU, cooperating agencies, participating agencies, and the public will be given an opportunity for input in the development of the project. The first of a series of public scoping meetings, conducted in an open house format, is planned to be held in the fall of 2009. This preliminary scoping meeting will be the first in a series of meetings to solicit public comments throughout the planning process on the proposed action as part of the NEPA process.

The scoping meetings will provide opportunities for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project and to assist in determining the range of alternatives for consideration in the EIS and alternative evaluation methodologies. As part of the scoping process, correspondence describing the proposed action and soliciting comments to be considered during the scoping process will be sent to the appropriate federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project. Public scoping meetings and public hearings will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of each. The Draft EIS will be available for public and agency review and comment prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided. A proposed schedule for completion of the environmental review process is not available at this time;

however, it will become accessible for public review at a future date.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: July 27, 2009.

Salvador Deocampo,

District Engineer.

[FR Doc. E9-18292 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2009-0113; Notice 1]

Auto Temp, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Auto Temp, Inc. (Auto Temp) has determined that certain replacement backlights (part number FB22692 GTY ATI), manufactured for 2006-09 Honda Civic 2-Door Coupe passenger cars, do not fully comply with paragraph S5.2 of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials*. Auto Temp 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), Auto Temp 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 Auto Temp'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.

Auto Temp estimated that 68 replacement backlights manufactured on July 14, 2008, intended for 2006-09 Honda Civic 2-Door coupe passenger cars, are involved and that 80% of those backlights may be noncompliant.

Paragraphs S5.2 of FMVSS No. 108 require in pertinent part:

S5.2 Each of the test specimens described in ANSI/SAE Z26.1-1996 Section 5.7 (fracture test) must meet the fracture test requirements of that section when tested in accordance with the test procedure set forth in that section.

5.7.4 Interpretation of Results. NO individual fragment free from cracks and

obtained within 3 minutes subsequent to test shall weight more than 4.25g (0.15oz).

Auto Temp explained that the noncompliance is that the subject backlights do not meet the fracture test requirements of FMVSS No. 205 Section 5.7 Fracture Test 7 ANSI/SAE Z26.1-1996, because several tests revealed that out of 8 tested backlights, 6 contained fragments that exceeded the 4.25g (0.15oz) threshold specified by the above standard.

Auto Temp states that it believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons. Out of several thousand total fragments no more than 2 noncompliant fragments were found from a single backlight. Each of the noncompliant fragments exhibited all of the characteristics of tempered safety glass. The position of the noncompliant fragments in the backlight, coupled with the package tray location of the Honda Civic 2-Door Coupe, minimizes the potential for any contact between glass fragments and vehicle occupants. The extremely low percentage of noncompliant fragments, together with the small number of total affected backlights, results in a minimal impact on issue of motor vehicle safety.

Auto Temp also has informed NHTSA that since it 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 it has not yet formulated a remedy for the noncompliance. However, Auto Temp has agreed to reimburse its customers for all returned parts (FB22692 GTY ATI backlights produced on July 14, 2008) regardless of the filing of an inconsequential petition.

Auto Temp also informed NHTSA that it has corrected the problem that caused this noncompliance.

In summation, Auto Temp states that it believes that the noncompliances are 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 a.m. to 5 p.m. 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 27, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9-18253 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 18, 2009

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT-OST-2009-0164.

Date Filed: July 17, 2009.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 604. Resolution 010d.

Establishing Passenger Fares and Related Charges from Nepal (Memo 1535).

Intended effective date: 1 August 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-18293 Filed 7-30-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8082

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 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

DATES: Written comments should be received on or before September 29, 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: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

OMB Number: 1545-0790.

Form Number: 8082.

Abstract: A partner, S corporation shareholder, or the holder of a residual interest in a real estate mortgage investment conduit (REMIC) generally must report items consistent with the way they were reported by the partnership or S corporation on Schedule K-1 or by the REMIC on Schedule Q. Also, an estate or domestic trust beneficiary, or a foreign trust owner or beneficiary, is subject to the consistency reporting requirements for returns filed after August 5, 1997. Form 8082 is used to notify the IRS of any inconsistency between the tax treatment of items reported by the partner, shareholder, etc., and the way the pass-through entity treated and reported the same item on its tax return.

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, individuals, and farms.

Estimated Number of Respondents: 7,067.

Estimated Time per Respondent: 7 hr., 13 min.

Estimated Total Annual Burden Hours: 51,024.

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 22, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9-18256 Filed 7-30-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (Call Center)]

Proposed Information Collection (Call Center Satisfaction Survey): Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from Veterans regarding their

recent experience in contacting the VA call centers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 29, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at <http://www.Regulations.gov> or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail:

nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900—New Call Center" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of

Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VBA Call Center Satisfaction Survey.

OMB Control Number: 2900—New (Call Center).

Type of Review: New Collection.

Abstract: VBA maintains a commitment to improve the overall quality of service for Veterans. Feedback from Veterans regarding their recent experience to the VA call centers will provide VBA with three key benefits to: (1) Identify what is most important to Veterans; (2) determine what to do to improve the call center experience; and (3) serve to guide training and/or operational activities aimed at enhancing the quality of service provided to Veterans and active duty personnel.

Affected Public: Individuals or households.

Estimated Annual Burden: 675 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,700.

Dated: July 27, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9-18235 Filed 7-30-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Friday,
July 31, 2009**

Part II

Securities and Exchange Commission

**17 CFR Parts 200 and 242
Amendments to Regulation SHO; Final
Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 242

[Release No. 34-60388; File No. S7-30-08]

RIN 3235-AK22

Amendments to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is finalizing amendments to Regulation SHO under the Securities Exchange Act of 1934 (“Exchange Act”) by making permanent amendments contained in Interim Final Temporary Rule 204T (“temporary Rule 204T”) of Regulation SHO, with some modifications to address commenters’ concerns. These amendments are intended to help further our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, these amendments are intended to help further our goal of addressing abusive “naked” short selling in all equity securities. These goals will be furthered by requiring that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. Failure to comply with the close-out requirement of this final rule is a violation of the rule. In addition, a participant that does not comply with this close-out requirement, and any broker-dealer from which it receives trades for clearance and settlement, will not be able to short sell the security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security, until the fail to deliver position is closed out.

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

FOR FURTHER INFORMATION CONTACT: Jo Anne Swindler, Acting Associate Director; Josephine Tao, Assistant Director; Victoria Crane, Branch Chief; David Bloom and Christina M. Adams, Special Counsels; Matthew Sparkes or Katrina Wilson, Staff Attorneys, Office of Trading Practices and Processing, Division of Trading and Markets, at (202) 551-5720, at the Commission, 100

F Street, NE., Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION: We are adding Rule 204 of Regulation SHO [17 CFR 242.204] under the Exchange Act and removing Rule 204T of Regulation SHO [17 CFR 242.204T] under the Exchange Act.

I. Introduction

In October 2008, we adopted temporary Rule 204T of Regulation SHO as an interim final temporary rule, with an expiration date of July 31, 2009.¹ As discussed in more detail below, temporary Rule 204T strengthens the close-out requirements of Regulation SHO for failures to deliver securities (known as “fails” or “fails to deliver”) resulting from sales of any equity security. Our adoption of temporary Rule 204T followed a series of other steps aimed at reducing fails to deliver and addressing potentially abusive “naked” short selling.³

In addition, at the time that we adopted temporary Rule 204T, we noted our concerns about the sudden and unexplained declines in the prices of equity securities generally and the deterioration in investor confidence in our financial markets.⁴ Such price declines can give rise to questions about the underlying financial condition of an entity, which in turn can create a crisis of confidence even without a fundamental underlying basis.⁵ This crisis of confidence can impair the liquidity and ultimate viability of an entity, with potentially broad market consequences.⁶ Thus, we also adopted temporary Rule 204T to further our goal of preventing substantial disruption in the securities markets by providing a powerful disincentive to those who might otherwise engage in potentially abusive “naked” short selling.⁷

Preliminary results from the Commission’s Office of Economic Analysis (“OEA”) indicate that our various actions to further reduce fails to deliver and, thereby, address potentially abusive “naked” short selling are having their intended effect. For example, these preliminary results indicate a significant

downward trend in the number of fails to deliver in all equity securities since, among other actions, the adoption of temporary Rule 204T.⁸ These results provide, among other things, that in comparing a pre- to post-temporary Rule 204T adoption period,⁹ the average daily number of fails to deliver for all equity securities has declined from 1.1 billion to 478 million for a total decline of 56.6 percent. In addition, the average daily number of threshold securities declined from 480 securities to 108 securities in comparing the pre- to post-temporary Rule 204T adoption period, a decline of 77.5%.¹⁰

Due to the positive impact that temporary Rule 204T,¹¹ as well as other recent Commission actions, are having on reducing fails to deliver and after considering the comments received to temporary Rule 204T, we are adopting the provisions of that rule in a permanent rule, Rule 204 of Regulation SHO, with some limited modifications to refine provisions and address commenters’ concerns.¹² In general, as discussed in more detail below, we are maintaining the structure of temporary Rule 204T, while making some

⁸ See Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, November 26, 2008 at <http://www.sec.gov/comments/s7-30-08/s73008-37.pdf>; see also Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, March 20, 2009 at <http://www.sec.gov/comments/s7-30-08/s73008-107.pdf>; Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, April 16, 2009 (“OEA April 2009 Memorandum”) at <http://www.sec.gov/comments/s7-30-08/s73008-121.pdf>.

⁹ The OEA April 2009 Memorandum defined the pre-Rule period as the period from January 1, 2008 to September 22, 2008, and the post-Rule period as September 23, 2008 to March 31, 2009. The post-Rule period was also post elimination of the options market maker exception to Regulation SHO’s close-out requirement in Rule 203(b)(3) of Regulation SHO. See OEA April 2009 Memorandum; see also *infra* notes 38-41 and accompanying text.

¹⁰ See OEA April 2009 Memorandum.

¹¹ We note in this regard that at a public Roundtable to Examine Short Sale Price Test and Circuit Breaker Restrictions held on May 5, 2009 (the “Short Sale Price Test Roundtable”), a number of participants of the Roundtable commented on the success of temporary Rule 204T at reducing fails to deliver and urged the Commission to adopt temporary Rule 204T as a permanent rule. See, e.g., <http://www.sec.gov/spotlight/shortsales/roundtable050509/shortsalesroundtable050509-transcript.txt>.

¹² We received approximately 120 comment letters in response to the Rule 204T Adopting Release. The comment letters are available on the Commission’s Internet Web site at <http://www.sec.gov/comments/s7-30-08/s73008.shtml>. Further, as noted above, a number of participants at the Commission’s Short Sale Price Test Roundtable expressed views about temporary Rule 204T. See e.g., <http://www.sec.gov/spotlight/shortsales/roundtable050509/shortsalesroundtable050509-transcript.txt>. See also comments to the Short Sale Price Test Roundtable at <http://www.sec.gov/comments/4-581/4-581.shtml>.

¹ See Exchange Act Release No. 58733 (Oct. 14, 2008), 73 FR 61706 (Oct. 17, 2008) (“Rule 204T Adopting Release”).

² Fails to deliver occur when a seller fails to deliver securities to the buyer when delivery is due. See *infra* note 16 and accompanying text.

³ See *infra* Section II (discussing other Commission actions aimed at reducing fails to deliver and addressing potentially abusive “naked” short selling).

⁴ See Rule 204T Adopting Release, 73 FR 61707.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

adjustments to promote its workability.¹³

We believe that Rule 204 of Regulation SHO will continue to help further our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, these amendments are intended to help further our goal of addressing potentially abusive “naked” short selling. These goals will be furthered by, among other things, requiring that securities are purchased or borrowed to close out any fail to deliver position resulting from a short sale of an equity security by no later than the beginning of regular trading hours on the settlement day following the date on which the fail to deliver position occurred. Similar to temporary Rule 204T of Regulation SHO, Rule 204 will continue to provide a disincentive to those who might otherwise engage in potentially abusive “naked” short selling.

II. Background

Short selling involves a sale of a security that the seller does not own or a sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.¹⁴ Short sales normally are settled by the delivery of a security borrowed by or on behalf of the seller. In a “naked” short sale, however, the short seller does not borrow securities in time to make delivery to the buyer within the standard three-day settlement period.¹⁵ As a result, the seller fails to deliver securities to the buyer when delivery is due.¹⁶ Sellers sometimes intentionally

fail to deliver securities as part of a scheme to manipulate the price of a security,¹⁷ or possibly to avoid borrowing costs associated with short sales, especially when the costs of borrowing stock are high.

We have been concerned about reducing fails to deliver and addressing “naked” short selling, in particular, potentially abusive “naked” short selling, for some time. As we have stated on several prior occasions, we believe that all sellers of securities should promptly deliver, or arrange for delivery of, securities to the respective buyer and all buyers of securities have a right to expect prompt delivery of securities purchased.¹⁸ In addition, as we have stated on several prior occasions, we are concerned about the negative effect that fails to deliver may have on the markets and shareholders.¹⁹

For example, large and persistent fails to deliver may deprive shareholders of the benefits of ownership, such as voting and lending.²⁰ In addition, where a seller of securities fails to deliver securities on settlement date, in effect the seller unilaterally converts a securities contract (which is expected to settle within the standard three-day settlement period) into an undated futures-type contract, to which the buyer might not have agreed, or that might have been priced differently.²¹ Moreover, sellers that fail to deliver

securities on settlement date may attempt to use this additional freedom to engage in trading activities to improperly depress the price of a security. By not borrowing securities and, therefore, not making delivery within the standard three-day settlement period, the seller has additional freedom because it does not incur the costs of borrowing.

In addition, issuers and investors have repeatedly expressed concerns about fails to deliver in connection with manipulative “naked” short selling. For example, in response to proposed amendments to Regulation SHO in 2006,²² which were designed to further reduce the number of persistent fails to deliver in certain equity securities by eliminating Regulation SHO’s “grandfather” exception and limit the duration of the rule’s options market maker exception, we received a number of comments that expressed concerns about “naked” short selling and extended delivery failures.²³ Commenters continued to express these concerns in response to proposed amendments to eliminate the options market maker exception to the close-out requirement of Regulation SHO in 2007²⁴ and in response to the Rule 204T Adopting Release.²⁵

To the extent that fails to deliver might be part of manipulative “naked” short selling, which could be used as a tool to drive down a company’s stock price,²⁶ such fails to deliver may

⁷ 1993), 58 FR 52891 (Oct. 13, 1993). However, failure to deliver securities on T+3 does not violate Rule 15c6-1; see also Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544, n. 2 (Aug. 14, 2007) (“2007 Regulation SHO Final Amendments”).

¹⁷ In 2003, the Commission settled a case against certain parties relating to allegations of manipulative short selling in the stock of a corporation. The Commission alleged that the defendants profited from engaging in massive “naked” short selling that flooded the market with the stock, and depressed its price. See *Rhino Advisors, Inc. and Thomas Badian*, Lit. Rel. No. 18003 (Feb. 27, 2003); *SEC v. Rhino Advisors, Inc. and Thomas Badian*, Civ. Action No. 03 civ 1310 (RO) (S.D.N.Y.); see also Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, 62975 (Nov. 6, 2003) (“2003 Regulation SHO Proposing Release”) (describing the alleged activity in the case involving stock of Sedona Corporation); 2004 Regulation SHO Adopting Release, 69 FR 48016, n.76; Exchange Act Release No. 58774 (Oct. 14, 2008), 73 FR 61666 (Oct. 17, 2008) (“Anti-Fraud Rule Adopting Release”).

¹⁸ See, e.g., Rule 204T Adopting Release, 73 FR 61709; Exchange Act Release No. 57511 (Mar. 17, 2008), 73 FR 15376, 15377 (Mar. 31, 2008) (“Anti-Fraud Rule Proposing Release”).

¹⁹ See, e.g., Rule 204T Adopting Release, 73 FR 61709; 2007 Regulation SHO Final Amendments, 72 FR 45544; Exchange Act Release No. 54154 (July 14, 2006), 71 FR 41710, 41712 (July 21, 2006) (“2006 Regulation SHO Proposed Amendments”); Exchange Act Release No. 56213 (Aug. 7, 2007), 72 FR 45558, 45558-45559 (Aug. 14, 2007) (“2007 Regulation SHO Proposed Amendments”); Anti-Fraud Rule Proposing Release, 73 FR 15378.

²⁰ See *id.*

²¹ See *id.*

²² See 2006 Regulation SHO Proposed Amendments, 71 FR 41710.

²³ See, e.g., letter from Patrick M. Byrne, Chairman and Chief Executive Officer, Overstock.com, Inc., dated Sept. 11, 2006 (“Overstock”); letter from Daniel Behrendt, Chief Financial Officer, and Douglas Klint, General Counsel, TASER International, dated Sept. 18, 2006; letter from John Royce, dated April 30, 2007; letter from Michael Read, dated April 29, 2007; letter from Robert DeVivo, dated April 26, 2007; letter from Ahmed Akhtar, dated April 26, 2007.

²⁴ See, e.g., letter from Jack M. Wedam, dated Oct. 16, 2007; letter from Michael J. Ryan, Executive Director and Senior Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, dated Sept. 13, 2007 (“U.S. Chamber of Commerce”); letter from Robert W. Raybould, CEO Enteleke Capital Corp., dated Sept. 12, 2007 (“Raybould”); letter from Mary Helburn, Executive Director, National Coalition Against Naked Shorting, dated Sept. 12, 2007 (“NCANS”).

²⁵ See e.g., letter from Roel Campos, dated Mar. 25, 2009 (“Campos”); letter from the Risk Management Association, dated Dec. 23, 2008; letter from Professor James Angel, Ph.D., CFA, dated Dec. 17, 2008 (“Angel”); letter from Patrick Byrne, Ph.D., dated Dec. 16, 2008; letter from the American Bankers Association, dated Dec. 16, 2008 (“ABA”); letter from Fairfax Financial Holdings, Ltd., dated Oct. 16, 2008.

²⁶ See *supra* note 17 (discussing a case in which we alleged that the defendants profited from engaging in massive “naked” short selling that flooded the market with the company’s stock, and

undermine the confidence of investors.²⁷ These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct.²⁸ In addition, issuers may believe that they have suffered unwarranted reputational damage due to investors' negative perceptions regarding fails to deliver in the issuer's security.²⁹ Unwarranted

depressed its price); *see also* *S.E.C. v. Gardiner*, 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. Mar. 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price); *U.S. v. Russo*, 74 F.3d 1383, 1392 (2d Cir. 1996) (short sales were sufficiently connected to the manipulation scheme as to constitute a violation of Exchange Act Section 10(b) and Rule 10b-5).

²⁷ In response to the Rule 204T Adopting Release, we received comment letters discussing the impact of fails to deliver on investor confidence. *See e.g.*, letter from David Patch, dated Mar. 19, 2009; letter from Charles J. Greiner, dated Mar. 11, 2009. In response to the 2007 Regulation SHO Proposed Amendments, commenters discussed the impact of fails to deliver on investor confidence. *See e.g.*, letter from NCANS. Commenters expressed similar concerns in response to the 2006 Regulation SHO Proposed Amendments. *See e.g.*, letter from Mary Helburn, Executive Director, National Coalition Against Naked Shorting, dated Sept. 30, 2006 ("NCANS (2006)"); letter from Richard Blumenthal, Attorney General, State of Connecticut, dated Sept. 19, 2006 ("Blumenthal").

²⁸ In response to the Rule 204T Adopting Release, we received comment letters expressing concern about the impact of potential "naked" short selling on capital formation, claiming that "naked" short selling causes a drop in an issuer's stock price and may limit the issuer's ability to access the capital markets. *See e.g.*, letter from Campos (noting that "[i]n its most benign form, naked short selling is a hidden tax on equity markets, our largest wealth creation mechanism. At its worst, it is a violent force of wealth destruction that affects all market participants."); letter from Patrick Byrne Ph.D., Chairman and Chief Executive Officer, Overstock.com Inc., dated Dec. 16, 2008 (stating that "more needs to be done to correct the problem of naked short selling and to prevent more companies from being taken down by those that use it as a tool for manipulation."); *see also* letter from ABA. Commenters expressed similar concerns in response to the 2007 Regulation SHO Proposed Amendments. *See e.g.*, letter from Robert K. Lifton, Chairman and CEO, Medis Technologies, Inc., dated Sept. 12, 2007 ("Medis"); letter from NCANS. Commenters also expressed similar concerns in response to the 2006 Regulation SHO Proposed Amendments. *See e.g.*, letter from Congressman Tom Feeney—Florida, U.S. House of Representatives, dated Sept. 25, 2006 ("Feeney"); *see also* letter from Zix Corporation, dated Sept. 19, 2006 ("Zix") (stating that "[m]any investors attribute the Company's frequent re-appearances on the Regulation SHO list to manipulative short selling and frequently demand that the Company 'do something' about the perceived manipulative short selling. This perception that manipulative short selling of the Company's securities is continually occurring has undermined the confidence of many of the Company's investors in the integrity of the market for the Company's securities.").

²⁹ Due in part to such concerns, some issuers have taken actions to attempt to make transfer of their securities "custody only," (*i.e.*, certificating the securities and prohibiting ownership by a securities intermediary) thus preventing transfer of their stock to or from securities intermediaries such as the

reputational damage caused by fails to deliver might have an adverse impact on the security's price.³⁰

Although the majority of trades settle within T+3,³¹ we adopted Regulation SHO³² on July 28, 2004, in part to address problems associated with persistent fails to deliver securities and potentially abusive "naked" short selling. For example, Regulation SHO requires broker-dealers to "locate" securities that the broker-dealer reasonably believes can be delivered within the standard three-day settlement period.³³

Depository Trust Company ("DTC") or broker-dealers. *See* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, at 62975 (Nov. 6, 2003). Some issuers have attempted to withdraw their issued securities on deposit at DTC in order to make the securities ineligible for book-entry transfer at a securities depository. *See id.* Withdrawing securities from DTC or requiring custody-only transfers would undermine the goal of a national clearance and settlement system designed to reduce the physical movement of certificates in the trading markets. *See id.* We note, however, that in 2003 the Commission approved a DTC rule change clarifying that its rules provide that only its participants may withdraw securities from their accounts at DTC. *See* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003).

³⁰ *See* 2006 Regulation SHO Proposed Amendments, 71 FR 41712; 2007 Regulation SHO Final Amendments, 72 FR 45545; 2007 Regulation SHO Proposed Amendments, 72 FR 45558-45559; Anti-Fraud Rule Proposing Release, 73 FR 15378; Rule 204T Adopting Release, 73 FR 61709-61710 (providing discussion of the impact of fails to deliver on the market); *see also* 2003 Regulation SHO Proposing Release, 68 FR 62975 (Nov. 6, 2003) (discussing the impact of "naked" short selling on the market).

³¹ According to the National Securities Clearing Corporation ("NSCC"), 99% (by dollar value) of all trades settle within T+3. Thus, on an average day, only approximately 1% (by dollar value) of all trades, including equity, debt, and municipal securities fail to settle on time.

³² 17 CFR 242.200. Regulation SHO became effective on January 3, 2005.

³³ 17 CFR 242.203(b)(1). Rule 203(b)(1) of Regulation SHO requires that, "A broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)." This is known as the "locate" requirement. Market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from this requirement. In connection with this "locate" requirement, as well as other provisions of Regulation SHO that require a reasonableness determination (*i.e.*, Rules 200(g)(1) and 203(a)(2)(ii)), we remind any broker-dealer subject to such provisions that they have an affirmative obligation to obtain and consider information from their own records and/or from the records of another source helpful to making the reasonableness determinations required by such rules. Such information may include, but is not limited to, information regarding a customer's prior assurances regarding a locate source, its share ownership, or delivery of shares by settlement date. *See* 17 CFR 242.203(b)(1), 242.200(g)(1),

Another requirement of Regulation SHO aimed at potentially abusive "naked" short selling and reducing fails to deliver in certain equity securities is the rule's "close-out" requirement. Since Regulation SHO was adopted it has required participants³⁴ of a registered clearing agency,³⁵ which includes broker-dealers, to purchase shares to close out fails to deliver in securities with large and persistent fails to deliver, *i.e.*, "threshold securities."³⁶ Until the position is closed out, the participant responsible for the fail to deliver position and any broker-dealer from which it receives trades for clearance and settlement may not effect further short sales in that threshold security without first borrowing or arranging to borrow the security.³⁷

As adopted, Regulation SHO included two major exceptions to the close-out requirement: The "grandfather" provision and the "options market maker" exception. The "grandfather" provision had provided that fails to deliver established prior to a security becoming a threshold security did not have to be closed out in accordance with Regulation SHO's thirteen consecutive settlement day close-out requirement.

203(a)(2)(ii). *See also* 2004 Regulation SHO Adopting Release, 69 FR 48014, n. 58, 48019 at n. 111.

³⁴ For purposes of Regulation SHO, the term "participant" has the same meaning as in section 3(a)(24) of the Exchange Act. *See* 15 U.S.C. 78c(a)(24).

³⁵ The term "registered clearing agency" means a clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, that is registered as such pursuant to Section 17A of the Exchange Act. *See* 15 U.S.C. 78c(a)(23)(A) and 78q-1, respectively; *see also* 2004 Regulation SHO Adopting Release, 69 FR 48031. The majority of equity trades in the United States are cleared and settled through systems administered by clearing agencies registered with the Commission. The NSCC clears and settles the majority of equity securities trades conducted on the exchanges and in the over-the-counter market. NSCC clears and settles trades through the Continuous Net Settlement ("CNS") system, which nets the securities delivery and payment obligations of all of its members. NSCC notifies its members of their securities delivery and payment obligations daily. In addition, NSCC guarantees the completion of all transactions and interposes itself as the counterparty to both sides of the transaction. We intend to closely monitor fails to deliver resulting from trades that are not cleared and settled through the CNS system.

³⁶ Rule 203(c)(6) of Regulation SHO defines a "threshold security" as any equity security of an issuer that is registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78l) or for which the issuer is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) for which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more, and that is equal to at least 0.5% of the issue's total shares outstanding; and is included on a list disseminated to its members by a self-regulatory organization ("SRO"). *See* 17 CFR 242.203(c)(6).

³⁷ *See* 17 CFR 242.203(b)(3)(iv).

Due to our concerns about the potentially negative market impact of large and persistent fails to deliver, and the fact that we continued to observe threshold securities with fail to deliver positions that were not being closed out under existing delivery and settlement requirements, effective on October 15, 2007, we adopted an amendment to Regulation SHO that eliminated the “grandfather” provision.³⁸

The options market maker exception excepted any fail to deliver position in a threshold security resulting from short sales effected by a registered options market maker to establish or maintain a hedge on options positions that were created before the underlying security became a threshold security. On September 17, 2008, we adopted and made immediately effective, as an emergency rule, an amendment to Rule 203(b)(3) of Regulation SHO to eliminate the options market maker exception to the rule’s close-out requirement.³⁹ Following the issuance of the September Emergency Order, we adopted amendments making permanent the elimination of the options market maker exception.⁴⁰ As we discussed in the 2008 Regulation SHO Final Amendments, we believed it was appropriate to eliminate the options market maker exception in part because substantial levels of fails to deliver continued to persist in threshold securities and it appeared that a significant number of these fails to deliver were as a result of the options market maker exception.⁴¹

In adopting temporary Rule 204T of Regulation SHO pursuant to the September Emergency Order and subsequently pursuant to the Rule 204T Adopting Release, we strengthened further the close-out requirements of Regulation SHO by applying close-out requirements to fails to deliver resulting

from sales of all equity securities and reducing the time-frame within which fails to deliver must be closed out.⁴²

As noted above, since the adoption of temporary Rule 204T and the elimination of Regulation SHO’s options market maker exception, we have seen a significant reduction in the number of fails to deliver in all equity securities. To continue advancing our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling, we are adopting the substance of temporary Rule 204T in a permanent rule, Rule 204. We continue to believe that strengthening the close-out requirements of Regulation SHO will further help to protect and enhance the operation, integrity, and stability of the markets, as well as help reduce potential short selling abuses.

III. Discussion of Rule 204 of Regulation SHO

As discussed in more detail below, we are maintaining the structure of temporary Rule 204T with limited

⁴² In addition to these amendments to Regulation SHO, recently we have taken other actions aimed at reducing fails to deliver and addressing potentially abusive “naked” short selling. For example, in July 2008, we published an emergency order under section 12(k) of the Exchange Act (the “July Emergency Order”) that temporarily restricted “naked” short selling in the publicly traded securities of nineteen financial institutions. See Exchange Act Release No. 58166 (July 15, 2008), 73 FR 55169 (July 21, 2008) (imposing borrowing and delivery requirements on short sales of the equity securities of nineteen financial companies); see also Exchange Act Release No. 58248 (July 29, 2008), 73 FR 45257 (Aug. 4, 2008) (extending the July Emergency Order such that it expired on August 12, 2008). In September 2008, we published an emergency order that temporarily banned short selling in the publicly traded securities of approximately 1,000 financial institutions (the “Short Sale Ban”). See Exchange Act Release No. 58592 (Sept. 18, 2008), 73 FR 55169 (Sept. 24, 2008); see also Exchange Act Release No. 58611 (Sept. 21, 2008), 73 FR 55556 (Sept. 25, 2008) (amending the Short Sale Ban). The Short Sale Ban expired on October 8, 2008. In addition, in the September Emergency Order, we adopted and made immediately effective a “naked” short selling anti-fraud rule, Rule 10b–21, aimed at sellers, including broker-dealers acting for their own accounts, who deceive certain specified persons about their intention or ability to deliver securities in time for settlement and that fail to deliver securities by settlement date. See September Emergency Order. Following the issuance of the September Emergency Order, we adopted final amendments making Rule 10b–21 permanent. See Anti-Fraud Rule Adopting Release, 73 FR 61666; see also Anti-Fraud Rule Proposing Release, 73 FR 15376. In addition, on April 8, 2009, we proposed amendments to Regulation SHO that, if adopted, would add a short sale price test restriction or short sale circuit breaker rule to Regulation SHO. See Exchange Act Release No. 59748 (Apr. 10, 2009), 74 FR 18042 (Apr. 20, 2009) (the “Short Sale Price Test Proposing Release”).

modifications to address commenters’ concerns. In discussing the provisions of Rule 204, we highlight below some of the main issues, concerns, and suggestions raised by commenters.⁴³

A. Rule 204’s Close-Out Requirement

1. Close-Out Period

In Rule 204(a), we are adopting the close-out requirements of temporary Rule 204T(a) without modification. Temporary Rule 204T(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours⁴⁴ on the settlement day⁴⁵ following the settlement date (*i.e.*, T+4), immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.⁴⁶

Under certain circumstances, temporary Rule 204T provides additional time during which fails to deliver may be closed out. Specifically, temporary Rule 204T(a)(1) and (a)(3) provide that, subject to certain conditions, fails to deliver resulting from long sales or certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the third settlement day after settlement date (*i.e.*, T+6).⁴⁷

In response to our requests for comment, a number of commenters expressed concerns regarding the time periods within which fails to deliver must be closed out under temporary Rule 204T. Commenters expressed concern that temporary Rule 204T’s

⁴³ See *supra* note 12.

⁴⁴ “Regular trading hours” has the same meaning as in Rule 600(b)(64) of Regulation NMS. Rule 600(b)(64) provides that “*Regular trading hours* means the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).”

⁴⁵ The term “settlement day” is defined in Rule 203(c)(5) of Regulation SHO as: “* * * any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.” 17 CFR 242.203(c)(5).

⁴⁶ See temporary Rule 204T(a).

⁴⁷ In addition, temporary Rule 204T(a)(2) provides that fails to deliver resulting from sales of securities pursuant to Rule 144 of the Securities Act of 1933 (“Rule 144 Securities”) must be closed out by no later than the beginning of regular trading hours on the thirty-sixth consecutive settlement day following settlement date (*i.e.*, T+39).

³⁸ See 2007 Regulation SHO Final Amendments, 72 FR 45544. This amendment also contained a one-time phase-in period that provided that previously-grandfathered fails to deliver in a security that was a threshold security on the effective date of the amendment must be closed out within 35 consecutive settlement days from the effective date of the amendment. The phase-in period ended on December 5, 2007.

³⁹ See Exchange Act Release No. 58572 (Sept. 17, 2008), 73 FR 54875 (Sept. 23, 2008) (“September Emergency Order”).

⁴⁰ See Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690 (Oct. 17, 2008) (“2008 Regulation SHO Final Amendments”); see also 2007 Regulation SHO Proposed Amendments, 72 FR 45558; 2006 Regulation SHO Proposed Amendments, 71 FR 41710; Exchange Act Release No. 58107 (July 7, 2008), 73 FR 40201 (July 14, 2008) (“2008 Regulation SHO Re-Opening Release”).

⁴¹ See 2008 Regulation SHO Final Amendments, 73 FR 61690; see also 2008 Regulation SHO Re-Opening Release, 73 FR 40201.

requirement to close-out fails to deliver by no later than the beginning of regular trading hours can create buying pressure at the open, that may temporarily distort the price of the security.⁴⁸ To minimize the market impact of the close-out requirement, commenters suggested allowing participants to close out fails to deliver by the end of regular trading hours, or the close of business on the New York Stock Exchange (“NYSE”), rather than by no later than the beginning of regular trading hours.⁴⁹ In requesting additional time during the day to close out fails to deliver, one commenter noted that such a change “would significantly alleviate the market pressures associated with execution of potentially large purchases at the opening of trading—a time when markets are particularly susceptible to price fluctuations.”⁵⁰ This commenter also stated that, as a practical matter, “transactions effected at market open to close-out open fail positions are no different from those effected later on in the trading session because both are part of the same clearance and settlement cycle. Thus, providing this relief would not add any delay of consequence to the close-out process.”⁵¹

Other commenters requested additional days within which to close out fails to deliver in connection with short sales. For example, some commenters requested that the Commission extend the close-out period for fails to deliver resulting from short sales to three settlement days after the fail occurs, consistent with the close-out period for fails to deliver resulting from long sales and market making activity.⁵² Other commenters requested that the

⁴⁸ See, e.g., letter from Stuart Kaswell, Executive Vice President and General Counsel, Managed Funds Association, dated Dec. 15, 2008 (“MFA”); letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, dated Dec. 23, 2008 (“CBOE”); letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, dated Dec. 16, 2008 (“SIFMA”); letter from Eric Swanson, General Counsel, BATS Exchange, Inc., dated Dec. 29, 2008 (“BATS”); letter from Michael P. McAuley, Chair, RMA Committee on Securities Lending, dated Dec. 23, 2008 (“RMA”); letter from Stefan Gavell, Executive Vice President and Head of Regulatory Industry Affairs, State Street Corporation, dated Dec. 16, 2008 (“State Street”).

⁴⁹ See, e.g., letters from SIFMA; MFA; State Street; BATS; letter from A. Peter Allman-Ward, Executive Vice President and CFO, Wedbush Morgan Securities, Inc., dated Dec. 15, 2008 (“Wedbush”).

⁵⁰ Letter from SIFMA.

⁵¹ See *id.*

⁵² See, e.g., letter from Peter Kovac, Chief Operating Officer and Financial and Operations Principal, EWT, LLC, dated Nov. 25, 2008 (“EWT”); letter from James S. Chanos, Chairman, Coalition of Private Investment Companies, dated Dec. 16, 2008 (“Coalition of Private Investment Companies”); letters from SIFMA; MFA; State Street.

Commission extend the close-out requirement for fails to deliver resulting from all sales to five settlement days after the fail to deliver position occurs.⁵³ These commenters stated that the additional time to close out fails to deliver would allow the majority of trades to clear and settle on their own within a few days following the regular settlement date (*i.e.*, T+3).⁵⁴

Some commenters expressed concerns about the effect of the close-out requirements of temporary Rule 204T on securities lending.⁵⁵ For example, one commenter stated that the compressed time-frame for closing out fails to deliver under temporary Rule 204T “has generated over-buying and borrowing of securities that would otherwise settle in the normal course, thus impairing liquidity by tying up shares that would otherwise be available to natural buyers and sellers.”⁵⁶ This commenter also noted that in practice fails to deliver resulting from sales of securities on loan, which are considered “long” sales, are often closed out in accordance with the time-frames for fails to deliver resulting from short sales rather than long sales because temporary Rule 204T does not provide sufficient time to determine whether or not a fail to deliver position resulted from a long or short sale.⁵⁷ According to this commenter, such purchasing activity acts as a disincentive to lending and causes institutions to question their participation in lending programs.⁵⁸

Other commenters stated that where the holder of a long position sells

⁵³ See, e.g., letter CBOE; letter from Boston Options Exchange, Chicago Board Options Exchange, International Securities Exchange, NASDAQ Options Market, NASDAQ OMX PHLX, NYSE Alternext US, NYSE Arca, and The Options Clearing Corporation, dated Dec. 19, 2008 (“Options Exchanges”).

⁵⁴ See, e.g., letters from SIFMA; MFA; State Street; CBOE; Options Exchanges; Coalition of Private Investment Companies.

⁵⁵ As stated in the Rule 204T Adopting Release, if a person that has loaned a security to another person sells the security and a bona fide recall of the security is initiated within two business days after trade date, the person that has loaned the security will be “deemed to own” the security for purposes of Rule 200(g)(1) of Regulation SHO, and such sale will not be treated as a short sale for purposes of temporary Rule 204T. In addition, a broker-dealer may mark such orders as “long” sales provided such marking is also in compliance with Rule 200(c) of Regulation SHO. See Rule 204T Adopting Release, 73 FR 61713, n. 70.

⁵⁶ Letter from SIFMA.

⁵⁷ See letter from SIFMA; see also letter from RMA; letter from Heather Traeger, Assistant Counsel, Investment Company Institute, dated Dec. 16, 2008 (“ICI”).

⁵⁸ See letter from SIFMA; see also letter from RMA (recommending the extension of the close-out period for fails to deliver for all sales to settlement date plus three days (*i.e.*, T+6) “to ensure that beneficial owners selling on-loan positions are not compromised by close-outs of long sales on T+4”).

securities that have been financed through a securities loan, the close-out requirements of temporary Rule 204T may not provide sufficient time for the securities to be recalled and delivered in time for settlement of the sale transaction.⁵⁹ These commenters stated, among other things, that temporary Rule 204T’s requirement that securities be delivered by no later than the beginning of regular trading hours does not allow for the completion of the securities lending cycle, which may not occur until the close of the DTC settlement window on the third settlement day after settlement date (*i.e.*, T+6).⁶⁰

As noted above, the close-out requirements of temporary Rule 204T are advancing our goal of further reducing fails to deliver, as evidenced in part by preliminary results from OEA regarding its impact on the number of fails to deliver.⁶¹ Thus, we are adopting as a permanent rule the structure of the close-out requirements of temporary Rule 204T. Specifically, Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours⁶² on the settlement day⁶³

⁵⁹ See letters from EWT; BATS; RMA; ICI; Wedbush.

⁶⁰ See letters from EWT; BATS; RMA; ICI. EWT stated that a recall typically occurs to assure that the securities are returned on the settlement date for the sale transaction. If the securities are not returned by that date, the lender may initiate a buy-in process designed to obtain the securities as promptly as possible. This buy-in is intended to result in delivery of the securities after three business days, such that the lender will not complete the buy-in process until the close of the DTC settlement window on the third business day following initiation of the buy-in process.

Accordingly, this commenter recommended, among other things, that we should: (1) either (a) create an exception for fails to deliver where the securities are loaned but have been recalled or (b) confirm that the issuance of a bona fide loan recall notice is a valid form of close-out for a fail to deliver; or (2) extend the close-out period from settlement date plus three days (*i.e.*, T+6), to settlement date plus six days (*i.e.*, T+9) for fails to deliver resulting from long sales. See also letter from RMA (stating that due to operational complexity and the number of market participants involved in the sale of an “on-loan position,” it is commonplace for a sale to be settled during the day on T+6).

⁶¹ See *supra* note 8, and accompanying text.

⁶² See *supra* note 44 (discussing the definition of the term “regular trading hours” for purposes of Regulation SHO).

⁶³ See *supra* note 45 (discussing the definition of the term “settlement day” for purposes of Regulation SHO).

following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.⁶⁴

In addition, as discussed in more detail below, we are adopting in Rule 204(a)(1) and (a)(3) the close-out requirements of temporary Rule 204T(a)(1) and (a)(3) for fails to deliver resulting from long sales and certain bona fide market making activity so that such fails to deliver must be closed out by no later than the beginning of regular trading hours on the close-out date (*i.e.*, T+6) for such fails to deliver.⁶⁵

Although we recognize commenters' concerns regarding the potential market impact of the close-out requirements of temporary Rule 204T, particularly at the market open, we believe that these potential effects are justified by the benefits of retaining the strict close-out requirements of temporary Rule 204T. As discussed above, since the adoption of temporary Rule 204T, and other actions taken by the Commission aimed at reducing fails to deliver, there has been a significant reduction in fails to deliver. To maintain these declines, we believe it is necessary at this time to continue to require that participants close out fails to deliver by no later than the beginning of regular trading hours on the applicable close-out date. We believe that the strict close-out requirements of the temporary rule have helped reduce fails to deliver by providing a disincentive to those who, but for the rule, may have failed to deliver securities by settlement date. In addition, we note that participants have been operating pursuant to the close-out requirements of the temporary rule, as adopted, and appear to have adjusted to its requirements.⁶⁶

⁶⁴ See Rule 204(a).

⁶⁵ In addition, as discussed in Section III.E. below, we are adopting the close-out requirements of Rule 204(a)(2) for fails to deliver resulting from sales of Rule 144 Securities so that such fails to deliver must be closed out by no later than the beginning of regular trading hours on the applicable close-out date.

⁶⁶ In discussing the requirement to purchase securities by no later than the beginning of regular trading hours on the applicable close-out date, some commenters discussed the ability to use, among other mechanisms, volume weighted average price ("VWAP") orders entered at the beginning of the day to more effectively manage their buy-in risk. See, *e.g.*, letters from Duncan L. Niederauer, CEO, NYSE Euronext and Richard G. Ketchum, NYSE Regulation, Inc., dated Dec. 16, 2008 ("NYSE"); ICI. We note that if a participant has a fail to deliver position at a registered clearing agency that it must close out in accordance with Rule 204 of Regulation SHO, the participant may satisfy the close-out requirement to purchase securities of like kind and quantity with a VWAP order provided: (i) the order to purchase the equity security on a VWAP basis is irrevocable and received by no later than the beginning of regular trading hours on the applicable close-out date; and (ii) the final execution price of

We believe that continuing to require that fails to deliver be closed out on the day immediately following the day on which the fail to deliver occurs is consistent with our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing "naked" short selling and, in particular, potentially abusive "naked" short selling. Although extending the timeframes within which fails to deliver must be closed out may allow for ordinary course settlement, as several commenters contend, we believe that the close-out requirements of Rule 204 are necessary to continue to help encourage delivery by settlement date and achieve our goal of not allowing fails to deliver to persist.⁶⁷

As we discussed in the Rule 204T Adopting Release, we believe that delivery on sales should be made by settlement date.⁶⁸ In the Rule 204T Adopting Release, we noted that the vast majority of fails to deliver are closed out within five days after T+3.⁶⁹ In addition, in that release we referenced a recent analysis by OEA that found that more than half of all fails to deliver and more than 70% of all fail to deliver positions are closed out within two settlement days after T+3.⁷⁰ We also noted in that release, however, that although this information shows that delivery is being made, it demonstrates that often delivery is not being made until several days following the standard three-day settlement cycle.

In addition, as discussed above, fails to deliver may be part of a scheme to manipulate the price of a security. We are also concerned about the negative effect that fails to deliver and potentially abusive "naked" short selling may have on the market and the broader economy, including on investor confidence.⁷¹ The close-out

any such transaction is not determined until after the close of regular trading hours when the VWAP value is calculated and the execution is on an agency basis.

⁶⁷ See *supra* note 16 (discussing the standard three-day settlement cycle).

⁶⁸ See Rule 204T Adopting Release, 73 FR 61712-61713.

⁶⁹ See *id.*

⁷⁰ See *id.* at n. 68. We note that OEA's analysis examined the period from January to July 2008 and used the age of the fail to deliver position as reported by the NSCC. The NSCC data included only securities with at least 10,000 shares in fails to deliver. These numbers also included securities that were not subject to the close-out requirement in Rule 203(b)(3) of Regulation SHO, which applies only to "threshold securities" as defined in Rule 203(c)(6) of Regulation SHO.

⁷¹ See, *e.g.*, Anti-Fraud Rule Adopting Release, 73 FR 61666.

requirements of Rule 204 help address these concerns by prohibiting the persistence of fails to deliver.

We understand, however, that fails to deliver may occur from long sales within the first two settlement days after settlement date for legitimate reasons.⁷² For example, human or mechanical errors or processing delays can result from transferring securities in custodial or other form rather than book-entry form, thereby causing a fail to deliver on a long sale.⁷³

Thus, in Rule 204(a)(1), we are adopting, with certain limited modifications, the provisions of temporary Rule 204T(a)(1) relating to closing out fails to deliver resulting from long sales. Specifically, Rule 204(a)(1) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity.⁷⁴

In response to a request for comment, some commenters requested that we provide additional flexibility to the close-out requirements of temporary Rule 204T(a)(1) by allowing participants to borrow as well as purchase securities to close out such fails to deliver.⁷⁵ In temporary Rule 204T(a)(1), we required a participant to purchase securities to close out fails to deliver resulting from long sales to be consistent with the close-out requirements of Rule 203(b)(3) of Regulation SHO which require that a participant that has a fail to deliver position in a threshold security for thirteen consecutive settlement days immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity.⁷⁶

⁷² See Rule 204T Adopting Release, 73 FR 61713.

⁷³ See *id.*

⁷⁴ See Rule 204(a)(1).

⁷⁵ See *e.g.*, letters from SIFMA; EWT; MFA; State Street; BATS; Wedbush; Angel.

⁷⁶ See 17 CFR 242.203(b)(3). Some commenters requested clarification regarding a broker-dealer's obligations under FINRA Rule 11810 (the "FINRA Buy-In Rule") and the close-out requirements of temporary Rule 204T. See, *e.g.*, letter from Joseph Zangri, Chief Compliance Officer, Bloomberg Tradebook, LLC (Dec. 16, 2008) ("Bloomberg"). We note that because the requirements of Rule 204 apply to broker-dealers involved in the sell-side of a transaction, whereas the FINRA Buy-In Rule sets forth procedures applicable to a purchaser that chooses to buy-in a seller, we believe that these rules apply separate and distinct obligations on

Commenters stated that borrowing securities serves the same purpose as purchasing securities to close out fails to deliver.⁷⁷ In addition, commenters noted that allowing a borrow to close out such fails would be consistent with the close-out requirements for short sales. After considering the comments received, we provide in Rule 204(a)(1) the ability for a participant to close out a fail to deliver position resulting from a long sale by purchasing or borrowing securities.⁷⁸ We believe that such an amendment is consistent with our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, because it will provide additional flexibility to participants in closing out fail to deliver positions.⁷⁹ Permitting a borrow as well as a purchase will also make the close-out requirements of Rule 204(a)(1) consistent with the close-out requirements of Rule 204(a).

As we stated with respect to Rule 204T's close-out requirements, under Rule 204's close-out requirements for fails to deliver resulting from long or short sales, a participant must take affirmative action to close out a fail to deliver position by purchasing or borrowing securities.⁸⁰ Thus, a participant may not offset the amount of its fail to deliver position with shares that the participant receives or will receive during the applicable close-out date (*i.e.*, during T+4 or T+6, as applicable).⁸¹ In addition, as we stated in the Rule 204T Adopting Release, to meet its close-out obligation a participant also must be able to

market participants and, therefore, are not in conflict.

⁷⁷ See *e.g.*, letter from MFA.

⁷⁸ See Rule 204(a)(1). Although Rule 204(a)(1) permits borrowing to close out a fail to deliver position resulting from a long sale, broker-dealers must also comply with Rule 203(a) of Regulation SHO. Rule 203(a)(1) provides that, unless an exception applies, "[i]f a broker or dealer knows or has reasonable grounds to believe that the sale of an equity security was or will be effected pursuant to an order marked "long," such broker or dealer shall not lend or arrange for the loan of any security for delivery to the purchaser's broker after the sale, or fail to deliver a security on the date delivery is due." 17 CFR 242.203(a).

⁷⁹ See letter from CBOE (stating that the close-out procedures under temporary Rule 204T for fails to deliver attributable to bona fide market making activity should be amended to permit borrows or purchases throughout the close-out period).

⁸⁰ See Rule 204T Adopting Release, 73 FR 61710.

⁸¹ In determining its close-out obligation, a participant may rely on its net delivery obligation as reflected in its notification from NSCC regarding its securities delivery and payment obligations, provided such notification is received prior to the beginning of regular trading hours on the applicable close-out date. See Rule 204T Adopting Release, 73 FR 61711, at n. 46 (and accompanying text).

demonstrate on its books and records that on the applicable close-out date, it purchased or borrowed shares in the full quantity of its fail to deliver position and, therefore, that the participant has a net flat or net long position on its books and records on the applicable close-out date (*i.e.*, during T+4 or T+6, as applicable).⁸²

Consistent with temporary Rule 204T, Rule 204 defines a "settlement date" as "the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security."⁸³ As we noted in the Rule 204T Adopting Release, this definition is consistent with Rule 15c6-1 under the Exchange Act that prohibits broker-dealers from effecting or entering into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.⁸⁴

Because most transactions settle by T+3 and because delivery on all sales should be made by settlement date, participants should consider having in place policies and procedures to help ensure that delivery is being made by settlement date. As we stated in the Rule 204T Adopting Release, we intend to examine participants' policies and procedures to determine whether, among other things, such policies and procedures require broker-dealers to monitor for delivery by settlement date.⁸⁵

Consistent with the existing close-out requirements of Rule 203(b)(3) of Regulation SHO and temporary Rule 204T, the close-out requirements of Rule

⁸² See Rule 204T Adopting Release, 73 FR 61711. Both temporary Rule 204T and Rule 204 require that a participant purchase or borrow shares, as applicable, to close out a fail to deliver position. Accordingly, the purchase or borrow on the applicable close-out date must be for the full quantity of the fail to deliver position that is subject to the close-out requirement. In addition, where a participant subject to the close-out requirement purchases or borrows securities on the applicable close-out date and on that same date engages in sale transactions that can be used to re-establish or otherwise extend the participant's fail position, and for which the participant is unable to demonstrate a legitimate economic purpose, the participant will not be deemed to have satisfied the close-out requirement.

⁸³ See Rule 204(g)(1); see also Rule 204T(f)(1).

⁸⁴ See 17 CFR 240.15c6-1; see also Rule 204T Adopting Release, 73 FR 61711.

⁸⁵ See Rule 204T Adopting Release, 73 FR 61711. Of course, broker-dealers must comply with any applicable SRO policies and procedures requirements. For example, NASD Rule 3010 contains, among other things, written procedures requirements for member firms.

204 are based on a participant's fail to deliver position at a registered clearing agency. As noted above, the NSCC clears and settles the majority of equity securities trades conducted on the exchanges and in the over-the-counter markets. NSCC clears and settles trades through the CNS system, which nets the securities delivery and payment obligations of all of its members. NSCC notifies its members of their securities delivery and payment obligations daily. Because Rule 204 is based on a participant's fail to deliver position at a registered clearing agency, it is consistent with current settlement practices and procedures and with the Regulation SHO framework regarding delivery of securities.⁸⁶

2. Application to All Equity Securities

Consistent with temporary Rule 204T, the close-out requirements of Rule 204 apply to fails to deliver in all equity securities. As discussed in the Rule 204T Adopting Release, this requirement differs from the close-out requirement of Rule 203(b)(3) of Regulation SHO that applies the close-out requirements of that rule only to those securities with a large and persistent level of fails to deliver, *i.e.*, threshold securities.⁸⁷

A purpose of Rule 204 is to help limit the use of "naked" short selling as part of a manipulative scheme. To achieve this purpose, we are applying the rule to all equity securities, regardless of the level or persistence of any fails to deliver in such securities. In addition, as discussed above, we believe that all sellers of equity securities should promptly deliver, or arrange for delivery of, securities to the respective buyer and all buyers of securities have a right to expect prompt delivery of securities purchased. We believe this should be the case for sales in all equity securities and are adopting this rule to further that goal.

We note that in the Rule 204T Adopting Release, we requested comment regarding whether temporary Rule 204T should be expanded to apply to debt as well as equity securities. In response, commenters opposed the extension of temporary Rule 204T to debt securities.⁸⁸ One such commenter stated that the Commission has expressly carved out debt securities from all short sale regulations, including Regulation SHO, citing in support the non-manipulative potential associated

⁸⁶ See temporary Rule 204T; see also 17 CFR 242.203(b)(3).

⁸⁷ See Rule 204T Adopting Release, 73 FR 61711; see also 17 CFR 242.203(b)(3).

⁸⁸ See, *e.g.*, letters from SIFMA; MFA; State Street.

with fixed income securities.⁸⁹ This commenter stated that it believes that certain structured products should also be excluded from the application of temporary Rule 204T.⁹⁰ This commenter acknowledged, however, that the “equity” status of some structured products may not be clear and its view that it may not be feasible for the Commission to make broad-based determinations on whether categories of securities constitute debt or equity.⁹¹

After considering the comments and because all other provisions of Regulation SHO apply only to equity securities, at this time, we are not extending Rule 204 to securities other than equity securities. We note, however, for those securities for which market participants believe the “equity” status is unclear, we will consider on a case-by-case basis whether the provisions of Rule 204, and Regulation SHO more generally, apply.

Regulation SHO, as adopted in 2004, was a first step in reducing persistent fails to deliver and addressing abusive “naked” short selling. In Regulation SHO, we took a targeted approach, imposing additional delivery requirements on securities with a substantial and persistent amount of fails to deliver. As we stated in the 2004 Regulation SHO Adopting Release, we took this targeted approach at that time in an effort to address the problem but at the same time not to burden the vast majority of securities where there are not similar concerns regarding settlement.⁹² In addition, Regulation SHO’s close-out requirement was adopted to address potential abuses that may occur with large, extended fails to deliver.⁹³ We also noted in the 2004 Regulation SHO Adopting Release, however, that we would pay close attention to the operation and efficacy of the provisions we were adopting at that time and would consider whether any further action was warranted.⁹⁴

Because of continued concerns about the potentially negative market impact of fails to deliver, and the fact that through our monitoring of the efficacy of Regulation SHO’s close-out requirement we continued to observe threshold securities with fail to deliver positions that were not being closed out, we eliminated the “grandfather” and options market maker exceptions to

Regulation SHO’s close-out requirements.⁹⁵

However, as we stated in the Rule 204T Adopting Release, we were concerned that the close-out requirements of Regulation SHO, as adopted, had not gone far enough in reducing fails to deliver and addressing potentially abusive “naked” short selling.⁹⁶ In light of the recent instability and lack of investor confidence in the financial markets,⁹⁷ we believe that the requirements of temporary Rule 204T should be made permanent to maintain the reduced fails to deliver and to address potentially abusive “naked” short selling.

We note that one commenter to the Rule 204T Adopting Release suggested eliminating temporary Rule 204T of Regulation SHO, such that only the close-out requirements of Rule 203(b)(3) would apply.⁹⁸ If we were to take such an approach, Regulation SHO’s close-out requirements would apply only to threshold securities and fails to deliver in such securities would not have to be closed out until such fails to deliver had persisted for thirteen consecutive settlement days. As discussed above, we are applying the close-out requirements of Rule 204 to all equity securities to further our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, in both threshold and non-threshold securities and, thereby, also help continue to address abusive “naked” short selling in such securities. In the Rule 204T Adopting Release, we noted that prior to its adoption, fails to deliver in non-threshold securities averaged approximately 624 million shares or \$4.6 billion in value per day from January to July 2008.⁹⁹ Since adoption

of the temporary rule, and in connection with other Commission actions to address fails to deliver, this number has declined significantly such that from December 2008 to March 2009, OEA estimates that fails to deliver in non-threshold securities averaged approximately 307 million shares or \$1.1 billion in value per day. We are applying Rule 204’s close-out requirements to all equity securities to help maintain the benefits already achieved.

3. Allocation of a Fail To Deliver Position

Temporary Rule 204T(d) provides that a participant may reasonably allocate its responsibility to close out a fail to deliver position to another broker-dealer from which the participant receives trades for clearance and settlement.¹⁰⁰ Consistent with temporary Rule 204T(d), Rule 204(d) provides for allocation of a fail to deliver position by a participant to a broker-dealer. Specifically, Rule 204(d) provides that if a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or from which it receives trades for settlement, based on such broker’s or dealer’s short position, the provisions of Rule 204(a) and (b) relating to such fail to deliver position shall apply to such registered broker or dealer that was allocated the fail to deliver position, and not to the participant.¹⁰¹

Thus, participants that are able to identify the accounts of broker-dealers for which they clear or from which they receive trades for settlement may allocate the responsibility to close out the fail to deliver position to the particular broker-dealer account(s) whose trading activities have caused the fail to deliver position provided the allocation is reasonable (e.g., the allocation must be timely). Absent such identification, however, the participant would remain subject to the close-out requirement.¹⁰²

¹⁰⁰ See temporary Rule 204T(d); see also 17 CFR 242.203(b)(3)(vi). Rule 203(b)(3)(vi) of Regulation SHO provides that “[i]f a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer’s short position, then the provisions of this paragraph (b)(3) relating to such fail to deliver position shall apply to the portion of such registered broker or dealer that was allocated the fail to deliver position, and not to the participant.”

¹⁰¹ See Rule 204(d).

¹⁰² One commenter requested that we clarify whether an allocated broker-dealer may reasonably re-allocate to the broker-dealer from which it

⁸⁹ See letter from SIFMA (referring to, among other things, Securities Exchange Act Release No. 56206 (Aug. 6, 2007), 72 FR 45094 (Aug. 10, 2007)).

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See 2004 Regulation SHO Adopting Release, 69 FR 48016.

⁹³ See *id.* at 48017.

⁹⁴ See *id.* at 48018.

⁹⁵ See *supra* Section II (discussing the elimination of Regulation SHO’s “grandfather” and options market maker exceptions).

⁹⁶ See Rule 204T Adopting Release, 73 FR 61711–61712.

⁹⁷ See, e.g., letter from Leland Chan, General Counsel, California Bankers Association, dated Aug. 21, 2008; letter from Eric C. Jensen, Esq., Cooley Godward Kronish L.L.P., dated Aug. 21, 2008; letter from Steven B. Boehm and Cynthia M. Krus, Sutherland Asbill Brennan LLP, dated July 31, 2008; letter from James J. Angel, Professor of Finance, Georgetown University, McDonough School of Business, dated Aug. 20, 2008; letter from Tuan Nguyen, dated Aug. 8, 2008; see also Short Sale Price Test Proposing Release, 74 FR 18042 (proposing short sale price test restrictions and short sale circuit breaker rules due to recent changes in market conditions and a deterioration in investor confidence).

⁹⁸ See letter from CBOE.

⁹⁹ See Rule 204T Adopting Release, 73 FR 61712, n. 60. We also noted these fails accounted for approximately 54.5% (56.6%) of all fail to deliver shares (by dollar value).

If a participant allocates a fail to deliver position to a broker-dealer in accordance with Rule 204(d), such that the close-out requirements of Rule 204(a) apply to that broker-dealer, the broker-dealer to which the position was allocated must be able to demonstrate that on the applicable close-out date, it purchased or borrowed shares in the full quantity of the fail to deliver position allocated to it, and that it has a net flat or net long position on its books and records for that security on the applicable close-out date.¹⁰³

In addition, as discussed above and consistent with temporary Rule 204T, the close-out requirements of Rule 204 require that the allocated broker-dealer take affirmative action to close out the fail to deliver position by purchasing or borrowing securities. Thus, a broker-dealer allocated a fail to deliver position may not offset the amount of its fail to deliver position with shares that the broker-dealer receives or will receive during the applicable close-out date (*i.e.*, during T+4 or T+6, as applicable).¹⁰⁴

Temporary Rule 204T(d) imposes a notification requirement on a broker-dealer that has been allocated responsibility for complying with the rule's requirements. Specifically, temporary Rule 204T(d) provides that a broker-dealer that has been allocated a portion of a fail to deliver position that does not comply with the provisions of temporary Rule 204T(a) must immediately notify the participant that it has become subject to the borrowing requirements of temporary Rule 204T(b).¹⁰⁵ In the Rule 204T Adopting Release, we stated that we adopted this notification requirement so that participants would know when a broker-dealer for which they clear and settle trades has become subject to the temporary rule's borrowing requirements.¹⁰⁶ We did not receive any comments specific to this notification

received the trade all or a portion of the fail to deliver position that it was allocated. This commenter stated that such re-allocation may continue until the fail position is allocated to the ultimate initiating broker-dealer. *See* letter from Bloomberg. We note that Rule 204(d) applies only to the allocation by a participant to a registered broker or dealer for which it clears trades or from which it receives trades for settlement. Thus, if a participant allocates all or a portion of a fail to deliver position to a broker-dealer, the close-out requirements of Rule 204 will apply to that allocated broker-dealer. This is consistent with the allocation provisions of temporary Rule 204T and Rule 203(b)(3) of Regulation SHO. Rule 204 does not, by its terms, apply to the allocation of costs by a broker-dealer in connection with meeting its close-out requirements.

¹⁰³ *See* Rule 204(d); *see also supra* note 82.

¹⁰⁴ *See supra* note 81 and supporting text.

¹⁰⁵ *See* temporary Rule 204T(d).

¹⁰⁶ *See* Rule 204T Adopting Release, 73 FR 61711.

requirement. We believe that the reasons for adopting this notification requirement in temporary Rule 204T(d) apply to Rule 204(d) as well. Thus, we have determined to maintain the requirement under Rule 204(d) that a broker-dealer that has been allocated a portion of a fail to deliver position that does not comply with the provisions of Rule 204(a) must immediately notify the participant that it has become subject to the borrowing requirements of Rule 204(b).¹⁰⁷

B. Rule 204(b)—Borrowing Requirement

1. Borrowing Requirement

We are adopting in Rule 204(b) the requirements of temporary Rule 204T(b) without modification. If a participant does not purchase or borrow shares, as applicable, to close out a fail to deliver position in accordance with Rule 204, the participant violates the close-out requirement of the rule. Rule 204(b), like temporary Rule 204T(b), also imposes on the participant and on all broker-dealers from which that participant receives trades for clearance and settlement (including introducing and executing brokers), a requirement to borrow or arrange to borrow securities prior to accepting or effecting further short sales in that security. Specifically, Rule 204(b) provides that the participant and any broker-dealer from which it receives trades for clearance and settlement, including any market maker that is otherwise entitled to rely on the exception provided in Rule 203(b)(2)(iii) of Regulation SHO,¹⁰⁸ may not accept a short sale order in an equity security from another person, or effect a short sale order in such equity security for its own account, to the extent that the broker-dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.¹⁰⁹

¹⁰⁷ *See* Rule 204(d).

¹⁰⁸ *See* 17 CFR 242.203(b)(2)(iii) (providing an exception from Regulation SHO's "locate" requirement for short sales effected by a market maker in connection with bona fide market making activities in the securities for which the exception is claimed).

¹⁰⁹ *See* Rule 204(b). The borrow requirements of Rule 204(b) are also consistent with the requirements of Rule 203(b)(3)(iv) of Regulation SHO for a participant that has not closed out a fail to deliver position in a threshold security that has persisted for thirteen consecutive settlement days. *See* 17 CFR 242.203(b)(3)(iv). Rule 203(b)(3)(iv) of Regulation SHO provides that "[i]f a participant of a registered clearing agency has a fail to deliver

We believe it is appropriate to include in the rule borrow requirements for broker-dealers, including participants, that sell short a security for which a fail to deliver position has not been closed out in accordance with the requirements of the rule. We believe that the borrow requirements of Rule 204(b) will further our goal of limiting fails to deliver, thereby addressing abusive "naked" short selling by promoting the prompt and accurate clearance and settlement of securities transactions. By requiring that participants and broker-dealers from which they receive trades for clearance and settlement borrow or arrange to borrow securities prior to accepting or effecting short sales in the security that has a fail to deliver position that has not been closed out, the rule will help to ensure that shares will be available for delivery on the short sale by settlement date and, thereby, help to avoid additional fails to deliver occurring in the security.

One commenter asked for clarification regarding whether a participant ceases to be subject to the borrow requirements of temporary Rule 204T(b) if that participant no longer has a fail to deliver position at a registered clearing agency due the participant borrowing the securities or the participant receiving securities from the seller (*e.g.*, in connection with long sales).¹¹⁰ Temporary Rule 204T(b) imposes short sale borrowing requirements until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency. Thus, under temporary Rule 204T regardless of whether a participant borrows or receives delivery of securities, the requirements of temporary Rule 204T(b) continue to apply until the participant purchases securities to close out the fail to deliver position and that purchase has cleared and settled at a registered clearing agency.

We have incorporated these same requirements into Rule 204(b) without modification. Rule 204(b) requires the purchase and clearance and settlement

position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity".

¹¹⁰ *See* letter from SIFMA.

of shares purchased to help ensure that the fail to deliver position is closed out before the participant, and broker-dealers from which they receive trades for clearance and settlement, can accept or effect additional short sales without first borrowing or arranging to borrow such securities. Moreover, the provisions of Rule 204(b) are intended to act as an additional incentive to broker-dealers to deliver securities by settlement date, and to close out fail to deliver positions in accordance with the requirements of Rule 204. We believe that these goals would not be furthered absent the purchase requirement of Rule 204(b).

As discussed above in Section III.A.3, Rule 204(d) provides that a participant may reasonably allocate (*e.g.*, the allocation must be timely) its responsibility to close out a fail to deliver position to another broker-dealer for which the participant clears or from which the participant receives trades for settlement. Thus, to the extent that the participant can identify the broker-dealer(s) that contributed to the fail to deliver position, and the participant has reasonably allocated the close-out obligation to the broker-dealer(s), the requirement to borrow or arrange to borrow prior to effecting further short sales in that security will apply to only those particular broker-dealer(s).

Rule 204(b), however, includes an exception from the borrowing requirements for any broker-dealer that can demonstrate that it was not responsible for any part of the fail to deliver position of the participant. We have incorporated into Rule 204(b) the language of temporary Rule 204T(b)(1), without modification. Thus, Rule 204(b) provides that a broker-dealer shall not be subject to the requirements of paragraph (b) of Rule 204 if the broker-dealer timely certifies to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that the broker-dealer is in compliance with the requirements of Rule 204(e).¹¹¹ We have included this exception because we do not believe that a broker-dealer should be subject to the borrowing requirements of the temporary rule if the broker-dealer can demonstrate that it did not incur a fail to deliver position in the security on settlement date, or if it has taken steps, in accordance with Rule 204(e), to close out the fail to deliver position.

2. Notification Requirement

In connection with the borrowing requirements of Rule 204(b), we are incorporating into Rule 204(c) the notification requirement contained in temporary Rule 204T(c), without modification. In accordance with Rule 204(c), participants must notify all broker-dealers from which they receive trades for clearance and settlement that a fail to deliver position has not been closed out in accordance with Rule 204. Specifically, Rule 204(c) provides that the participant must notify any broker-dealer from which it receives trades for clearance and settlement, including any market maker that is otherwise entitled to rely on the exception provided in Rule 203(b)(2)(iii) of Regulation SHO,¹¹² (a) that the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of Rule 204, and (b) when the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency.¹¹³

We are including this notification requirement in Rule 204(c) so that all broker-dealers that submit trades for clearance and settlement to a participant that has a fail to deliver position in a security that has not been closed out in accordance with Rule 204 will be on notice that short sales in that security to be cleared or settled through that participant will be subject to the borrow requirements of Rule 204(b) until the fail to deliver position has been closed out, or unless the broker-dealer can demonstrate, as specified in Rule 204(b), that it is not responsible for the fail to deliver position.

C. Credit for Early Close-Outs

To encourage early close outs of fail to deliver positions, temporary Rule 204T(e) provides that a broker-dealer can satisfy the temporary rule's close-out requirement by purchasing securities in accordance with the conditions of that provision (*i.e.*, broker-dealers will receive "pre-fail credit" for the purchase).¹¹⁴ Encouraging early close outs of fail to deliver positions advances our goal of reducing fails to deliver. Thus, we have incorporated the conditions of temporary Rule 204T(e) into Rule 204 with some limited modifications to address commenters' concerns and to provide clarification regarding the applicability of the conditions.

Specifically, Rule 204(e) provides that even if a participant of a registered clearing agency has not closed out a fail to deliver position at a registered clearing agency in accordance with Rule 204(a), or has not allocated a fail to deliver position to a broker-dealer in accordance with Rule 204(d), a broker-dealer shall not be subject to the requirements of Rule 204(a) or (b) if the broker-dealer purchases or borrows¹¹⁵ the securities, and complies with the conditions set forth in Rule 204(e)(1) though (4), as described in more detail below.

One commenter requested that we allow a broker-dealer to borrow as well as purchase shares to obtain credit for closing out a position prior to the applicable close-out date.¹¹⁶ Temporary Rule 204T(e) provides that a broker-dealer must purchase securities to obtain credit for closing out a position prior to the applicable close-out date because under Rule 203(b)(3) of Regulation SHO, we understand that broker-dealers purchased shares to obtain credit for closing out fails to deliver in threshold securities prior to the thirteenth consecutive settlement day of having a fail to deliver position in such security. We believe, however, that allowing a broker-dealer to borrow as well as purchase securities to obtain credit for early close-outs is consistent with our goal of maintaining the benefits already achieved under temporary Rule 204T, as well as other actions by the Commission, such as the recent reduction in fails to deliver, by providing broker-dealers with additional flexibility in closing out fails to deliver. We also note that allowing a borrow is consistent with the close-out requirements of Rule 204(a) which permit a participant to close out fails to deliver on the applicable close-out date by either borrowing or purchasing securities.¹¹⁷

Consistent with temporary Rule 204T(e)(1), to obtain pre-fail credit under Rule 204(e), the purchase or borrow must be "bona fide." Thus, where a broker-dealer enters into an arrangement with another person to purchase or borrow securities, and the broker-dealer knows or has reason to know that the other person will not deliver securities in settlement of the

¹¹⁵ As discussed in more detail below, in contrast to temporary Rule 204T(e), Rule 204(e) permits a broker-dealer to borrow as well as purchase securities to close-out a fail to deliver position prior to the applicable close-out date.

¹¹⁶ See letter from SIFMA.

¹¹⁷ See Rule 204(a); see also *supra* Section III.A.1. (discussing the close-out requirements of Rule 204(a)).

¹¹¹ See Rule 204(b). Rule 204(e) is discussed in detail below in Section III.C.

¹¹² See *supra* note 108.

¹¹³ See Rule 204(c).

¹¹⁴ See temporary Rule 204T(e).

transaction, the purchase or borrow will not be "bona fide."¹¹⁸

Also consistent with temporary Rule 204T(e)(2), Rule 204(e)(2) provides that to obtain pre-fail credit, *i.e.*, credit for purchases or borrows to close out fails to deliver resulting from short sales, the purchase or borrow must be executed after trade date but by no later than the end of regular trading hours on settlement date (*i.e.*, T+3) for the transaction. Thus, the purchase or borrow must be executed on T+1, 2, or 3.

Temporary Rule 204T(e)(3) provides that the purchase must be of a quantity of securities sufficient to cover the entire amount of the broker-dealer's open short position. One commenter stated that it believes that the broker-dealer should only have to close out its open fail to deliver position, and not its open short position.¹¹⁹ This commenter noted that a broker-dealer's open short position could far exceed its open fail to deliver position and, therefore, a requirement to purchase securities to close out the broker-dealer's entire open short position would not encourage early close outs of fail to deliver positions.¹²⁰

The purpose of Rule 204(e) is to encourage broker-dealers to close out fail to deliver positions prior to the close-out date. Requiring a broker-dealer to close out its open fail to deliver position prior to the applicable close-out date is more effective at achieving that goal than requiring a broker-dealer to close out its open short position prior to the applicable close-date because a broker-dealer's open short position could far exceed its open fail to deliver position and, therefore, requiring close out of the potentially smaller fail to deliver position only is more likely to encourage broker-dealers to close out such positions early. Thus, in contrast to temporary Rule 204T(e)(3), Rule 204(e)(3) provides that a broker-dealer must purchase or borrow a quantity of securities sufficient to cover the entire amount of that broker-dealer's fail to deliver position at a registered clearing agency in that security, rather than the entire amount of the broker-dealer's open short position.¹²¹

In addition, to help ensure that broker-dealers purchase sufficient shares to close out their fail to deliver positions, Rule 204(e)(4) incorporates the condition of temporary Rule

204T(e)(4) that the broker-dealer that is purchasing or borrowing securities must be net flat or net long in that security on its books and records on the day of the purchase or borrow.¹²² Consistent with temporary Rule 204T(e)(4), Rule 204(e)(4) requires that the broker-dealer demonstrate that it has complied with this requirement.¹²³ This requirement will enable the Commission and SROs to monitor more effectively whether or not a broker-dealer has complied with the requirements of Rule 204(e).

D. Market Makers

To allow broker-dealers that are market makers to facilitate customer orders in a fast moving market, temporary Rule 204T includes a limited exception from the temporary rule's close-out requirement for fails to deliver attributable to bona fide market making activities by registered market makers, options market makers, or other market makers obligated to quote in the over-the-counter market. Temporary Rule 204T requires that such fails to deliver are closed out by no later than the beginning of regular trading hours on the third settlement day following the settlement date for the transaction (*i.e.*, T+6).¹²⁴

Similar to commenters' discussions regarding extending the close-out period to the end of the day for fails to deliver subject to the requirements of temporary Rule 204T(a) and (a)(1), commenters requested that we extend the market maker close-out period under temporary Rule 204T(a)(3) to the end of regular trading hours on the close-out date to help reduce buy-in risk.¹²⁵

We recognize commenters' concerns regarding the market impact of temporary Rule 204T's close-out requirements, particularly at the market open. As discussed above, however, we believe, at this time, that it is appropriate to adopt temporary Rule 204T's requirement that fails to deliver, including fails to deliver resulting from market making activity, are closed out by no later than the beginning of regular

trading hours on the applicable close-out date to help further our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and to maintain the benefits achieved pursuant to temporary Rule 204T. Thus, Rule 204(a)(3) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security that is attributable to bona fide market making activities by a registered market maker, options market maker, or other market maker obligated to quote in the over-the-counter market, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position.¹²⁶

In contrast to temporary Rule 204T(a)(3), however, Rule 204(a)(3) permits a participant to borrow securities to close-out a fail to deliver position. In temporary Rule 204T, we required a participant to purchase securities to close out fails to deliver attributable to bona fide market making activity to be consistent with the close-out requirements of Rule 203(b)(3) of Regulation SHO which require that a participant that has a fail to deliver position in a threshold security for thirteen consecutive settlement days immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity.¹²⁷

Rule 204(a)(3) permits a borrow as well as a purchase to close out a fail to deliver position because we believe that such an amendment is consistent with our goal of maintaining the recent reduction in fails to deliver because it will provide additional flexibility to participants in closing out fail to deliver positions.¹²⁸ Permitting a borrow as well as a purchase will also make the close-out requirements of Rule 204(a)(3) consistent with the close-out requirements of Rule 204(a) and (a)(1).

As noted above and consistent with temporary Rule 204T, the close-out requirements of Rule 204 require that a broker-dealer take affirmative action to close out the fail to deliver position by purchasing or borrowing securities. Thus, under Rule 204(a)(3), a market maker may not offset the amount of a fail to deliver position with shares that

¹²² See Rule 204(e)(4).

¹²³ See *id.*

¹²⁴ See temporary Rule 204T(a)(3).

¹²⁵ See, *e.g.*, letters from NYSE; CBOE; The Specialist Association (discussing increased volatility at the opening of trading due to the requirement under temporary Rule 204T that fails to deliver be closed out by no later than the beginning of regular trading hours). One commenter recommended that we also extend the close-out period to five settlement days after settlement date (*i.e.*, T+8) for fails to deliver resulting from bona fide market making activity. See letter from CBOE. For the reasons set forth in section III.A.1 above, discussing generally the close-out periods under Rule 204, we have determined not to extend the close-out period to provide additional days to close out such fails to deliver.

¹²⁶ See Rule 204(a)(3).

¹²⁷ See 17 CFR 242.203(b)(3).

¹²⁸ See letter from CBOE (stating that the close-out procedures under temporary Rule 204T for fails to deliver attributable to bona fide market making activity should be amended to permit borrows or purchases throughout the close-out period).

¹¹⁸ See *infra* Section III.F. (discussing bona fide purchases and borrows for purposes of the close-out requirements of Rule 204); see also 17 CFR 203(b)(3)(vii).

¹¹⁹ See letter from SIFMA.

¹²⁰ See *id.*

¹²¹ See Rule 204(e)(3).

it receives or will receive during the close-out date.¹²⁹

Temporary Rule 204T(b)(2) included an exception from the borrowing requirements of temporary Rule 204T(b) for market makers that can demonstrate that they do not have an open short position in the equity security at the time of any additional short sales.¹³⁰ We do not believe that a similar exception is necessary under Rule 204(b) because, as with other broker-dealers, a market maker is excepted from the borrowing requirements of Rule 204(b) if it timely certifies to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that it is in compliance with the requirements of Rule 204(e). Because Rule 204(b) includes an exception applicable to all broker-dealers, including market makers, we do not think it is necessary to maintain a separate exception applicable only to market makers.

E. Sales of Certain Deemed To Own Securities

Temporary Rule 204T(a)(2) includes an exception from the temporary rule's close-out requirements for sales of Rule 144 Securities.¹³¹ Specifically, temporary Rule 204T(a)(2) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in an equity security sold pursuant to Rule 144 for thirty-five consecutive settlement days after the settlement date for a sale in that equity security, the participant shall, by no later than the beginning of regular trading hours on the thirty-sixth consecutive settlement day following the settlement date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity.¹³²

Regulation SHO provides an exception from the "locate" requirement of Rule 203(b)(1) for situations where a broker-dealer effects a short sale on behalf of a customer that is deemed to own the security pursuant to Rule 200 of Regulation SHO, although, through no fault of the customer or broker-dealer, it is not reasonably expected that the security will be in the physical possession or control of the broker-dealer by settlement date and, therefore, is a "short" sale under the marking requirements of Rule 200(g). Rule 203(b)(2)(ii) of Regulation SHO provides

that in such circumstances, delivery must be made on the sale as soon as all restrictions on delivery have been removed, and in any event no later than 35 days after trade date, at which time the broker-dealer that sold on behalf of the person must either borrow securities or close out the open position by purchasing securities of like kind and quantity.¹³³ In addition, in 2007 we adopted amendments to the close-out requirement of Regulation SHO to allow fails to deliver resulting from sales of threshold securities pursuant to Rule 144 to be closed out within 35 rather than 13 consecutive settlement days.¹³⁴

We included in temporary Rule 204T an exception for Rule 144 Securities because these securities are formerly restricted securities that a seller is "deemed to own," as defined by Rule 200(a) of Regulation SHO.¹³⁵ The securities, however, may not be capable of being delivered on the settlement date due to processing delays related to removal of the restricted legend and, therefore, sales of these securities frequently result in fails to deliver. In addition, this exception is consistent with our statements in connection with our recent amendments to Rule 203(b)(3) of Regulation SHO which extended the close-out requirements of that rule for fails to deliver in threshold securities sold pursuant to Rule 144.¹³⁶ We limited the exception in temporary Rule 204T to Rule 144 Securities, rather than extending the exception to all formerly restricted securities that a seller is "deemed to own," to remain consistent with Rule 203(b)(3) of Regulation SHO.

In response to a request for comment, one commenter that discussed the requirements of temporary Rule 204T(a)(2) relating to fails to deliver resulting from sales of Rule 144 Securities urged the Commission to retain the exception, and to extend it to cover sales of other securities that a person owns, but is unable to deliver on settlement date.¹³⁷ In particular, the commenter stated that the exception

should apply to the same universe of securities to which the exception in Rule 203(b)(2)(ii) of Regulation SHO applies.¹³⁸ In addition, the commenter stated that for those securities subject to the close-out requirements of temporary Rule 204T(a)(2) and the delivery requirements of Rule 203(b)(2)(ii) there is confusion as to which time-frame for closing out fails to deliver resulting from sales of these securities should apply.¹³⁹ We note, however, that rather than changing the close-out requirement of temporary Rule 204T(a)(2), this commenter recommended extending the delivery time-frame of Rule 203(b)(2)(ii) of Regulation SHO to 35 settlement days, rather than calendar days, from trade date.¹⁴⁰

After considering the comments and to provide consistency between the delivery requirements of Rule 203(b)(2)(ii) of Regulation SHO and the close-out requirements of Rule 204, we are adopting in Rule 204(a)(2) the requirements of temporary Rule 204T(a)(2) with some modifications. Specifically, we are expanding the universe of securities to which Rule 204(a)(2) will apply. It will apply to fails to deliver resulting from the sale of an equity security that a person is "deemed to own" pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed.¹⁴¹ In addition, we are revising the close-out period within which a participant must close out fails to deliver resulting from sales of such securities to be consistent with the delivery period contained in Rule

¹³⁸ See *id.*; see also *supra* note 133, and accompanying text.

¹³⁹ See letter from SIFMA.

¹⁴⁰ See *id.*

¹⁴¹ Such circumstances could include the situation where a convertible security, option, or warrant has been tendered for conversion or exchange, but the underlying security is not reasonably expected to be received by settlement date. See 2004 Regulation SHO Adopting Release, 69 FR 48015; see also 17 CFR 242.200(b) (defining when a person shall be "deemed to own" a security). Another situation could include the sale of a Rule 144 Security. See Rule 204T Adopting Release, 73 FR 61715. In addition, we understand that sellers that own restricted equity securities that wish to sell pursuant to an effective resale registration statement under Rule 415 under the Securities Act experience similar types of potential settlement delays as sales of Rule 144 Securities. Thus, fails to deliver in such securities may be closed out in accordance with Rule 204(a)(2) if the fails to deliver resulted from sales of securities that were outstanding at the time they were sold and the sale occurred after a registration has become effective. In addition, we understand that sales pursuant to broker-assisted cashless exercises of compensatory options to purchase a company's stock, may result in potential settlement delays and, therefore, fails to deliver. Such fails to deliver may be closed out in accordance with Rule 204(a)(2).

¹²⁹ See *supra* note 81 and supporting text.

¹³⁰ See temporary Rule 204T(b)(2).

¹³¹ See 17 CFR 230.144.

¹³² See temporary Rule 204T(a)(2).

¹³³ See 17 CFR 242.203(b)(2)(ii). In the 2004 Regulation SHO Adopting Release, the Commission stated that it believed that 35 calendar days is a reasonable outer limit to allow for restrictions on a security to be removed if ownership is certain. In addition, the Commission noted that Section 220.8(b)(2) of Regulation T of the Federal Reserve Board allows 35 calendar days to pay for securities delivered against payment if the delivery delay is due to the mechanics of the transactions. See 2004 Regulation SHO Adopting Release, 69 FR 48015, n.72.

¹³⁴ See 2007 Regulation SHO Final Amendments, 72 FR 45550–45551.

¹³⁵ See 17 CFR 242.200(a).

¹³⁶ See 2007 Regulation SHO Final Amendments, 72 FR 45550–45551.

¹³⁷ See letter from SIFMA.

203(b)(2)(ii) of Regulation SHO. Accordingly, Rule 204(a)(2) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security resulting from the sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed, the participant shall, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity.¹⁴²

In addition to being consistent with the delivery time-frame under Rule 203(b)(2)(ii) of Regulation SHO, we believe that a close-out requirement of 35 consecutive calendar days from trade date for fails to deliver resulting from sales of such owned securities will permit the orderly settlement of such sales without the risk of causing market disruption due to unnecessary purchasing activity (particularly if the purchases are for sizable quantities of stock). Because the security being sold will be received as soon as all processing delays have been removed, this additional time will allow participants to close out fails to deliver resulting from the sale of the security with the security sold, rather than having to close out such fail to deliver position by purchasing securities in the market. In addition, we note that although a commenter requested that we maintain the close-out requirement of temporary Rule 204T(a)(2) but amend the delivery time-frame of Rule 203(b)(2)(ii) of Regulation SHO to 35 settlement rather than calendar days, we have determined not to make such an amendment because we believe that 35 calendar days from trade date should be a sufficient period of time within which delivery can be made on sales of such securities. We also note that 35 calendar days from trade date is the delivery time-frame with which broker-dealers have had to comply since the effective date of Regulation SHO in January 2005, if relying on the exception in Rule 203(b)(2)(ii) to the rule's locate requirement. We are not aware that broker-dealers have been unable to comply with this delivery requirement.

Although this amendment will provide an extended period of time within which fails to deliver resulting from sales of certain "deemed to own" securities must be closed out, we

believe that such additional time is warranted and does not undermine our goal of reducing fails to deliver because these are sales of owned securities that cannot be delivered by settlement date due solely to processing delays outside the seller's or broker-dealer's control. Moreover, delivery will be made on such sales as soon as all restrictions on delivery have been removed. In addition, Rule 204(b)'s borrowing requirements will help ensure that, if a fail to deliver position is not closed out in accordance with Rule 204(a)(2), additional fails to deliver cannot occur until securities have been purchased to close out the fail to deliver position and such purchase has cleared and settled. If a participant does not close out a fail to deliver position at a registered clearing agency in accordance with Rule 204(a)(2), the rule prohibits the participant, and any broker-dealer from which it receives trades for clearance and settlement, including market makers, from accepting any short sale orders or effecting further short sales in the particular security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.¹⁴³ In addition, we intend to closely monitor whether fails to deliver are being closed out in accordance with the requirements of Rule 204(a)(2).

F. Sham Close-Outs

In the Rule 204T Adopting Release, we stated that it is possible under Regulation SHO that a close out by a participant of a registered clearing agency may result in a fail to deliver position at another participant if the counterparty from which the participant purchases securities fails to deliver. We also noted, however, that Regulation SHO prohibits a participant of a registered clearing agency, or a broker-dealer for which it clears transactions, from engaging in "sham close outs" by entering into an arrangement with a counterparty to purchase securities for purposes of closing out a fail to deliver position and the purchaser knows or has reason to know that the counterparty will not deliver the securities, and which thus creates another fail to deliver position.¹⁴⁴ Because these same concepts apply to the close-out

requirements of Rule 204, we have determined to include rule text in subparagraph (f) of Rule 204 to provide that a participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of Rule 204 where the participant enters into an arrangement with another person to purchase or borrow securities as required by Rule 204, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase or borrow.¹⁴⁵

G. De Minimis Fail To Deliver Positions

Some commenters requested that the Commission consider including an exception from temporary Rule 204T's close-out requirements where a participant's fail to deliver position at a registered clearing agency is below a certain amount.¹⁴⁶ One commenter suggested that such an exception be voluntary so that firms could decide whether or not to take advantage of the exception based on their particular business model and capabilities.¹⁴⁷ Another commenter noted that *de minimis* fails to deliver are particularly likely to occur in connection with odd lot trading.¹⁴⁸ This commenter stated that it believes that permitting a *de minimis* fail to deliver, particularly in less-than-round lots, would not undermine the intent of temporary Rule 204T.¹⁴⁹ Other commenters, in discussing odd lot orders and fails to deliver, recommended a *de minimis* exception for fails to deliver of less than 1,000 shares.¹⁵⁰ One other commenter recommended a *de minimis* exception that would except a fail to deliver position from the close-out requirements if the net value of the fail in the particular security across all firm accounts is under one million dollars.¹⁵¹

A primary goal of Rule 204 is to continue the recent reduction in fails to deliver. We believe that an exception

¹⁴⁵ See Rule 204(f).

¹⁴⁶ See, e.g., letters from SIFMA; NYSE; Webdush; Lek Securities Corporation; CBOE; BATS; EWT; The Specialist Association.

¹⁴⁷ See letter from SIFMA.

¹⁴⁸ See, e.g., letter from NYSE (stating that by operation of NYSE and NYSE Alternext rules, odd lot executions take place automatically, with the designated market maker ("DMM") acting as the contra-side to all odd lot trades. As a result, DMMs may sell short in a *de minimis* amount automatically and without prior knowledge. This commenter further stated that if the odd lot trade occurs in hard-to-borrow or illiquid securities, the DMM may not be able to avoid failing to deliver).

¹⁴⁹ See letter from NYSE.

¹⁵⁰ See letters from The Specialist Association; Webdush.

¹⁵¹ See letter from EWT; see also letter from Lek Securities Corporation.

¹⁴² See Rule 204(a)(2).

¹⁴³ See Rule 204(b).

¹⁴⁴ See Rule 204T Adopting Release, 73 FR 61714, n.78; see also 17 CFR 242.203(b)(3)(vii); 2004 Regulation SHO Adopting Release, 69 FR 48018, n.96.

from Rule 204's close-out requirements that would permit certain fails to deliver to persist indefinitely could undermine this goal. Accordingly, we have determined at this time not to include a *de minimis* or odd-lot related exception that would permit such fails to deliver to not have to be closed out. We will continue to monitor, however, whether a *de minimis* or odd-lot related exception is appropriate.

IV. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act ("APA") provides that a substantive rule generally may not be made effective less than 30 days after notice is published in the **Federal Register**.¹⁵² Section 553(d), however, also provides an exception to the 30-day requirement where an agency finds good cause for providing a shorter effective date.¹⁵³

Temporary Rule 204T will expire on July 31, 2009. Rule 204 makes permanent the provisions of temporary Rule 204T with limited modifications to address commenters' concerns and to help ensure the workability of the rule on a permanent basis. Rule 204 is intended to help maintain the benefits achieved in part by temporary Rule 204T, such as maintaining the recent reduction in fails to deliver, and address potentially abusive "naked" short selling by strengthening the close-out requirements of Regulation SHO. A gap between the expiration of temporary Rule 204T and the effective date of Rule 204 would be contrary to these purposes and goals. Rule 204 in significant part, moreover, continues the restrictions on short selling that are currently in place, and with which participants are already familiar. In addition, the modifications that are made in Rule 204 from Rule 204T relieve participants of some of the regulatory burdens imposed by temporary Rule 204T by, for example, allowing participants to close out fail to deliver positions from long sales and market making activities by borrowing securities. Thus, the Commission finds that there is good cause for making Rule 204 effective on July 31, 2009.

V. Amendments to Rule 30-3

The Commission is adopting an amendment to Rule 30-3 of its Rules of Organization and Program Management governing delegations of authority to the Director of the Division of Trading and Markets (the "Director").¹⁵⁴ The amendment delegates to the Director the authority to grant by order an exemption

from the provisions of Regulation SHO of the Exchange Act, under Section 36 of the Exchange Act. Such an exemption may be granted either unconditionally, or on specified conditions.

Section 36 of the Exchange Act provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."¹⁵⁵

This delegation of authority to the Director is intended to conserve Commission resources and provide market participants needed flexibility by allowing the staff, pursuant to Section 36(a) of the Exchange Act, to review and act by order on applications for exemptions from Regulation SHO. Pursuant to the amendment, the Director may consider and act upon appropriate requests for relief from the provisions of Regulation SHO, and will consider the particular facts and circumstances relevant to each such request, the potential ramifications of granting any exemptive relief, and any appropriate conditions to be imposed as part of such an exemption.

The Commission anticipates that the delegation of authority will facilitate efficient review. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate, and the Commission "may, in its sole discretion, decline to entertain any application for an order of exemption under this section."¹⁵⁶

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this amendment to Rule 30-3 relates solely to agency organization, procedure and practice and thus, notice and the opportunity for public comment before its effective date are unnecessary. In addition, because the amendment to Rule 30-3 relates solely to the internal processes of the Commission with regard to the grant of exemptions from the provisions of Regulation SHO, the Commission finds, pursuant to Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), that there is good cause for making the amendment effective upon publication in the **Federal Register**. For similar reasons, the amendment does not require an analysis under the Regulatory

Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act.¹⁵⁷

VI. Paperwork Reduction Act

Like temporary Rule 204T, several provisions under Rule 204 will impose a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act").¹⁵⁸ These collections of information are mandatory. With the single exception of the elimination in Rule 204 of the exception in temporary Rule 204T(b)(2) for market makers from the borrowing requirement in Rule 204(b),¹⁵⁹ all collections of information from temporary Rule 204T have been incorporated into Rule 204 without modification. The collection of information requirements of temporary Rule 204T have not been substantively or materially modified in Rule 204; therefore, the time and cost estimates for compliance with these provisions are the same for Rule 204 as our prior time and cost estimates for temporary Rule 204T, which we incorporate by reference.¹⁶⁰

We published a notice of our estimated time requirements for participants to comply with these collection of information provisions and requested comment on the collection of information requirements in connection with temporary Rule 204T. We submitted the collection of information to OMB for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13.

One commenter indicated that compliance with temporary Rule 204T resulted in an increase in man-hours to monitor multiple levels of data across various system platforms and business

¹⁵⁷ See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

¹⁵⁸ 44 U.S.C. 3501 *et seq.*

¹⁵⁹ In contrast to temporary Rule 204T(b), Rule 204(b) does not include an exception from the borrowing requirement of the Rule specific to market makers. We eliminated this exception because, as with other broker-dealers, a market maker is excepted from the borrowing requirements of Rule 204(b) if it timely certifies to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at the registered clearing agency or that it is in compliance with the requirements of Rule 204(e). Market makers, like all other broker-dealers, will continue to be subject to the certification requirements under Rule 204(b). See *supra* Section III.B. (discussing Rule 204(b)).

¹⁶⁰ See Rule 204T Adopting Release, 73 FR 61717-61722.

¹⁵² 5 U.S.C. 553(d).

¹⁵³ See *id.* at 553(d)(1), (d)(3).

¹⁵⁴ See 17 CFR 200.30-3.

¹⁵⁵ See 15 U.S.C. 78mm(a).

¹⁵⁶ See 15 U.S.C. 78mm(a)(2).

units within a firm,¹⁶¹ and other commenters expressed general concerns with the administrative and operational burdens on clearing firms, customers, and their regulators.¹⁶² The Commission, however, did not receive any comments as to the burdens associated with the collection of information requirements in temporary Rule 204T.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and SRO examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is changed from "Temporary Rule 204T" to "Rule 204" to indicate that the collection is no longer with regard to a temporary rule and the OMB control number for the collection of information is 3235-0647.

VII. Cost-Benefit Analysis

A. Summary

The Commission is sensitive to the costs and benefits of its rules and we have considered such with respect to the adoption of Rule 204 of Regulation SHO. We are incorporating by reference the cost-benefit discussion in the Rule 204T Adopting Release, except to the extent that we have made modifications or because we are addressing comments.

In order to assist our evaluation, we solicited comment via questions as to the costs and benefits of temporary Rule 204T, which is substantially similar to Rule 204. We address these comments as applied to permanent Rule 204 in detail below. In addition, we discuss in more detail below that we believe the benefits of adopting Rule 204 justify its costs. We also believe that the benefits of adopting Rule 204 justify forgoing benefits that might accrue if the Commission were to allow temporary

Rule 204T to expire without a substantially similar replacement.¹⁶³

As discussed above, preliminary results from OEA indicate that our actions to further reduce fails to deliver and, thereby, help address potentially abusive "naked" short selling are having their intended effect. For example, these preliminary results indicate a significant downward trend in the number of fails to deliver in all equity securities since, in addition to other measures, the adoption of temporary Rule 204T.¹⁶⁴

Due to the positive impact that temporary Rule 204T, among other actions, is having on reducing fails to deliver and after considering the comments received, we believe adopting the provisions of that rule in a permanent rule, Rule 204 of Regulation SHO, with limited modifications to promote the rule's workability and address commenters' concerns, will further the goals outlined above and below. We believe these modifications will aid compliance with Rule 204.

We believe that Rule 204 will help maintain the recent reduction in fails to deliver and address potentially abusive "naked" short selling in all equity securities by requiring that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurs the fail to deliver position. We recognize that, like temporary Rule 204T, Rule 204 may impose increased purchasing and borrowing costs beyond those that would occur if the rule was not in place and that these costs may increase the costs of legitimate short selling. We believe, however, that continuing the requirements of temporary Rule 204T by adopting them in Rule 204 is necessary to maintain the reduction in fails to deliver and to continue to address potentially abusive "naked" short selling. We believe that continuing these benefits achieved under temporary Rule 204T justifies the potential costs

¹⁶³ Temporary Rule 204T will expire on July 31, 2009.

¹⁶⁴ See Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, November 26, 2008 at <http://www.sec.gov/comments/s7-30-08/s73008-37.pdf>; see also Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, March 20, 2009 at <http://www.sec.gov/comments/s7-30-08/s73008-107.pdf>; Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, April 16, 2009 at <http://www.sec.gov/comments/s7-30-08/s73008-121.pdf>.

associated with making the requirements of that rule permanent.

Further, we believe that the benefits of making the requirements of temporary Rule 204T permanent in Rule 204 will justify forgoing any potential benefits that might accrue if the Commission were to allow temporary Rule 204T to expire. If the Commission were to allow temporary Rule 204T to expire without replacement, there might be potential benefits. For example, some commenters noted that they believe that there has been price disruption and market volatility resulting from temporary Rule 204T's requirement that participants close out fails to deliver by no later than the beginning of regular trading hours on the applicable close-out date.¹⁶⁵ Some commenters stated that temporary Rule 204T's close-out requirements cause over-buying and over-borrowing at the market open by parties seeking to meet the close-out requirements and has unnecessarily interfered in transactions that would settle in the normal course.¹⁶⁶

If we were to allow temporary Rule 204T to expire without adopting a substantially similar rule, the marketplace would revert back to the close-out requirements of Rule 203(b)(3) of Regulation SHO that apply only to those securities with a large and persistent level of fails to deliver, *i.e.*, threshold securities, and only to those fail to deliver positions that have persisted for thirteen consecutive settlement days.¹⁶⁷ Thus, it is plausible that a return to this pre-temporary Rule 204T close-out requirement might alleviate concerns expressed by commenters regarding potential over-buying, over-borrowing, volatility, and price disruption at the market open, be easier to comply with and, therefore, potentially reduce transaction costs to market participants. Further, according to some commenters, temporary Rule 204T may provide disincentives to lenders of securities and, thus, may cause lower liquidity levels in the market place.¹⁶⁸

In addition, if we were to allow temporary Rule 204T to expire without taking substantially similar action, participants might experience fewer costs in terms of monitoring systems platforms and notification obligations associated with complying with temporary Rule 204T¹⁶⁹ and with Rule

¹⁶⁵ See *e.g.*, letters from BATS; LEK; MFA; SIFMA; State Street.

¹⁶⁶ See, *e.g.*, letter from SIFMA.

¹⁶⁷ See 17 CFR 242.203(b)(3).

¹⁶⁸ See letters from BATS; ICI; SIFMA.

¹⁶⁹ See letters from CBOE; SIFMA; State Street (noting some of the potential costs associated with

¹⁶¹ See letter from SIFMA. The commenter noted that one firm indicated its operations personnel initially spent an extra 60 man-hours per day to comply with the rule, but acknowledged that time amount had tapered down through automation. The comment is addressed more directly in the cost-benefit analysis in Section VII below.

¹⁶² See *e.g.*, letters from CBOE; State Street.

204. For instance, the demonstration and notification requirements of temporary Rule 204T and Rule 204 and related compliance costs in terms of personnel, recordkeeping, systems, and surveillance mechanisms would not apply. However, as noted in the temporary Rule 204T Adopting Release, we believe any potential additional costs incurred in implementing the collection of information requirements under temporary Rule 204T would be minimal. We believe the same with respect to the costs associated with Rule 204. In addition, we note that most of the infrastructure necessary to comply with Rule 204 should already be in place in order to meet the close-out requirements of Rule 203(b)(3) of Regulation SHO and, more recently, of temporary Rule 204T.

For the reasons articulated above and below, in more detail, we believe that a reversion to the pre-temporary Rule 204T close-out regime would result in a number of costs to the securities markets in the forms of an increase in the level of fails to deliver and a lack of incentive for sellers to promptly deliver securities by settlement date. Such results would undermine our goals of reducing fails to deliver and addressing potentially abusive “naked” short selling.

As previously noted, and stated in the temporary Rule 204T Adopting Release, we are concerned that the close-out requirements of Regulation SHO do not adequately address our goals of reducing fails to deliver and addressing potentially abusive “naked” short selling.¹⁷⁰ In part due to such concerns, we have taken measures to help further reduce fails to deliver in all equity securities. As discussed above, OEA’s findings regarding the impact of temporary Rule 204T, and other Commission actions, indicate a significant reduction in the number of fails to deliver.¹⁷¹ Thus, we believe it is necessary to adopt temporary Rule 204T’s close-out requirements in a permanent rule, Rule 204, such that fails in all equity securities must be closed out within specific timeframes and, thereby, help maintain the recent reduction in fails to deliver and the benefits already achieved.

B. Benefits

By continuing to require that participants of a registered clearing agency immediately close-out a fail to

complying with temporary Rule 204T’s close-out requirements).

¹⁷⁰ See, e.g., Rule 204T Adopting Release, 73 FR 61711–61712.

¹⁷¹ See *supra* note 164.

deliver position on the applicable close-out date, Rule 204 will further our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling. This, in turn, will help to ensure that investors remain confident that trading can be conducted without the influence of illegal manipulation.¹⁷² The rule also furthers the goals of helping to maintain fair and orderly markets against the threat of sudden and excessive fluctuations of securities prices and substantial disruption in the functioning of the securities markets. The rule also promotes the prompt and accurate clearance and settlement of transactions in equity securities.

In addition, by helping to further our goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, Rule 204, like temporary Rule 204T, will help continue to address concerns that fails may create a misleading impression of the market for securities. Large and persistent fails to deliver may have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending.¹⁷³ Thus, by facilitating the prompt receipt of shares, Rule 204 will help enable investors to receive the benefits associated with share ownership.

Persistent fails to deliver in a security may also be perceived by potential investors negatively and may affect their investment decisions.¹⁷⁴ Thus, providing greater assurance that securities will be delivered might help alleviate investor apprehension about investing in certain securities and increase investor confidence in the settlement process.¹⁷⁵

1. Close-Out Requirements

By maintaining the close-out requirements of temporary Rule 204T we believe Rule 204 will continue to

¹⁷² See 2006 Regulation SHO Proposed Amendments, 71 FR 41712; 2007 Regulation SHO Final Amendments, 72 FR 45545; 2007 Regulation SHO Proposed Amendments, 72 FR 45558–45559; Anti-Fraud Rule Proposing Release, 73 FR 15378; Rule 204T Adopting Release, 73 FR 61709–61710 (providing discussion of the impact of fails to deliver on the market); see also 2003 Regulation SHO Proposing Release, 68 FR 62975 (Nov. 6, 2003) (discussing the impact of “naked” short selling on the market).

¹⁷³ See *supra* Section II. (discussing the potential negative impact of large and persistent fail to delivers).

¹⁷⁴ See *id.*

¹⁷⁵ See *id.*

help restore, maintain, and enhance investor confidence in the securities markets. It will also help continue to limit the use of manipulative schemes involving “naked” short selling in all equity securities.¹⁷⁶ Without the requirements of Rule 204, sellers that fail to deliver securities on settlement date may attempt to engage in trading activities that deliberately depress the price of a security. Rule 204’s close-out requirements will continue the limitations on a potential means of manipulation, thereby decreasing the possibility of artificial market influences and contributing to price efficiency. Rule 204’s close-out requirements are also expected to prevent large, widespread build-ups of fails over time.

As in temporary Rule 204T(a), Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date or, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.¹⁷⁷ Similarly, consistent with temporary Rule 204T(a)(1) and (a)(3), the close-out requirements of Rule 204(a)(1) and (a)(3) for fails to deliver resulting from long sales and certain bona fide market making activity must be closed out by the beginning of regular trading hours on the close-out date for such fails to deliver (*i.e.*, T+6).¹⁷⁸

As discussed in Section III above, some commenters requested that we extend the close-out period for fails to deliver resulting from short sales, long sales, and bona fide market making activity from the beginning to the end of regular trading hours on the applicable close-out date. Commenters expressed concern that temporary Rule 204T’s requirement to close out fails to deliver by no later than the beginning of regular trading hours can create buying pressure at the open, that may temporarily distort the price of the security.¹⁷⁹

Other commenters requested additional days within which to close

¹⁷⁶ See 204T Adopting Release, 73 FR 61709–61710.

¹⁷⁷ See Rule 204(a).

¹⁷⁸ See Rules 204(a)(1) and 204(a)(3).

¹⁷⁹ See, e.g., letters from MFA; CBOE; SIFMA; BATS; RMA; State Street.

out fails to deliver in connection with short sales. For example, some commenters requested that the Commission extend the close-out period for fails to deliver resulting from short sales to three settlement days after the fail occurs, consistent with the close-out period for fails to deliver resulting from long sales and market making activity.¹⁸⁰ Other commenters requested that the Commission extend the close-out requirement for fails to deliver resulting from all sales to five settlement days after the fail to deliver position occurs.¹⁸¹ These commenters stated that the additional time to close out fails to deliver would allow the majority of trades to clear and settle on their own within a few days following the regular settlement date (*i.e.*, T+3).¹⁸²

Some commenters expressed concerns about the effect of the close-out requirements of temporary Rule 204T on securities lending.¹⁸³ One commenter also noted that in practice fails to deliver resulting from sales of securities on loan, which are considered “long” sales, are often closed out in accordance with the time-frames for fails to deliver resulting from short sales rather than long sales because temporary Rule 204T does not provide sufficient time to determine whether or not a fail to deliver position resulted from a long or short sale.¹⁸⁴ According to this commenter, because some broker-dealers are purchasing securities by no later than the beginning of regular trading hours on the settlement date after the fail to deliver occurs, in accordance with the close-out requirements for short sales, such purchasing activity acts as a disincentive to lending and causes institutions to question their participation in lending programs.¹⁸⁵

Other commenters stated that where the holder of a long position sells securities that have been financed through a securities loan, the close-out requirements of temporary Rule 204T may not provide sufficient time for the securities to be recalled and delivered in time for settlement of the sale

¹⁸⁰ See, *e.g.*, letters from EWT; Coalition of Private Investment Companies; SIFMA; MFA; State Street.

¹⁸¹ See, *e.g.*, letters from CBOE; Options Exchanges.

¹⁸² See, *e.g.*, letters from SIFMA; MFA; State Street; CBOE; Options Exchanges; Coalition of Private Investment Companies.

¹⁸³ See, *e.g.*, letter from SIFMA.

¹⁸⁴ See letter from SIFMA; *see also* letters from RMA; ICI.

¹⁸⁵ See letter from SIFMA; *see also* letter from RMA (recommending the extension of the close-out period for fails to deliver for all sales to settlement date plus three days (*i.e.*, T+6) “to ensure that beneficial owners selling on-loan positions are not compromised by close-outs of long sales on T+4”).

transaction.¹⁸⁶ These commenters stated, among other things, that temporary Rule 204T’s requirement that securities be delivered by no later than the beginning of regular trading hours does not allow for the completion of the securities lending cycle, which may not occur until the close of the DTC settlement window on the third settlement day after settlement date (*i.e.*, T+6).¹⁸⁷

Although we recognize commenters’ concerns regarding the potential market impact of the close-out requirements of temporary Rule 204T, particularly at the market open, we believe that these potential concerns are justified by the benefits of retaining in Rule 204 the strict close-out requirements of temporary Rule 204T. As discussed above, since the adoption of temporary Rule 204T, and other actions taken by the Commission aimed at reducing fails to deliver, there has been a significant reduction in fails to deliver. To maintain this reduction, we believe it is appropriate at this time to continue to require that participants close out fails to deliver by no later than the beginning of regular trading hours on the applicable close-out date. Thus, we are adopting as a permanent rule the requirement that fails to deliver resulting from short sales, long sales, and certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the applicable close-out date.

In addition, we believe that continuing to require that fails to deliver be closed out on the day immediately following the day on which the fail to deliver occurs is consistent with our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing “naked” short selling and, in particular, potentially abusive “naked” short selling. Although extending the time-frames within which fails to deliver must be closed out may allow for ordinary course settlement, as several commenters contend, we believe that the close-out requirements of Rule 204 are necessary to help encourage delivery by settlement date and achieve our goal of not allowing fails to deliver to persist.¹⁸⁸

As we discussed in the Rule 204T Adopting Release, we believe that delivery on sales should be made by

¹⁸⁶ See letters from EWT; BATS; RMA; ICI; Wedbush.

¹⁸⁷ See letters from EWT; BATS; RMA; ICI; RMA.

¹⁸⁸ See *supra* note 16 (discussing the standard three-day settlement cycle).

settlement date.¹⁸⁹ In the Rule 204T Adopting Release, we noted that the vast majority of fails to deliver are closed out within five days after T+3.¹⁹⁰ In addition, in that release we referenced a recent analysis by OEA that found that more than half of all fails to deliver and more than 70% of all fail to deliver positions are closed out within two settlement days after T+3.¹⁹¹ We also noted in that release, however, that although this information shows that delivery is being made, it demonstrates that often delivery is not being made until several days following the standard three-day settlement cycle.

In addition, as discussed above, fails to deliver may be associated with a scheme to manipulate the price of a security. We are also concerned about the negative effect that fails to deliver and potentially abusive “naked” short selling may have on individual securities and the broader market, including on investor confidence.¹⁹² The close-out requirements of Rule 204 help address these concerns by encouraging timely settlement and not allowing fails to deliver to persist.

We understand, however, that fails to deliver may occur from long sales within the first two settlement days after settlement date for legitimate reasons. For example, human or mechanical errors or processing delays can result from transferring securities in custodial or other form rather than book-entry form, thereby causing a fail to deliver on a long sale.

Thus, in Rule 204(a)(1), we are adopting, with certain limited modifications, the provisions of temporary Rule 204T(a)(1) relating to closing out fails to deliver resulting from long sales. Specifically, Rule 204(a)(1) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day

¹⁸⁹ See Rule 204T Adopting Release, 73 FR 61712–61713.

¹⁹⁰ See *id.*

¹⁹¹ See *id.* at n. 68. We note that OEA’s analysis examined the period from January to July 2008 and used the age of the fail to deliver position as reported by the NSCC. The NSCC data included only securities with at least 10,000 shares in fails to deliver. These numbers also included securities that were not subject to the close-out requirement in Rule 203(b)(3) of Regulation SHO, which applies only to “threshold securities” as defined in Rule 203(c)(6) of Regulation SHO.

¹⁹² See, *e.g.*, Anti-Fraud Rule Adopting Release, 73 FR 61666.

following the settlement date immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity.¹⁹³

In addition, consistent with temporary Rule 204T(a)(3), Rule 204(a)(3) extends the close-out requirement for fails to deliver attributable to certain bona fide market making activities by requiring a participant to close out the fail to deliver position attributable to such activities by no later than the beginning of regular trading hours on the third settlement day after the settlement date. We believe this exception to Rule 204(a)'s close-out requirement benefits clearing agency participants because the two additional days to close-out these fail to deliver positions may reduce close-out costs for such participants.

Although we have determined at this time not to provide additional time within which fails to deliver must be closed out on the applicable close-out date, we are providing additional flexibility to the close-out requirements for fails to deliver resulting from long sales and certain bona fide market making activity by, in contrast to temporary Rule 204T(a)(1) and (a)(3), providing in Rule 204(a)(1) and (a)(3) the ability to borrow as well as purchase securities to close out a fail to deliver position. As some commenters noted, we believe that the ability to borrow a security to close-out a fail to deliver position may have less market impact than a purchase, while serving the objective of closing-out a fail position.¹⁹⁴ In addition, we believe that the additional flexibility afforded by the ability to close out a fail to deliver position either through a purchase or a borrow, will allow participants to access additional liquidity sources, thereby potentially reducing close-out costs and helping to ensure that fails to deliver are closed out on the applicable close-out date.¹⁹⁵

Temporary Rule 204T(d) provides that a participant may reasonably allocate its responsibility to close out a fail to deliver position to another broker-dealer from which the participant receives

trades for clearance and settlement.¹⁹⁶ Consistent with temporary Rule 204T(d), Rule 204(d) provides for allocation of a fail to deliver position by a participant to a broker-dealer. Specifically, Rule 204(d) provides that if a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker-dealer for which it clears trades or from which it receives trades for settlement, based on such broker-dealer's short position, the provisions of Rule 204(a) and (b) relating to such fail to deliver position shall apply to such registered broker-dealer that was allocated the fail to deliver position, and not to the participant.¹⁹⁷ This allocation provision benefits participants because if a participant can identify the accounts of broker-dealers for which they clear or from which they receive trades for settlement, the participant can allocate the responsibility to close out the fail to deliver position to the particular broker-dealer account(s) whose trading activities caused the fail to deliver position, provided the allocation is reasonable. In this way, the allocated broker-dealer rather than the participant will incur any costs associated with Rule 204's close-out requirement.

In addition, consistent with temporary Rule 204T(d), Rule 204(d) imposes a notification requirement on a broker-dealer that has been allocated responsibility for complying with the rule's requirements. Thus, under the rule's allocation provision, if the broker-dealer does not comply with the provisions of Rule 204(a), it must immediately notify the participant that it has become subject to the borrowing requirements of Rule 204(b). This notification requirement is intended to let participants know when a broker-dealer from which the participant receives trades for clearance and settlement has become subject to the rule's borrowing requirements. The notification requirement furthers the Commission's goals of limiting fails to deliver and addressing abusive "naked" short selling by promoting the prompt and accurate clearance and settlement of transactions involving equity securities.

The notification requirement will also help ensure that participants that receive trades for clearance and settlement from broker-dealers will be on notice that the broker-dealer is subject to the borrow requirements of Rule 204(b) until the fail to deliver position has been closed out.

Under Rule 204(e), even if a participant of a registered clearing agency has not closed out a fail to deliver position at a registered clearing agency in accordance with Rule 204(a), or has not allocated a fail to deliver position to a broker-dealer in accordance with Rule 204(d), a broker-dealer shall not be subject to the requirements of Rule 204(a) or (b) if it purchases or borrows securities, and complies with the conditions set forth in Rule 204(e)(1) through (4), as described in detail in Section III.C. above. We note that, unlike temporary Rule 204T(e), Rule 204(e) permits a broker-dealer to use a borrow, as well as a purchase, to close out a position prior to the applicable close-out date. Rule 204(e), similar to temporary Rule 204T(e), encourages early close-outs of fail to deliver positions, by providing that a broker-dealer can satisfy the rule's close-out requirements by purchasing securities prior to the applicable close-out date provided the broker-dealer complies with certain conditions. In addition, as noted above, Rule 204(e) provides more flexibility than temporary Rule 204T(e) by allowing a broker-dealer to close out a fail to deliver position prior to the applicable close-out date by borrowing, as well as purchasing securities. We believe this ability to borrow, as well as purchase, securities further encourages early close-outs of fail to deliver positions which serves the benefit of promoting our goal of maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, by facilitating the ability to close-out fails faster.

Further, Rule 204(e) is modified from temporary Rule 204T(e)(3)'s provision that the purchase must be of a quantity of securities sufficient to cover the entire amount of the broker-dealer's open short position. The purpose of Rule 204(e) is to encourage broker-dealers to close out fail to deliver positions prior to the applicable close-out date (*i.e.*, T+4 or T+6) by reducing the costs of the early close-out. Requiring a broker-dealer to close out its open fail to deliver position prior to the applicable close-out date is more closely tailored towards achieving that goal than requiring a broker-dealer to close out its open short position prior to the

¹⁹³ See Rule 204(a)(1).

¹⁹⁴ See *e.g.*, letters from SIFMA; EWT; MFA; State Street; BATS; Wedbush.

¹⁹⁵ Although Rule 204(a)(1) permits borrowing to close out a fail to deliver position resulting from a long sale, broker-dealers must also comply with Rule 203(a) of Regulation SHO. Rule 203(a)(1) provides that, unless an exception applies, "[i]f a broker or dealer knows or has reasonable grounds to believe that the sale of an equity security was or will be effected pursuant to an order marked 'long,' such broker or dealer shall not lend or arrange for the loan of any security for delivery to the purchaser's broker after the sale, or fail to deliver a security on the date delivery is due." 17 CFR 242.203(a).

¹⁹⁶ See temporary Rule 204T(d); see also 17 CFR 242.203(b)(3)(vi). Rule 203(b)(3)(vi) of Regulation SHO provides that "[i]f a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this paragraph (b)(3) relating to such fail to deliver position shall apply to the portion of such registered broker or dealer that was allocated the fail to deliver position, and not to the participant."

¹⁹⁷ See Rule 204(d).

applicable close-out date. Thus, in response to commenters' concerns, in Rule 204(e)(3) we have modified the requirement of temporary Rule 204T(e)(3) to provide that a broker-dealer must purchase or borrow a quantity of securities sufficient to cover the entire amount of that broker-dealer's fail to deliver position at a registered clearing agency in that security on the day of the purchase. Consequently, we believe our incorporation of the conditions of temporary Rule 204T(e), with the noted modifications, facilitates early close-outs of fail to deliver positions.¹⁹⁸

2. Borrowing Requirements

Under temporary Rule 204T(b), if a participant does not purchase or borrow shares, as applicable, to close out a fail to deliver position in accordance with temporary Rule 204T, the participant violates the close-out requirements of that rule. We are adopting in Rule 204(b) the borrowing requirements of temporary Rule 204T(b), without modification. Accordingly, Rule 204(b) imposes on the participant and on all broker-dealers from which that participant receives trades for clearance and settlement (including introducing and executing brokers) a requirement to borrow or arrange to borrow securities prior to accepting or effecting further short sales in that security. We believe that this borrow requirement is beneficial in that it furthers our goals of reducing fails to deliver by helping to maintain the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive "naked" short selling, by promoting the prompt and accurate clearance and settlement of securities transactions.

Specifically, Rule 204(b) provides that the participant and any broker-dealer from which it receives trades for clearance and settlement, including any market maker that is otherwise entitled to rely on the exception provided in Rule 203(b)(2)(iii) of Regulation SHO,¹⁹⁹ may not accept a short sale order in an equity security from another person, or effect a short sale order in such equity security for its own account, to the extent that the broker-dealer submits its

short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.²⁰⁰

Rule 204, like temporary Rule 204T, is aimed at reducing fails to deliver and addressing potentially abusive "naked" short selling. To that end, we believe it is appropriate to include in the rule borrowing requirements for broker-dealers, including participants, that sell short a security for which a fail to deliver position has not been closed out in accordance with the requirements of the rule. We believe that the borrowing requirements of Rule 204(b) will help further our goals of reducing fails to deliver by helping to maintain the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive "naked" short selling by promoting the prompt and accurate clearance and settlement of securities transactions. In addition, we believe the rule's requirement that participants and broker-dealers from which they receive trades for clearance and settlement borrow or arrange to borrow securities prior to accepting or effecting short sales in the security that has a fail to deliver position that has not been closed out will help continue to ensure that shares will be available for delivery on any additional short sales by settlement date and, thereby, help to avoid additional fails to deliver occurring in the security.

We note that one commenter asked for clarification regarding whether a participant ceases to be subject to the borrow requirements of temporary Rule 204T(b) if a participant no longer has a

²⁰⁰ See Rule 204(b). The borrow requirements of Rule 204(b) are also consistent with the requirements of Rule 203(b)(3)(iv) of Regulation SHO for a participant that has not closed out a fail to deliver position in a threshold security that has persisted for thirteen consecutive settlement days. See 17 CFR 242.203(b)(3)(iv). Rule 203(b)(3)(iv) of Regulation SHO provides that "[i]f a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity."

fail to deliver position at a registered clearing agency due to the participant borrowing the securities or the participant receiving securities from the seller (e.g., in connection with long sales).²⁰¹ Temporary Rule 204T(b) imposes short sale borrowing requirements until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency. Thus, under temporary Rule 204T, regardless of whether a participant borrows or receives delivery of securities, the requirements of temporary Rule 204T(b) continue to apply until the participant purchases securities to close out the fail to deliver position and that purchase has cleared and settled at a registered clearing agency.

We have incorporated these same requirements into Rule 204(b) without modification. The provisions of Rule 204(b) are intended to act as an additional incentive to broker-dealers to deliver securities by settlement date, and to close out fail to deliver positions in accordance with the requirements of Rule 204. We believe that the purchase requirement of Rule 204(b) is beneficial in that it will continue to further these goals.

In connection with the borrowing requirements of Rule 204(b), we are incorporating into Rule 204(c) the notification requirement contained in temporary Rule 204T(c), without modification. In accordance with Rule 204(c), participants must notify all broker-dealers from which they receive trades for clearance and settlement that a fail to deliver position has not been closed out in accordance with Rule 204. Specifically, Rule 204(c) provides that the participant must notify any broker-dealer from which it receives trades for clearance and settlement, including any market maker that is otherwise entitled to rely on the exception provided in Rule 203(b)(2)(iii) of Regulation SHO,²⁰² (a) that the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of Rule 204, and (b) when the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency.²⁰³

We are including this notification requirement in Rule 204(c) so that all broker-dealers that submit trades for clearance and settlement to a participant

¹⁹⁸ See *supra* Section III.C. (explaining the conditions of Rule 204(e), as well as commenters' concerns that by requiring broker-dealers to close-out their entire open short position temporary Rule 204T(e) does not encourage early close-outs).

¹⁹⁹ See 17 CFR 242.203(b)(2)(iii) (providing an exception from Regulation SHO's "locate" requirement for short sales effected by a market maker in connection with bona fide market making activities in the securities for which the exception is claimed).

²⁰¹ See letter from SIFMA.

²⁰² See *supra* note 199.

²⁰³ See Rule 204(c).

that has a fail to deliver position in a security that has not been closed out in accordance with Rule 204 will be on notice that short sales in that security to be cleared or settled through that participant will be subject to the borrow requirements of Rule 204(b) until the fail to deliver position has been closed out. We believe this notification requirement will help serve the goal of addressing potentially abusive “naked” short selling in equity securities.

As noted above, Rule 204(d) provides that a participant may reasonably allocate (e.g., the allocation must be timely) its responsibility to close out a fail to deliver position to another broker-dealer for which the participant clears or from which the participant receives trades for settlement. Thus, to the extent that the participant can identify the broker-dealer(s) that have contributed to the fail to deliver position, and the participant has reasonably allocated the close-out obligation to the broker-dealer(s), the requirement to borrow or arrange to borrow prior to effecting further short sales in that security will continue to apply to only those particular broker-dealer(s).²⁰⁴

Rule 204(b) includes an exception from the borrowing requirements for any broker-dealer that can demonstrate that it was not responsible for any part of the fail to deliver position of the participant. We have incorporated into Rule 204(b) the language of temporary Rule 204T(b)(1), without modification. Thus, Rule 204(b) provides that a broker-dealer shall not be subject to the requirements of paragraph (b) of Rule 204 if the broker-dealer timely certifies to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that the broker-dealer is in compliance with the requirements of Rule 204(e).²⁰⁵ We have included this exception because we continue to believe that a broker-dealer should not be subject to the borrowing requirements of the rule if the broker-dealer can demonstrate that it did not incur a fail to deliver position in the security on settlement date, or if it has taken steps, in accordance with Rule 204(e), to close out the fail to deliver position.

Temporary Rule 204T(b)(2) included an exception from the borrowing requirements of temporary Rule 204T(b) for market makers that can demonstrate that they do not have an open short

position in the equity security at the time of any additional short sales.²⁰⁶ We do not believe that a similar exception is necessary under Rule 204(b) because, as with other broker-dealers, a market maker is excepted from the borrowing requirements of Rule 204(b) if it timely certifies to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that it is in compliance with the requirements of Rule 204(e). Because Rule 204(b) includes an exception applicable to all broker-dealers, including market makers, we do not think it is necessary to maintain a separate exception applicable only to market makers.

3. Sales of Certain Deemed To Own Securities

After considering the comments and to provide consistency between the delivery requirements of Rule 203(b)(2)(ii) of Regulation SHO and the close-out requirements of Rule 204, we are adopting in Rule 204(a)(2) the requirements of temporary Rule 204T(a)(2) with some limited modifications.²⁰⁷ Specifically, we are expanding the universe of securities to which Rule 204(a)(2) will apply. Rule 204(a)(2) will apply to fails to deliver resulting from the sale of an equity security that a person is “deemed to own” pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed.²⁰⁸ In addition, we are revising the close-out period within which a participant must close out fails to deliver resulting from sales of such securities to be consistent with the delivery period contained in Rule 203(b)(2)(ii) of Regulation SHO.

Thus, Rule 204(a)(2) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security resulting from the sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed, the participant shall, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing

securities of like kind and quantity.²⁰⁹ We believe that amending the close-out requirement to 35 consecutive calendar days from trade date for fails to deliver resulting from sales of such owned securities will better permit the orderly settlement of such sales without the risk of causing market disruption due to unnecessary purchasing activity (particularly if the purchases are for sizable quantities of stock). In addition, the amendment to the close-out period relieves an inconsistency between Rule 203(b)(2)(ii) of Regulation SHO and temporary Rule 204T(a)(2), as noted by one commenter.²¹⁰

Although this amendment will provide an extended period of time within which fails to deliver resulting from sales of certain “deemed to own” securities must be closed out, we believe that such additional time is warranted and does not undermine our goal of reducing fails to deliver because these are sales of owned securities that cannot be delivered by settlement date due solely to processing delays outside the seller’s or broker-dealer’s control. Moreover, delivery will be made on such sales as soon as all restrictions on delivery have been removed. In addition, if a fail to deliver position is not closed out in accordance with Rule 204(a)(2), the borrowing requirements of Rule 204(b) will apply. Rule 204(b)’s borrowing requirements will help ensure that additional fails to deliver cannot occur until securities have been purchased to close out the fail to deliver position and such purchase has cleared and settled.

Thus, if a participant does not close out a fail to deliver position at a registered clearing agency in accordance with Rule 204(a)(2), the rule prohibits the participant, and any broker-dealer from which it receives trades for clearance and settlement, including market makers, from accepting any short sale orders or effecting further short sales in the particular security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.²¹¹

C. Costs

We recognize that temporary Rule 204T may have resulted in increased short selling costs for participants that may have impacted legitimate short

²⁰⁴ See Rule 204(d).

²⁰⁵ See Rule 204(b).

²⁰⁶ See temporary Rule 204T(b)(2).

²⁰⁷ See e.g., letter from SIFMA.

²⁰⁸ See Rule 204(a)(2).

²⁰⁹ See *id.*

²¹⁰ See letter from SIFMA.

²¹¹ See Rule 204(b).

selling activities.²¹² To the extent that the requirements of temporary Rule 204T have resulted in increased short selling costs, we do not believe that such costs will increase, and may in fact decrease, under Rule 204 because, as discussed below, among other things, we have provided additional flexibility to closing out fails to deliver under Rule 204 as compared to Rule 204T.

Some commenters stated that temporary Rule 204T has imposed burdens on market participants in several areas, including on firm operations personnel.²¹³ Some industry participants have stated that lending rates increased significantly following the adoption of temporary Rule 204T and other recent Commission actions.²¹⁴ We note, however, that the evidence that attempts to specify the cause of any such increase in lending rates is confounded by the unusual circumstances of the continued credit crisis. In addition, we note that a recent academic study that examined borrowing costs after the September Emergency Order²¹⁵ found no significant increase in average lending rates.²¹⁶

As discussed in more detail below, some commenters also stated that the inflexibility of temporary Rule 204T's requirement that participants purchase securities to close-out a fail to deliver position by no later than the beginning of regular trading hours on the applicable close-out date has led to increased market pressures and market volatility due to the need to execute potentially large purchases at the market open.²¹⁷

To the extent that the requirements of Rule 204 result in increased costs to short selling in equity securities, it may lessen some of the benefits of legitimate short selling and, thereby, result in a reduction in short selling generally. Such a reduction may lead to a decrease in market efficiency and price

²¹² See, e.g., letter from CBOE (noting its belief that legitimate short selling activity has been damaged by temporary Rule 204T).

²¹³ See letters from CBOE (stating that temporary Rule 204T has created undue burdens in trading and risk management, clearing, lending and buy-in operations and front-end trading, back-office and regulatory systems); SIFMA; State Street (noting the "additional transactional, operational and market costs which the industry had to incur").

²¹⁴ See *supra* notes 39–42 and accompanying text (discussing recent Commission actions in addition to the adoption of temporary Rule 204T).

²¹⁵ See September Emergency Order, 73 FR 54875.

²¹⁶ See Adam C. Kolasinski, Adam V. Reed, and Jacob R. Thornock, *Prohibitions versus Constraints: The 2008 Short Sales Regulations*, March 2009 working paper.

²¹⁷ See e.g., letters from SIFMA; MFA; Wedbush; Lek Securities; State Street.

discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity. We also recognize that requiring that participants close out fails to deliver in equity securities in accordance with the rule may potentially impact the willingness of participants to provide liquidity. As one commenter stated, certain aspects of the close-out process "may have an unintended impact on the securities lending market and therefore the efficient functioning of the markets."²¹⁸ As a result, securities lending could become more risky and costly and, in turn, impact market liquidity and price discovery benefits of short selling.²¹⁹

Although we recognize that Rule 204 may result in the continuation of some costs, as well as new costs, to certain participants, as discussed in detail below, we believe such costs will be limited and are justified by the fact that the rule will continue our efforts to achieve our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive "naked" short selling and, thereby help restore, maintain, and enhance investor confidence in the markets.

1. Close-Out Requirements

Consistent with temporary Rule 204T(a), Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.²²⁰ Similarly, consistent with temporary Rule 204T(a)(1) and (a)(3), the close-out requirements of Rule 204(a)(1) and (a)(3) for fails to deliver resulting from long sales and certain bona fide market making activity must be closed out by the beginning of regular trading hours on the close-out date for such fails to deliver (*i.e.*, T+6).²²¹

²¹⁸ Letter from ICI; see also letter from CBOE.

²¹⁹ See letters from ICI; BATS.

²²⁰ See Rule 204(a).

²²¹ See Rules 204(a)(1) and 204(a)(3).

As discussed in detail above in Section VII.B. in connection with the benefits of Rule 204, some commenters requested that we extend the close-out period for fails to deliver resulting from short sales, long sales, and bona fide market making activity from the beginning to the end of regular trading hours on the applicable close-out date due to concerns that temporary Rule 204T's requirement to close out fails to deliver by no later than the beginning of regular trading hours can create buying pressure at the open, that may temporarily distort the price of the security.²²² Other commenters requested additional days within which to close out fails to deliver in connection with short sales.²²³ Commenters stated that the additional time to close out fails to deliver would allow the majority of trades to clear and settle on their own within a few days following the regular settlement date (*i.e.*, T+3).²²⁴

Some commenters expressed concerns about the effect of the close-out requirements of temporary Rule 204T on securities lending.²²⁵ One commenter also noted that in practice fails to deliver resulting from sales of securities on loan, which are considered "long" sales, are often closed out in accordance with the time-frames for fails to deliver resulting from short sales rather than long sales because temporary Rule 204T does not provide sufficient time to determine whether or not a fail to deliver position resulted from a long or short sale, which acts as a disincentive to lending and causes institutions to question their participation in lending programs.²²⁶ Other commenters expressed concerns regarding the impact of temporary Rule 204T's close-out requirements on the lending recall process.²²⁷

As discussed above, although we recognize commenters' concerns regarding the potential market impact of the close-out requirements of temporary Rule 204T, such close-out requirements are furthering our goal of reducing fails to deliver, as evidenced in part by preliminary results from OEA regarding its impact on the number of fails to

²²² See, e.g., letters from MFA; CBOE; SIFMA; BATS; RMA; State Street.

²²³ See e.g., letters from EWT; Coalition of Private Investment Companies; SIFMA; MFA; State Street; CBOE; Options Exchanges.

²²⁴ See, e.g., letters from SIFMA; MFA; State Street; CBOE; Options Exchanges; Coalition of Private Investment Companies.

²²⁵ See, e.g., letter from SIFMA.

²²⁶ See letter from SIFMA; see also letters from RMA; ICI.

²²⁷ See letters from EWT; BATS; RMA; ICI; Wedbush; RMA.

deliver.²²⁸ To maintain this reduction, we believe it is appropriate at this time to adopt as a permanent rule the requirement that fails to deliver resulting from short sales, long sales, and certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the applicable close-out date.

In addition, as discussed above, we believe that continuing to require that fails to deliver be closed out on the day immediately following the day on which the fail to deliver occurs is consistent with our goal of reducing fails to deliver and addressing “naked” short selling and, in particular, potentially abusive “naked” short selling. Although extending the timeframes within which fails to deliver must be closed out may allow for ordinary course settlement, as several commenters contend, we believe that the close-out requirements of Rule 204 are necessary to help encourage delivery by settlement date and achieve our goal of not allowing fails to deliver to persist.

We recognize that Rule 204T’s close-out requirement resulted in costs for participants of a registered clearing agency in terms of systems and surveillance modifications and recordkeeping, as well as changes to processes and procedures. Because we have made limited modifications in Rule 204 to some of the requirements of temporary Rule 204T, compliance with Rule 204’s requirements may result in new costs for participants in terms of systems and surveillance modifications and recordkeeping, as well as changes to processes and procedures.

We believe, however, that most of the infrastructure and personnel necessary to comply with Rule 204 is already in place to meet the requirements of Rule 203(b)(3) of Regulation SHO²²⁹ and temporary Rule 204T. As temporary Rule 204T has been in effect since September 2008, and Rule 204 incorporates the substance of temporary Rule 204T with limited modifications, market participants should already have established systems and processes that should mitigate many of the costs to comply with Rule 204. Thus, we believe any additional costs incurred with respect to complying with Rule 204’s close-out requirements, over those incurred with respect to complying with temporary Rule 204T, will be minimal.

In addition, we note that the close-out requirements of Rule 204 are consistent with current settlement practices and procedures and with the close-out requirements of temporary Rule 204T

and Rule 203(b)(3) of Regulation SHO. For example, because most transactions settle by T+3, participants should already have had in place policies and procedures to help ensure that delivery is being made by settlement date prior to the implementation of the requirements of temporary Rule 204T.²³⁰ Nevertheless, under Rule 204, as under temporary Rule 204T, we recognize that participants will continue to incur costs for each close-out and these costs could accumulate to significant amounts over time and across participants. For example, one commenter noted that “the close-out process is manual in nature and involves intensive monitoring of multiple levels of data across various system platforms and business units within the firm.”²³¹ We believe, however, that the experience participants have gained to date in complying with temporary Rule 204T is expected to reduce the costs to participants in complying with Rule 204 from those incurred in connection with complying with Rule 204T.

Moreover, similar to the existing close-out requirements of Rule 203(b)(3) of Regulation SHO and consistent with temporary Rule 204T, the requirements of Rule 204 are based on a participant’s fail to deliver position at a registered clearing agency. As noted above, the NSCC clears and settles the majority of equity securities trades conducted on the exchanges and in the over-the-counter markets.²³² The NSCC clears and settles trades through the CNS system, which nets the securities delivery and payment obligations of all of its members.²³³ The NSCC notifies its members of their securities delivery and payment obligations daily.²³⁴ Because Rule 204 is based on a participant’s fail to deliver position at a registered clearing agency, it is consistent with current settlement practices and procedures and with the Regulation SHO framework regarding delivery of securities.²³⁵ As such, we anticipate that most participants will already have systems, processes and procedures in place in order to comply with Rule 204’s close-out requirements and, therefore, that any additional implementation costs associated with the rule will be minimal.

In addition, to comply with Regulation SHO’s close-out requirement when it became effective in January

2005, participants needed to modify their recordkeeping systems and surveillance mechanisms.²³⁶ Participants also should have retained and trained the necessary personnel to ensure compliance with the Regulation SHO’s close-out requirements. As we noted in the Rule 204T Adopting Release, the infrastructure necessary to comply with the requirements of that rule should already be in place.²³⁷ Because Rule 204 incorporates the substance of temporary Rule 204T with limited modifications, we similarly believe that most of the infrastructure necessary to comply with Rule 204’s close-out requirements will already be in place. Thus, we believe minimal modifications will be necessary to comply with Rule 204. Accordingly, we believe that any changes to personnel, computer hardware and software, recordkeeping or surveillance costs will be minimal.²³⁸

We recognize that the requirements of Rule 204(a)(1) with respect to closing out fails to deliver resulting from long sales, may impose additional costs on participants. However, we believe that these costs are consistent with those currently borne by these entities in complying with temporary Rule 204T(a)(1). Under Rule 204(a)(1), a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in an equity security and can demonstrate on its books and records that the fail to deliver position resulted from a long sale will have until no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date to immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity.²³⁹ Thus, to qualify for this additional time to close out a fail to deliver position, the rule requires the participant to demonstrate on its books and records that the fail to deliver position resulted from a long sale. This demonstration requirement may result in participants continuing to incur costs related to personnel, recordkeeping, systems, and surveillance mechanisms. However, because most of these systems have been in place since September 2008 in order for broker-dealers to comply with the requirements of temporary Rule

²³⁶ See, e.g., letter from SIFMA (indicating that their existing system for tracking and eliminating fails to deliver is based on the Regulation SHO framework).

²³⁷ See Rule 204T Adopting Release, 73 FR 61725.

²³⁸ See also *supra* Section VII.B.I. (discussing benefits of the close-out requirements despite commenters’ costs concerns).

²³⁹ See Rule 204(a)(1).

²²⁸ See *supra* note 164.

²²⁹ See 17 CFR 242.203(b)(3).

²³⁰ See *supra* note 16.

²³¹ Letter from SIFMA.

²³² See *supra* note 35.

²³³ See *id.*

²³⁴ See *id.*

²³⁵ See 17 CFR 242.203(b)(3).

204T, we do not believe that the demonstration requirements of Rule 204(a)(1) will result in significant additional cost.

In addition, we recognize that the allocation notification requirement of Rule 204(d) may continue to impose costs on broker-dealers that have been allocated responsibility for the close-out requirement under the rule. As discussed above, consistent with temporary Rule 204T(d), Rule 204(d) requires a broker-dealer that has been allocated a portion of a fail to deliver position that has not complied with the close-out requirements under the rule to notify the participant that it has become subject to the borrowing requirements of Rule 204(b). This notification requirement may result in broker-dealers incurring costs related to personnel, recordkeeping, systems, and surveillance mechanisms. Again, as most of these mechanisms have been in place since the implementation of temporary Rule 204T, we believe any further implementation costs will be minimal, and the costs incurred with each notification will be similar to those incurred under temporary Rule 204T.

We also recognize that like temporary Rule 204T, the requirements of Rule 204(e) may continue to impose costs on broker-dealers. Rule 204(e) allows a broker-dealer to obtain credit if it purchases securities in accordance with the conditions specified in that provision of the rule. Rule 204(e) requires, among other things, that a broker-dealer demonstrate that it has a net long position or net flat position on its books and records on the settlement day for which the broker-dealer is claiming credit. This demonstration requirement may continue to result in participants incurring costs related to personnel, recordkeeping, systems, and surveillance mechanisms. However, we believe the costs associated with Rule 204(e) will be minimal because the mechanisms necessary to comply with this requirement should already be in place.

2. Borrowing Requirements

Consistent with temporary Rule 204T, we believe that Rule 204's borrowing requirements for fail to deliver positions that are not closed out in accordance with the rule will result in limited, if any, implementation costs—in terms of personnel, recordkeeping, systems and surveillance mechanisms—to participants of a registered clearing agency, and broker-dealers from which they receive trades for clearance and settlement. These entities have already had to comply with the borrowing requirements of Rule 203(b)(3)(iv) of

Regulation SHO,²⁴⁰ since January 2005, and temporary Rule 204T since September 2008, as applicable, if a fail to deliver position has not been closed out in accordance with those rules' mandatory close-out requirements. Accordingly, participants and broker-dealers are already required to have in place the personnel, recordkeeping, systems, and surveillance mechanisms necessary to comply with Rule 204(b)'s borrowing requirements. Nevertheless, we recognize that these borrowing requirements will impose costs on participants, broker-dealers, and investors, and these costs can accumulate to significant amounts if the borrowing requirement is triggered often. One commenter stated a concern that, “[R]equiring a borrow or arrangement to borrow securities prior to accepting or effectuating further short sales in a security that failed to deliver and has not been closed out, are overly restrictive.”²⁴¹ Because Rule 204 does not modify this requirement, we expect these costs to be similar to those under temporary Rule 204T.

Consistent with temporary Rule 204T, however, Rule 204 is aimed at addressing potentially abusive “naked” short selling. To that end, we believe it is appropriate to continue to include in the rule borrowing requirements for participants and broker-dealers that sell short a security for which a fail to deliver position has not been closed out in accordance with the requirements of the rule. We believe that the borrowing requirements of Rule 204(b), like those already required by temporary Rule 204T(b), will help further our goals of reducing fails to deliver by helping to maintain the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling by promoting the prompt and accurate clearance and settlement of securities transactions. By continuing to require that participants and broker-dealers from which they receive trades for clearance and settlement borrow or arrange to borrow securities prior to accepting or effecting additional short sales in the security that has a fail to deliver position that has not been closed out, the rule will continue to help ensure that shares will be available for delivery on the short sale by settlement date and, thereby, will continue to help avoid additional fails to deliver occurring in the security.

Moreover, we believe any other costs incurred in connection with the

borrowing requirements of Rule 204(b) will be limited because, consistent with temporary Rule 204T(b)(1), if a participant becomes subject to the borrowing requirements of Rule 204(b), a broker-dealer that clears through the participant will not also be subject to the borrowing requirements of Rule 204(b) if that broker-dealer can demonstrate that it was not responsible for any part of the fail to deliver position of the participant or that it has complied with the requirement of Rule 204(e).²⁴²

The certification requirement of Rule 204(b) may impose some costs on a broker-dealer having to demonstrate that it was not responsible for any part of the fail to deliver position of the participant. As discussed above, Rule 204(b) requires a broker-dealer to timely certify to the participant that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or the broker-dealer is in compliance with the requirements set forth in Rule 204(e).²⁴³ However, as we noted in the PRA section for temporary Rule 204T, the certification requirement's impact on broker-dealers' costs related to personnel, recordkeeping, systems, and surveillance mechanisms is expected to be limited.²⁴⁴ We expect that Rule 204's impact on broker-dealers' costs similarly will be limited because the requirements of Rule 204(b) are consistent with the requirements of temporary Rule 204T(b)(1).

Consistent with existing requirements under temporary Rule 204T(c), the notification requirement of Rule 204(c) may continue to impose costs on participants of a registered clearing agency. Rule 204(c) requires a participant to notify any broker-dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in Rule 203(b)(2)(iii) of Regulation SHO,²⁴⁵ (1) that the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of Rule 204(a), and (2) when the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered

²⁴² See Rule 204(b).

²⁴³ See *id.*

²⁴⁴ See Rule 204T Adopting Release, 73 FR 61726–61727.

²⁴⁵ See *supra* note 199.

²⁴⁰ 17 CFR 242.203(b)(3)(iv).

²⁴¹ Letter from MFA.

clearing agency.²⁴⁶ This notification requirement may result in participants incurring costs related to personnel, recordkeeping, systems, and surveillance mechanisms. We believe, however, that any additional costs under Rule 204 will be minimal because participants should already have in place mechanisms necessary to comply with this requirement pursuant to temporary Rule 204T.

3. Sales of Certain Deemed To Own Securities

We do not believe that the modification in Rule 204(a)(2) to apply the close-out requirement to fails to deliver resulting from the sale of any equity security that a person is “deemed to own” pursuant to Rule 200 of Regulation SHO, and that such person intends to deliver as soon as all restrictions on delivery have been removed, rather than just fails to deliver resulting from sales of Rule 144 Securities as in temporary Rule 204T(a)(2), will impose any significant additional cost on participants.²⁴⁷ In fact, this modification is responsive to issues raised by commenters and should decrease costs from those of temporary Rule 204T by providing additional time to close out fails to deliver in additional “deemed to own” securities.²⁴⁸

Participants may incur some costs to implement changes to their current systems to comply with the limited modifications in Rule 204(a)(2) as compared with temporary Rule 204T(a)(2). Specifically, participants will have to ensure that their systems apply the close-out requirements to all “deemed to own” securities, rather than just equity securities sold pursuant to Rule 144 of the Securities Act, as well as monitor for compliance with the 35 calendar day close-out period. However, we believe the costs for such adjustments will be minimal.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.²⁴⁹ In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when

adopting rules under the Exchange Act, to consider the impact such rules would have on competition.²⁵⁰ Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We believe Rule 204 will not materially affect the promotion of the efficiency of the capital markets. Rule 204 makes some modifications relative to temporary Rule 204T and we believe that Rule 204 will help limit disruptions due to potentially abusive “naked” short selling, but several commenters argue that temporary Rule 204T created disruptions at the open and empirical evidence suggests that fails to deliver, on average, are unrelated to stock prices.²⁵¹

As discussed in the Rule 204T Adopting Release, we believe that Rule 204 will help further our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling without unduly burdening legitimate short selling activity. Rule 204 is intended to maintain the significant reductions in the number of fails to deliver in all equity securities since, among other actions, the adoption of temporary Rule 204T²⁵² by requiring that participants of a registered clearing agency that have a fail to deliver position, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity by no later than the beginning of regular trading hours on the applicable close-out date. A participant that does not comply with Rule 204’s close-out requirements, and any broker-dealer from which it receives trades for clearance and settlement, will not be able to short sell the security either for itself or for the account of another, unless it has borrowed the security, or entered into a bona fide arrangement to borrow the security, until the fail to deliver position is closed out.

The rule is designed to help ensure that buyers of equity securities receive delivery of their shares, thereby helping to discourage persistent fails to deliver, which may have a negative effect on the securities markets and investors and also may be used to facilitate

manipulative trading strategies. By requiring that participants of a registered clearing agency borrow or purchase securities to close out a fail to deliver position by no later than the beginning of regular trading hours on the applicable close-out date, Rule 204 will promote the prompt clearance and settlement of securities transactions. By doing so, the rule will help further our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling and, thereby, will help ensure that investors remain confident that trading can be conducted without the illegal influence of manipulation. A loss of confidence in the market for these securities can lead to panic selling, which may be further exacerbated by potentially abusive “naked” short selling.

We sought comment regarding whether the rule may adversely impact liquidity, disrupt markets, or unnecessarily increase risks or costs to participants of a registered clearing agency. We are incorporating by reference the discussion in the Rule 204T Adopting Release regarding the burden on competition and promotion of efficiency, competition, and capital formation,²⁵³ except to the extent that we have made modifications or because we are addressing comments.

Several commenters suggested that temporary Rule 204T has had a negative impact, particularly at the market open.²⁵⁴ Although we recognize commenters’ concerns regarding the potential market impact of the close-out requirements of temporary Rule 204T, we believe that these potential concerns are justified by the benefits of retaining the strict close-out requirements of temporary Rule 204T. In addition, we note that the close-out provisions of Rule 204 provide additional flexibility in 204(a)(1) and (a)(3) by allowing a participant to close out a fail to deliver position resulting from a long sale or certain bona fide market making activity by borrowing as well as purchasing securities. In addition, as discussed above, in contrast to temporary Rule 204T, participants may satisfy the close-out requirement to purchase securities of like kind and quantity with a VWAP order.²⁵⁵ This increased flexibility in

²⁵³ See Rule 204T Adopting Release, 73 FR 61728–61729.

²⁵⁴ See *supra* Section III (discussing commenters’ concerns regarding the market impact of temporary Rule 204T).

²⁵⁵ See *supra* note 66.

²⁴⁶ See Rule 204(c).

²⁴⁷ See Rule 204(a)(2).

²⁴⁸ See, e.g., letter from SIFMA.

²⁴⁹ 15 U.S.C. 78c(f).

²⁵⁰ 15 U.S.C. 78w(a)(2).

²⁵¹ See, e.g., Fotak, Raman, and Yadav, 2009, Naked Short Selling: The Emperor’s New Clothes?, working paper, University of Oklahoma.

²⁵² See *supra* note 164.

Rule 204, as compared with temporary Rule 204T, is expected to reduce the possibility of the increased volatility and market disruptions potentially caused by temporary Rule 204T by potentially providing additional sources of liquidity from which to obtain shares to close out fail to deliver positions.

We believe that the rule will promote capital formation. Issuers and investors have repeatedly expressed concerns about fails to deliver in connection with potentially manipulative “naked” short selling.²⁵⁶ The perception that potentially abusive “naked” short selling is occurring in securities could undermine the confidence of investors. These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct.²⁵⁷ To the extent that “naked” short selling and fails to deliver result in an unwarranted decline in investor confidence about a security, the rule will improve investor confidence about the security. As previously noted, preliminary results from OEA indicate that the Commission’s various recent actions with respect to further reducing fails to deliver, including the adoption of temporary Rule 204T, have contributed to a significant reduction in the number of fails to deliver.²⁵⁸ In addition, the rule may lead to a greater certainty in the settlement of these securities which is expected to strengthen investor confidence in the settlement process. Therefore, we believe maintaining the substance of temporary Rule 204T in permanent Rule 204 will help achieve the Commission’s goals of preventing substantial disruption in the securities markets, reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other

actions taken by the Commission, and helping to prevent potentially abusive “naked” short-selling.

We also believe that the rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. By requiring that participants of a registered clearing agency borrow or purchase securities to close out a fail to deliver position by no later than the beginning of regular trading hours on the applicable close-out date, we believe the rule will promote competition by requiring similarly situated participants of a registered clearing agency, including broker-dealers from which they receive trades for clearance and settlement, to close out fail to deliver positions in any equity securities within similar time-frames. Moreover, the requirements of the rule will help to further reduce any possibility that potentially abusive “naked” short selling may contribute to the disruption of markets in equity securities and, therefore, will help ensure that all investors remain confident that trading in these securities can be conducted without the influence of illegal manipulation. We also believe that the rule will promote competition by protecting and enhancing the operation, integrity, and stability of the markets. At the same time, the rule will help to maintain fair and orderly markets without unduly restricting legitimate short selling.

IX. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis (“FRFA”) has been prepared in accordance with 5 U.S.C. 604. This FRFA relates to the adoption of Rule 204 to Regulation SHO.²⁵⁹

A. Need for and Objectives of the Rule

Sections I through VI of this release describe the reasons for and objectives of Rule 204. As previously stated in the temporary Rule 204T Adopting Release,²⁶⁰ we are concerned that the close-out requirements of Regulation SHO have not gone far enough in reducing fails to deliver and addressing potentially abusive “naked” short selling. Thus, we are incorporating the requirements of temporary Rule 204T with limited modification into Rule 204 to help maintain the recent reductions

in fails to deliver resulting from the implementation of temporary Rule 204T and other Commission actions. We believe the adoption of Rule 204 is appropriate to continue our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, addressing potentially abusive “naked” short selling, and providing an incentive for sellers to promptly deliver securities by settlement date.

B. Small Entities Affected by the Rule

The entities covered by the rule will include small entities that are participants of a registered clearing agency and small broker-dealers from which participants receive trades for clearance and settlement. In addition, the entities covered by the rule will include small entities that are market participants that effect sales subject to the requirements of Regulation SHO. Although it is impossible to quantify every type of small entity covered by the rule, Paragraph (c)(1) of Rule 0–10 under the Exchange Act²⁶¹ states that the term “small business” or “small organization,” when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. We estimate that as of 2008 there were approximately 915 broker-dealers that qualified as small entities as defined above.²⁶²

As noted above, the entities covered by the rule will include small entities that are participants of a registered clearing agency. As of May 30, 2009, approximately 89% of participants of the NSCC, the primary registered clearing agency responsible for clearing U.S. transactions, were registered as broker-dealers. Participants not registered as broker-dealers include such entities as banks, U.S.-registered exchanges, and clearing agencies. Although these entities are participants of a registered clearing agency, generally these entities do not engage in the types of activities that would implicate the close-out requirements of Regulation SHO.

²⁵⁶ See, e.g., 2008 Regulation SHO Final Amendments, 73 FR 61690.

²⁵⁷ See *supra* note 28 (discussing comments in response to the Rule 204T Adopting Release expressing concern about the impact of potential “naked” short selling on capital formation, claiming that “naked” short selling causes a drop in an issuer’s stock price and may limit the issuer’s ability to access the capital markets). In connection with prior proposed amendments to Regulation SHO aimed at reducing fails to deliver and addressing potentially abusive “naked” short selling, such as the 2007 Regulation SHO Proposed Amendments, we sought comment on whether such proposed amendments would promote capital formation, including whether the proposed increased short sale restrictions would affect investors’ decisions to invest in certain equity securities. In response, commenters expressed concern about the potential impact of “naked” short selling on capital formation claiming that “naked” short selling causes a drop in an issuer’s stock price that may limit the issuer’s ability to access the capital markets. See, e.g., letters from Medis; NCANS.

²⁵⁸ See *supra* note 164.

²⁵⁹ Although the requirements of the Regulatory Flexibility Act are not applicable to rules adopted under the Administrative Procedure Act’s “good cause” exception, see 5 U.S.C. 601(2) (defining “rule” and notice requirements under the Administrative Procedures Act), we nevertheless prepared an FRFA.

²⁶⁰ See Rule 204T Adopting Release, 73 FR 61712.

²⁶¹ 17 CFR 240.0–10(c)(1).

²⁶² These numbers are based on OEA’s review of 2008 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

The Federal securities laws do not define what is a “small business” or “small organization” when referring to a bank. The Small Business Administration regulations define “small entities” to include banks and savings associations with total assets of \$175 million or less.²⁶³ As of May 30, 2009, no bank that was a participant of the NSCC was a “small entity” because none met that criteria.

Paragraph (e) of Rule 0–10 under the Exchange Act²⁶⁴ states that the term “small business” or “small organization,” when referring to an exchange, means any exchange that: (1) Has been exempted from the reporting requirements of Rule 601 under the Exchange Act; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization, as defined by Rule 0–10. No U.S. registered exchange is a small entity because none meets these criteria.

Paragraph (d) of Rule 0–10 under the Exchange Act²⁶⁵ states that the term “small business” or “small organization,” when referring to a clearing agency, means a clearing agency that: (1) Compared, cleared and settled less than \$500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than \$200 million in funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined by Rule 0–10. No clearing agency that is subject to the requirements of Regulation SHO is a small entity because none meets these criteria.

C. Projected Reporting, Recordkeeping and Other Compliance Requirements

The rule may impose some new or additional reporting, recordkeeping, or compliance costs on small entities that are participants of a clearing agency registered with the Commission and small broker-dealers from which the participant receives trades for clearance and settlement. We do not believe, at this time, that any specialized professional skills will be necessary to comply with the rule.

D. Agency Action To Minimize Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Rule 204 is not expected to adversely affect small entities because it imposes minimal reporting, record keeping, or compliance requirements, many of which were previously required of small entities pursuant to the implementation of Regulation SHO and, more recently, temporary Rule 204T. Moreover, it is not appropriate to develop separate requirements for small entities because we believe that to accomplish the Commission’s stated goals, all broker-dealers, regardless of size, should be subject to the same enhanced delivery requirements imposed by the rule.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with Rule 204. The Commission has designed the rule so that it is consistent with the close-out requirements of Rule 203(b)(3) of Regulation SHO. In addition, with limited modifications to address commenters’ concerns, Rule 204 incorporates the substance and maintains most of the components of temporary Rule 204T of Regulation SHO and will become effective on July 31, 2009, the expiration date for temporary Rule 204T.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.²⁶⁶ In connection with the rule, we considered the following alternatives: (1) Establishing different compliance or reporting standards or timetable that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part of the rule.

The rule furthers the Commission’s stated goal of helping to eliminate the possibility that potentially abusive “naked” short selling may contribute to disruption in the securities markets and, therefore, to help ensure that investors remain confident that trading in equity

securities can be conducted without the illegal influence of manipulation. The rule also furthers the goals of helping to maintain fair and orderly markets against the threat of sudden and excessive fluctuations of securities prices generally.

The rule should not adversely affect small entities because the rule will impose only minimal compliance requirements, many of which were previously required of small entities pursuant to the implementation of Regulation SHO and, more recently, temporary Rule 204T. Moreover, it is not appropriate to develop different compliance requirements for small entities with respect to the rule because we believe all entities, including small entities, should be subject to the requirements of the rule. We believe that imposing different compliance requirements, and possibly a different timetable for implementing compliance requirements, for small entities would undermine the Commission’s goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive “naked” short selling. We have concluded similarly that it is not consistent with the goal of the rule to further clarify, consolidate or simplify the rule for small entities. The Commission also believes that it is inconsistent with the purposes of the Exchange Act to exempt small entities from having to comply with the rule.

X. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 9(h), 10, 11A, 15, 17, 17A, and 23(a) thereof, 15 U.S.C. 78b, 78i(h), 78j, 78k–1, 78o, 78q, 78q–1, and 78w(a), the Commission is amending Regulation SHO to adopt Rule 204.

XI. Text of Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

²⁶³ See 13 CFR 121.201.

²⁶⁴ 17 CFR 240.0–10(e).

²⁶⁵ 17 CFR 240.0–10(d).

²⁶⁶ See 5 U.S.C. 603(c).

**PART 200—ORGANIZATION;
CONDUCT AND ETHICS; AND
INFORMATION AND REQUESTS**

■ 1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30-3 is amended by adding paragraph (a)(11) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Trading and Markets.

* * * * *

(a) * * *

(11) Upon written application or upon its own motion, either unconditionally or on specified terms and conditions, to grant or deny by order an exemption from the requirements of Regulation SHO (§ 242.200 of this chapter) under the Act pursuant to Section 36 of the Act (15 U.S.C. 78mm).

* * * * *

**PART 242—REGULATIONS M, SHO,
ATS, AC, AND NMS AND CUSTOMER
MARGIN REQUIREMENTS FOR
SECURITY FUTURES**

■ 3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

■ 4. Section 242.204 is added to read as follows:

§ 242.204 Close-out requirement.

(a) A participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out its fail to deliver position by borrowing or purchasing securities of like kind and quantity; *Provided, however:*

(1) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver

position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity;

(2) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security resulting from a sale of a security that a person is deemed to own pursuant to § 242.200 and that such person intends to deliver as soon as all restrictions on delivery have been removed, the participant shall, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity; or

(3) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security that is attributable to bona fide market making activities by a registered market maker, options market maker, or other market maker obligated to quote in the over-the-counter market, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity.

(b) If a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out such fail to deliver position in accordance with the requirements of paragraph (a) of this section, the participant and any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii), may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, to the extent that the broker or dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency; *Provided, however:* A broker or dealer shall not be subject to the requirements of this

paragraph if the broker or dealer timely certifies to the participant of a registered clearing agency that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that the broker or dealer is in compliance with paragraph (e) of this section.

(c) The participant must notify any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii):

(1) That the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of paragraph (a) of this section; and

(2) When the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency.

(d) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or from which it receives trades for settlement, based on such broker's or dealer's short position, the provisions of paragraphs (a) and (b) of this section relating to such fail to deliver position shall apply to such registered broker or dealer that was allocated the fail to deliver position, and not to the participant. A broker or dealer that has been allocated a portion of a fail to deliver position that does not comply with the provisions of paragraph (a) of this section must immediately notify the participant that it has become subject to the requirements of paragraph (b) of this section.

(e) Even if a participant of a registered clearing agency has not closed out a fail to deliver position at a registered clearing agency in accordance with paragraph (a) of this section, or has not allocated a fail to deliver position to a broker or dealer in accordance with paragraph (d) of this section, a broker or dealer shall not be subject to the requirements of paragraph (a) or (b) of this section if the broker or dealer purchases or borrows the securities, and if:

(1) The purchase or borrow is bona fide;

(2) The purchase or borrow is executed after trade date but by no later than the end of regular trading hours on settlement date for the transaction;

(3) The purchase or borrow is of a quantity of securities sufficient to cover the entire amount of that broker's or

dealer's fail to deliver position at a registered clearing agency in that security; and

(4) The broker or dealer can demonstrate that it has a net flat or net long position on its books and records on the day of the purchase or borrow.

(f) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this section where the participant enters into an arrangement with another person to purchase or borrow securities as

required by this section, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase or borrow.

(g) *Definitions.* (1) For purposes of this section, the term *settlement date* shall mean the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security.

(2) For purposes of this section, the term *regular trading hours* has the same meaning as in Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(b)(64)).

Dated: July 27, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-18185 Filed 7-30-09; 8:45 am]

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Federal Register

**Friday,
July 31, 2009**

Part III

Department of Agriculture

**7 CFR Part 2904
Voluntary Labeling Program for Biobased
Products; Proposed Rule**

DEPARTMENT OF AGRICULTURE**7 CFR Part 2904**

RIN 0503-AA35

Voluntary Labeling Program for Biobased Products**AGENCY:** Departmental Administration, USDA.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to establish a voluntary labeling program for biobased products under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008. Under the proposed labeling program, a biobased product, after being certified by USDA, could be marketed using the “USDA Certified Biobased Product” label. The presence of the label will mean that the product meets USDA standards for the amount of biobased content and that the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred Web site. The proposed rule applies to manufacturers and vendors who wish to participate in the voluntary labeling program. The proposed rule also applies to other entities (e.g., trade associations) that wish to use the label to promote biobased products.

DATES: USDA will accept public comments on this proposed rule until September 29, 2009.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503-AA35. Also, please identify submissions as pertaining to the “Proposed Voluntary Labeling Program.”

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

• *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of the Assistant Secretary for Administration, Room 342, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

• Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotope, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice) and (202) 690-0942 (TTY).

You may also send comments on the information collection aspects of this rule directly to the Office of Information

and Regulatory Affairs of OMB, Attention: Desk Officer for Agriculture, Margaret Malanoski, 725 17th Street, NW., Room 10202, Washington, DC 20503. Comments should reference OMB control number 0503-NEW.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of the Assistant Secretary for Administration, Room 342, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024; e-mail: biopreferred@usda.gov; phone (202) 205-4008. Information regarding the Federal Procurement Program of Biobased Products (one part of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Background
 - A. Authority
 - B. Overview of Section 9002
- II. Purposes of the Voluntary Labeling Program
- III. Voluntary Labeling Program
 - A. Applicability
 - B. Criteria for Obtaining Certification
 - C. Initial Approval Process
 - D. Appeals
 - E. Information Posted on Web Site
 - F. Applications for Reformulated Products
 - G. Requirements Associated With the Label
 - H. Violations
 - I. Recordkeeping Requirements
 - J. Reporting
- IV. Suggested Comment Topics
- V. Regulatory Information
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Regulatory Flexibility Act (RFA)
 - C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
 - D. Executive Order 13132: Federalism
 - E. Unfunded Mandates Reform Act of 1995
 - F. Executive Order 12372: Intergovernmental Review of Federal Programs
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Paperwork Reduction Act
 - I. Government Paperwork Elimination Act Compliance
 - J. Small Business Regulatory Enforcement Fairness Act

I. Background**A. Authority**

The voluntary labeling program for biobased products is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA)(referred to in this preamble as “section 9002”), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102.

B. Overview of Section 9002

Section 9002 establishes a program for the Federal procurement of biobased products by Federal agencies and a voluntary program for the labeling of biobased products. These two programs, which are referred to collectively by USDA as the BioPreferredSM Program, are briefly discussed below.

Federal Procurement of Biobased Products. Section 9002 requires Federal agencies to develop procurement programs that give preference to the purchase of biobased products (hereafter referred to in this **Federal Register** notice as the “preferred procurement program”). Federal agencies and their contractors are required to purchase biobased products, as defined in regulations implementing the statute, that are within designated items¹ when the cumulative purchase price of the procurement item(s) procured is more than \$10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled \$10,000 or more. Each Federal agency and contractor must procure biobased products at the highest content levels within each designated item unless the agency determines that the items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The final guidelines for the preferred procurement program were published in the **Federal Register** on January 11, 2005 (70 FR 1792). The guidelines are contained in 7 CFR part 2902, “Guidelines for Designating Biobased Products for Federal Procurement.”

Part 2902 is divided into two subparts, “Subpart A—General,” and “Subpart B—Designated Items.” Subpart A addresses the purpose and scope of the guidelines and their applicability, provides guidance on product availability and procurement, defines terms used in part 2902, and addresses affirmative procurement programs and USDA funding for testing. Subpart B identifies designated items and specifies their minimum biobased contents, the effective date of the procurement preference for biobased products within each designated item, and other information (e.g., biodegradability). USDA is responsible for designating biobased items at the highest practicable biobased content levels for the Federal agencies’ preferred procurement programs.

¹ The term “designated item” refers to items (generic groupings of specific products that perform the same function) that have been afforded preferred procurement by Federal agencies under the BioPreferred Program.

As part of the preferred procurement program, section 9002 also requires USDA to provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of products within such items and, as applicable under section 9002(e)(1)(C), to recommend the minimum level of biobased content to be contained in the products within a designated item.

To date, USDA has designated 33 items used in a variety of applications, including cafeteria ware, personal and institutional cleaning products, construction products, and lubricants and greases.

Voluntary Labeling Program. Section 9002 also requires USDA to establish a voluntary labeling program under which USDA authorizes manufacturers and vendors of biobased products to use a "USDA Certified Biobased Product" label (hereafter referred to in this preamble as "the label"). The voluntary labeling program is intended to encourage the purchase and use of biobased products by reaching beyond the Federal purchasing community and promoting the purchase of biobased products by the general public. In establishing this program, USDA must identify the criteria to determine those products on which the label may be used and must develop specific requirements for how the label can be used. It is USDA's intent that the presence of the label on a product will mean that the labeled product is one for which credible factual information is available as to the biobased content, consistently measured across labeled products by use of the ASTM radioisotope test D6866.

In developing the proposed voluntary labeling program, USDA held discussions with other agencies that have implemented labeling programs, such as the "ENERGY STAR®" program implemented by the U.S. Department of Energy and the U.S. Environmental Protection Agency (EPA). USDA has also consulted with representatives of the Department of Agriculture's National Organic program and others of the Agricultural Marketing Service. Further, USDA consulted the Federal Trade Commission, which issues the "Guides for the Use of Environmental Marketing Claims" to ensure that the provisions of the proposed voluntary labeling program were consistent with the Guides. USDA also held a public meeting on July 22, 2008, to seek input on the content and use of the label from the public and industry stakeholders.

The following section of the preamble presents the goal of the voluntary labeling program and the objectives

toward achieving that goal. That section is followed by a summary of the voluntary labeling program that USDA is proposing to implement under section 9002(h).

II. Goal of the Voluntary Labeling Program

USDA's goal in proposing this voluntary labeling program is to encourage the increased use of biobased products in all market sectors. To achieve this goal, USDA has identified the following objectives:

Promotion of biobased products. The voluntary labeling program is intended to promote and increase the use of biobased products. In general, the labeling program supports this goal by recognizing manufacturers and vendors that produce and market products that utilize biobased materials and by encouraging consumers to purchase such products.

Whereas the preferred procurement program is specific to Federal agencies, the voluntary labeling program is intended to encompass all individuals and organizations making purchasing decisions. We are proposing that there be two slightly different versions of the label, one for those biobased products that have been designated for Federal preferred procurement because they are within a designated item, and another for those products that are not within a designated item. The label artwork for products within designated items would include the letters "FP" to indicate that they are Federally preferred. USDA believes that informing consumers that these products have been designated for Federal preferred procurement will be beneficial. As part of the process of designating items for preferred procurement, USDA gathers and evaluates information regarding the biobased product's life cycle costs and environmental performance as well as functional performance. Thus, the "FP" on the label will inform consumers that USDA has evaluated representative products within the designated item and found them to be qualified for the Federal preferred procurement program. USDA also notes that the identification of products that have been designated for preferred procurement would also be accomplished by listing those products on the USDA Web site and in Federal procurement catalogues.

Furthermore, the voluntary labeling program will increase the amount of information available to manufacturers whose products may utilize biobased materials or products as a component of their finished products or as part of their manufacturing process. USDA expects that this increased information

will encourage these manufacturers to consider using and/or increasing the amount of biobased materials when designing or manufacturing their products, thereby further increasing the purchase of biobased materials. For example, manufacturers of equipment that uses hydraulic fluids are encouraged to consider the use of biobased hydraulic fluids if available information indicates that the performance of these fluids meets or exceeds their requirements.

Increase public awareness of biobased products. The voluntary labeling program will raise the visibility of biobased products within the Federal government and within the commercial marketplace. The labeling program will also provide a unique and identifiable designator recognized in the U.S. and foreign markets.

To the extent that the voluntary labeling program achieves these objectives, there may be an increased purchase of biobased products, which is then expected to reduce petroleum consumption, increase the use of renewable resources, better manage the carbon cycle, and, may contribute to reducing adverse environmental and health impacts. The program is also expected to promote economic development for biobased product manufacturers and vendors by creating new jobs and providing new markets for farm commodities.

III. Voluntary Labeling Program

In developing the voluntary labeling program, USDA has one primary goal—to encourage the purchase of biobased products. In implementing this goal, USDA aims to ensure that only biobased products that meet the criteria set forth in the voluntary labeling program are labeled with the "USDA Certified Biobased Product" label and that the label is used properly. USDA believes that products carrying the label will become readily recognizable as biobased products, distinct from those that do not carry the label. Further, as the label will have the percent of biobased material printed on it, consumers will recognize that products carrying the label meet certain criteria that set them apart from other products.

A. Applicability

The proposed rule would apply to manufacturers and vendors of biobased products, as well as to other entities (e.g., trade associations, public interest groups) that promote, sell, or use the products. USDA believes that each of these groups must comply with the labeling requirements in order to ensure that only certified biobased products

(i.e., biobased products that have been approved for use of the label under this program) carry the label and that the label is used correctly. USDA believes that the goals of the voluntary labeling program can be achieved, and the beneficial impacts of the BioPreferred program can be increased, if manufacturers, vendors, and other entities are allowed to market and promote the manufacturers' biobased products with a credible biobased products labeling program.

Once USDA has approved a biobased product for labeling by its manufacturer or vendor, an equally important aspect in ensuring the integrity of the labeling program is the proper use of the label. Label misuse can occur at the manufacturer level (e.g., affixing the label to a non-certified biobased product) and at the retail level (e.g., using the label to imply that a non-certified biobased product has been certified), or by other entities wishing to use the label in promoting the sales or public awareness of non-certified biobased products (e.g., on a Web site or in promotional materials).

While the labeling of biobased products is voluntary, manufacturers, vendors, and other entities wishing to use the label in their marketing, promotional, or educational efforts would be required to comply with regulatory requirements as proposed herein. USDA believes these requirements for use of the label are necessary to avoid misleading consumers regarding whether a product has been certified by USDA under the voluntary labeling program.

B. Criteria for Obtaining Certification

To be eligible for USDA certification to use the label, USDA proposes that a product meet two criteria, as discussed below.

Criterion 1: Biobased Product. The product must be a biobased product. Biobased product is defined in section 2904.2 of today's proposed rule as follows: "The term 'biobased product' means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—(A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (B) an intermediate ingredient or feedstock. For the purposes of this subpart, the term 'biobased product' does not include motor vehicle fuels, heating oil, electricity produced from biomass, or any mature market products. Products from a mature market will be determined on a case-by-case basis."

Rationale for Criterion 1: As discussed earlier, section 9002 requires USDA to establish a voluntary labeling program under which USDA authorizes manufacturers and vendors of biobased products to use a "USDA Certified Biobased Product" label. USDA is proposing that mature market products not be eligible to use the label except on a case-by-case basis. Mature market products are those biobased products that had significant national market penetration in 1972. Examples of mature market products include cotton shirts or towels, paper plates, and wood furniture. USDA has excluded mature market products from the Federal preferred procurement program. In USDA's explanation for excluding mature market products from the preferred procurement program, USDA stated in the preamble to the final Guidelines (70 FR 1802), "The intent of section 9002, as described in the conference report accompanying FSRIA, 'is to stimulate the production of new biobased products and to energize emerging markets for those products.'"

Based on conference report, it is clear that Congress did not intend for mature market products to be given Federal procurement preference. It is not clear, however, whether this exclusion of mature market products was intended to apply to the voluntary labeling program. The procurement preference program and the labeling program are contained in different paragraphs of the statute, and the conference report does not specifically state whether the language quoted above refers to just one or to both paragraphs.

USDA believes, however, that the widespread labeling of mature market products could negatively impact the entry of new biobased products into market segments in which mature products already have significant market shares. Thus, USDA believes that it is reasonable to exclude many mature market products from the labeling program, as it has done for the preferred procurement program. USDA is, however, proposing to allow manufacturers of mature market products to appeal (on a case-by-case basis) the exclusion of their products from the program.

Criterion 2: Minimum Biobased Content. For a biobased product to receive certification under this proposed rule, the biobased content of that product must be at or above its applicable minimum biobased content, as described below. USDA believes this requirement is necessary so that the label is not used to promote products with de minimis biobased content. As discussed below, the applicable

minimum biobased content depends under which of the three proposed categories the product falls.

1. *Biobased products within one or more designated items.* If a biobased product (including an intermediate ingredient or feedstock) is within a designated item at the time of submitting an application for certification, the applicable minimum biobased content for use of the label would be the minimum biobased content specified for that item in 7 CFR 2902. As discussed in more detail below, once an item has been designated, its minimum biobased content, as specified in 7 CFR part 2902, becomes the applicable minimum biobased content for all products within that designated item, regardless of any previous minimum biobased content used to qualify a product for using the label.

If a biobased product is marketed within more than one designated item, and uses the same packaging, its biobased content must meet or exceed the specified minimum biobased content for each of the designated items in order to use the label for each item. For example, Product A is currently marketed as a "glass cleaner" and a "bath and tile cleaner" and uses the same packaging in both markets. USDA has designated both these categories of products as items under its BioPreferred procurement program. Product A has a biobased content of 60 percent. The minimum biobased content of designated item "glass cleaners" is 49 percent and the minimum biobased content of designated item "bath and tile cleaners" is 74 percent. The manufacturer would not be eligible to apply for use of the label for Product A under either designated item. If the biobased content of Product A were instead 80 percent, the manufacturer would be eligible to use the label under both designated items.

If, on the other hand, the manufacturer packaged the product in different packaging for marketing within the two designated items (e.g., a blue bottle for the glass cleaner and a green bottle for the bath and tile cleaner), the product marketed as a glass cleaner would be eligible to apply to use the label while the product marketed as bath and tile cleaner would not be eligible.

2. *Finished biobased products that are not within designated items.* If a biobased product is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content for the product for using the label would be 51 percent,

unless USDA approves an alternative applicable minimum biobased content. The proposed rule would allow manufacturers, vendors, and trade associations (individually or collectively) who believe that the 51 percent minimum biobased content is not appropriate for the biobased product to conduct an analysis, as discussed under "Alternative Minimum Biobased Content Analysis" later in this preamble, to support an alternative applicable minimum biobased content. If USDA approves the alternative applicable minimum biobased content, then that content becomes the applicable minimum biobased content for that product.

USDA recognizes that there will be groups of biobased products that will be certified to use the label that will never be designated for preferred procurement, primarily because these products are produced by only one manufacturer and, thus, there is not sufficient market competition to justify preferred procurement or they are not used prevalently in the Federal marketplace. However, USDA expects that the majority of the biobased products certified to use the label will be within a group of products that USDA designates for preferred procurement. In those cases where USDA subsequently designates an item under which the certified biobased product falls for inclusion in the preferred procurement program, the applicable minimum biobased content for the product will then become the minimum biobased content established for the designated item under which the product falls. As of the effective date of the designation, only those products that meet the new minimum biobased content may continue to use the label.

3. *Products that are intermediate ingredients or feedstocks that are not within designated items.* If a biobased product is an intermediate ingredient or feedstock and is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content for the product for using the label would be 51 percent, unless USDA approves an alternative applicable minimum biobased content. As with the previous product category, the proposed rule would allow manufacturers, vendors, and trade associations (individually or collectively) who believe that the 51 percent minimum biobased content is not appropriate to conduct an analysis, as discussed under "Alternative Minimum Biobased Content Analysis" later in this preamble, to support an alternative applicable minimum biobased content. If USDA approves the

alternative applicable minimum biobased content, then that content becomes the applicable minimum biobased content for that product.

Rationale for Criterion 2: USDA believes setting the applicable minimum biobased content of products within designated items at the minimum biobased content specified under the preferred procurement program is appropriate, as USDA has had an opportunity to perform an analysis on these products, including identifying similar biobased products and their manufacturers, and obtaining biobased contents for similar biobased products. USDA intends to proceed with the designation of numerous items for which it has, or is currently gathering, information. Once the designation process has been completed for those items that have been identified for designation, USDA intends to revisit, on a periodic basis, the minimum biobased content that was established for designated items at the time of their designation. As scientific advances and economic conditions warrant, USDA would expect that the applicable minimum biobased content for designated items will rise as competitors apply advances and increase the biobased content of designated products. Thus, it is USDA's expectation that the applicable minimum biobased content of designated items will increase as advancements are made in biobased product technology. USDA also notes that proposed revisions to the applicable minimum biobased content for designated items will be announced in the **Federal Register** and the public will have an opportunity to provide comments on the proposal.

For the second and third categories of products (finished biobased products and intermediate ingredients and feedstocks that are not within designated items) USDA considered several options for setting the minimum biobased content, including the use of the lowest minimum biobased content for any item designated to date. USDA decided, however, that in the absence of the level of detailed product information for setting a minimum biobased content based on product-specific data (as is used under the preferred procurement program), and in an effort to discourage minimal use of biobased feedstocks in what are otherwise not biobased products, it is reasonable to consider such finished products as "biobased" if they contain a significant amount of biobased materials; that is, at least 51 percent of the product is biobased. Thus, USDA is proposing that all finished products that

are not within designated items and all intermediate ingredients and feedstocks that are not within designated items must contain at least 51 percent biobased content to be qualified for the label.

USDA recognizes, however, that for some finished products (and intermediate ingredients) a 51 percent minimum biobased content may result in a product that is not viable. USDA also recognizes that the 51 percent minimum biobased content could discourage the development of new biobased products or the continued development of existing biobased products. With this in mind, USDA will continue to gather product-specific data under the preferred procurement program to determine applicable minimum biobased contents. Additionally, USDA believes that it is reasonable to provide a procedure to allow manufacturers, vendors, and trade associations to propose an alternative applicable minimum biobased content for such products.

Alternative Minimum Biobased Content Analysis

As noted above, manufacturers, vendors, and trade associations would be allowed to propose an alternative minimum biobased content for products not within a designated item if they believe that the proposed minimum biobased content is not appropriate for their product(s). For USDA to consider an alternative minimum biobased content for these types of products, manufacturers, vendors, and trade associations would be required to develop an analysis, in consultation with USDA, that demonstrates the need for an alternative applicable minimum biobased content. USDA believes that manufacturers, vendors, and trade associations should consult with the Department in developing the analysis to help ensure that an appropriate analysis is conducted.

While the analysis of the data supporting a specific request for an alternative minimum biobased content will be performed on a case-by-case basis, USDA anticipates that the evaluation process will be standardized and will be similar to the process used to set minimum biobased contents under the preferred procurement program. Such a process would include identifying similar biobased products and their manufacturers and determining biobased contents for similar biobased products. USDA recognizes the difficulties involved in collecting biobased contents, due in large part to the unpredictability of manufacturer and vendor participation

in providing products for testing. Similar to the process used in the preferred procurement program, the establishment of alternative minimum contents for the labeling program will require a measure of flexibility to address the variability in product type and level of industry development. In general, the number of samples that should be obtained for the biobased content analysis would depend on the number of manufacturers of a product and similar products available. USDA would expect applicants to coordinate with program officials to identify and agree upon a reasonable number of samples for the analysis. Emphasis would be focused on obtaining the maximum number of samples possible without restricting the analysis process.

C. Initial Approval Process

Application

Manufacturers and vendors seeking use of the label on a qualified biobased product must submit to USDA a separate USDA-approved application for certification for each product for which the manufacturer or vendor wishes to receive USDA approval to use the label. Both the application and instructions for submittal of the application will be available on the USDA BioPreferred Web site.

Each application must contain both contact and product information. Contact information would include the applicant's name, mailing address, e-mail address, and telephone number, and the name, mailing address, telephone number, and e-mail address (if available) of the person who prepared the application.

Product information would include the brand names or other product identifying information (such as model name or number, or UPC number) for the product, the biobased content of the product for which certification is sought, contact information on the third-party testing entity that tested the biobased content and documentation that the testing entity is ISO 9001 conformant, the product category under which the product falls, and the intended uses of the product. If the product falls within a designated item(s), the applicant would also identify the name of the designated item(s).

Lastly, the applicant would be required to sign a statement that certifies that the product identified in the application is a biobased product as defined in the labeling program and commits the applicant to provide to USDA, and to keep up-to-date, the product's brand name(s), or other

identifying information; contact information, including the name, mailing address, e-mail address, and telephone number of the applicant; the biobased content of the product; and a hot link directly to the applicant's Web site (if available). USDA is also requiring that if manufacturers make claims on the product packaging about the environmental and human health effects, life-cycle costs, sustainability benefits, and performance of their products that documentation supporting such claims be maintained.

Justification for Required Information

USDA considers the information required for the initial approval process to be the minimum that will be needed by USDA to confirm that products meet the criteria for certification. The following paragraphs summarize the rationale for requiring the information specified.

Contact Information. This information is necessary for communicating with the applicant concerning any issues with the application, whether the application is deficient, and whether the application has been approved.

Brand Names. Because a manufacturer or vendor may market the same product under different brand names (or other product identifiers such as model names or numbers), the application requires that all brand names or other applicable product identifiers for that product be provided. This will prevent the necessity of multiple applications from the same manufacturer or vendor for the same product.

Biobased Content Information. For products in the three categories discussed earlier, the biobased content of the product for which certification is sought would be determined by ISO 9001 certified or conformant,² third-party testing firms using ASTM Method D6866, "Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis."

In the case of a product that is marketed under different brand names, the proposed rule would allow the manufacturer or vendor to test the product once rather than requiring brand-name specific data, thereby minimizing unnecessary testing of the same product that is simply marketed under different brand names.

The applicant is required to provide the product's biobased content, as

determined using ASTM Method D6866, and contact information on the entity that performed the testing. The applicant is also required to provide documentation that the third-party testing entity that determined the biobased content reported for the product is ISO 9001 conformant. This information is necessary to demonstrate that the product's biobased content meets or exceeds the applicable minimum biobased content and that a qualified, independent, third-party testing entity conducted the testing.

Product Category. The applicant is required to identify whether the product (1) falls within one or more designated items under the preferred procurement program (and if so, the applicant is required to identify the item(s)), (2) is a finished biobased product that is not within a designated item, or (3) is an intermediate ingredient or feedstock that is not within a designated item. This information is necessary to identify the applicable minimum biobased content and then to ensure that the biobased content of the product meets or exceeds the applicable minimum biobased content.

Intended use(s). The applicant is required to provide a description of the intended uses of the product (e.g., as a glass cleaner or as a penetrating lubricant). USDA will use this description to confirm that the product is assigned to the appropriate designated item(s), if applicable. This will also allow USDA to determine if a product should have been assigned to a designated item, if the application incorrectly indicates that the product falls outside the designated item category.

Certifications and statements. The applicant must certify that the product for which certification is sought is a biobased product, as defined by the labeling program. USDA is proposing that applicants certify to this criterion and keep appropriate records to demonstrate that the product complies with this certifying statement, which USDA can then review during an audit. This condition must be met in order to ensure compliance with statutory requirements under which the voluntary labeling program is being established.

As noted earlier in this preamble, the applicant is also required to commit to providing to USDA information, and keeping it up-to-date, for posting by USDA on the BioPreferred Web site. This information includes the product's brand name(s) or other product identifiers; contact information, including the name, mailing address, e-mail address, and telephone number of the applicant; biobased content; and a

² ISO 9001 conformant means that the entity meets the requirements of ISO 9001, but is not required to be ISO 9001 certified.

hot link directly to the applicant's Web site (if available).

While USDA is not requiring manufacturers to analyze the environmental and human health effects, life-cycle costs, sustainability benefits, and performance of their products, manufacturers making claims regarding these attributes of their products must maintain documentation to substantiate those claims pursuant to the Federal Trade Commission (FTC) Act. Section 5 of the FTC Act (15 U.S.C. 45) makes unlawful deceptive acts and practices in or affecting commerce. The FTC "Guides for the Use of Environmental Marketing Claims" (16 CFR part 260) state that "any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim."

Evaluation

USDA will evaluate each application to determine if it is a "complete" application (*i.e.*, that it contains all of the required information). If USDA determines that the application is not complete, it will return the application to the applicant and provide an explanation of the deficiencies in the application. Once the deficiencies have been addressed, the applicant may resubmit the application for review by USDA.

USDA will evaluate each complete application to determine if the product meets the criteria for certification discussed above (and specified in § 2904.4). There will be no specified deadline for application submissions; applications will be worked on in a first come first serve basis. Based on this evaluation, USDA either will conditionally approve the application or will disapprove the application. USDA will provide to each applicant a written response within 60 days after the receipt of a complete application, informing the applicant whether or not its application has been conditionally approved or has been disapproved. An applicant who receives notice from USDA that its application has been conditionally approved may not begin using the label on its product until the applicant receives a notice of certification from USDA (see next paragraph). For those applications that are not approved, USDA will notify the applicant and identify each criterion not met. Applicants whose applications are not approved have the right to appeal under the proposed program first to USDA's

BioPreferred program office and then to USDA policy officials.

Notice of Product Certification

After an applicant receives notice from USDA that its application (for the product to bear the label) has been conditionally approved, the applicant must provide certain information, as discussed in Section E in this preamble, to USDA. Once USDA has confirmed that the information supplied by the applicant is complete, USDA will approve the product label application and will issue a notice of product certification to the applicant. USDA will include in the notice of certification information necessary for the applicant to access the applicable label artwork from the USDA BioPreferred Web site. Upon receipt of the notice of certification, the applicant may begin using the label on the certified biobased product.

Term of Product Certification

The effective (beginning) date of the product certification is the date that the applicant receives the notice of certification from USDA. The certification will remain valid for as long as the biobased product is manufactured in accordance with the information supplied in the approved application and presented on the USDA Web site, with one exception. As discussed earlier, it is USDA's intent that the applicable minimum biobased content of designated items will increase over time as advancements are made in biobased product technology. If the applicable required minimum biobased content for a product to be eligible to display the label is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days of receiving USDA's notice if they wish to continue to use the label. Manufacturers and vendors who have re-applied for certification may continue using the existing label until they receive notification from USDA on the results of their re-application for certification.

USDA considered proposing a certification period of either three or

five years, but decided that a fixed certification period was unnecessary and that the process of reapplying every three or five years would impose an undue burden on manufacturers who did not reformulate their products. In the case of items that become designated, it is likely that the required minimum biobased content for the item could be different from the 51 percent level used to qualify the item before it was designated. USDA believes that, in those cases, only those products that meet the new minimum biobased content should be eligible to display the label. Thus, USDA is proposing that if a certified product's biobased content is below the newly established minimum biobased content, the manufacturer must discontinue applying the label as of the effective date of the item designation. The same would be true in any other case where USDA, through established notice and comment rulemaking procedures, revises the minimum biobased content applicable to a previously certified product.

USDA points out that affixing the label to a certified biobased product does not imply that the useful life or the shelf life of the product has been affected in any way. Purchasers of labeled certified biobased products, therefore, should continue to look to information from the manufacturer or vendor to ascertain whether a product will perform as advertised at the time the purchase is made.

D. Appeals

Today's proposed rule includes provisions for appeal by an applicant whose application for certification is denied by USDA. In addition, entities that have been cited for a violation or that have received a notice of suspension or a notice of revocation may also file an appeal. All appeals must be filed within 30 days of receipt of the applicable notice. Appeals must be made in writing to the Program Manager of the Voluntary Labeling Program for Biobased Products and must contain, in part, a statement, including appropriate substantiating documentation, of the appellant's reasons for believing that USDA wrongfully denied the application or issued a notice of violation, suspension, or revocation. If the appellant is dissatisfied with the results of this appeal, he/she may raise the appeal to the Assistant Secretary for Administration by letter request. Appeals to the Assistant Secretary for Administration must be filed within 30 days of receipt of the notice of decision from the appeal to the Program Manager.

The proposed rule also includes provisions for manufacturers or vendors of mature market products to appeal the exclusion of their products from the voluntary labeling program if they believe that conditions justify the use of the label on their products.

E. Information Posted on Web Site

Before USDA issues the notice of certification to a manufacturer or vendor to use the label on a biobased product, the manufacturer or vendor must submit contact and product information to USDA, which USDA will then post on the USDA BioPreferred Web site (which can be accessed at <http://www.biopreferred.gov>). This information must be complete and must be provided to USDA before USDA will provide to the manufacturer or vendor, the notice of certification and the information for accessing the label artwork. The information that must be provided to USDA is:

- Product brand name(s) or other identifying information;
- Contact information for the applicant;
- Biobased content level; and
- A hot link directly to the applicant's Web site (if available).

In addition to the information listed above, USDA encourages manufacturers to provide other information related to product features and applicability for posting to the Web site.

USDA believes that making the information identified above available on the USDA BioPreferred Web site will be an extremely valuable step in establishing a database of certified biobased products. Ideally, both Federal agencies and public consumers will be able to readily access information that will help them in their decision-making regarding the purchase of biobased products. USDA believes that making this information available not only to Federal agencies, but also to public consumers will result in increased consumer awareness of and use of biobased products. USDA is also proposing that manufacturers of certified biobased products must include the USDA Web site address on or in close proximity to the label.

Manufacturers must provide to USDA updated information for posting by USDA to the USDA BioPreferred Web site whenever any of the information on the Web site becomes outdated or if additional relevant information becomes applicable. As discussed in Section I of this preamble, failure to provide USDA with updated information will be considered a violation of the requirements of the labeling program.

F. Applications for Reformulated Products

A manufacturer may decide to change the formulation of a certified biobased product for various reasons including performance issues, raw material availability, or changes in production processes. As discussed earlier, manufacturers may also be required to reformulate products that are within designated items in response to USDA re-evaluating and increasing the applicable minimum biobased content for products within the designated item. For such reformulated products to be eligible for USDA certification to use the label, USDA proposes that a new application be submitted to USDA, as discussed below.

If a certified product's biobased content is decreased by any amount, a new application would be required. In any case where the biobased content of a product is decreased from the original formulation, the biobased content of the reformulated product must still be at or above the applicable minimum biobased content for the product in order for the product to qualify for the label.

In the case of a product whose biobased content is reduced, the manufacturer or vendor cannot affix the label to the reformulated product until they have submitted a new application, provided USDA with the required information on the reformulated product for posting to the USDA BioPreferred Web site, and received the notice of certification for the reformulated product from USDA. If the manufacturer or vendor also continues to sell the product in its original formulation, the manufacturer or vendor may continue to affix the label to the original product.

If a certified product's biobased content is increased, and the manufacturer wishes to change the label to report the higher value, a new application would be required. The manufacturer or vendor may continue to affix the label to the reformulated product. However, the manufacturer or vendor may not revise the biobased content displayed on the label until they have submitted a new application, provided USDA with the required information on the reformulated product for posting to the USDA BioPreferred Web site, and received the notice of certification for the reformulated product from USDA.

G. Requirements Associated With the Label

Today's proposed rule establishes specific requirements for the use of the label. The requirements in today's

proposed rule specify who may use the label, correct and incorrect uses of the label, the physical appearance of the label, and restrictions on the use of the label. These requirements are summarized in the remainder of this section.

USDA is also developing a Marketing Guide that will be made available to manufacturers and vendors of labeled products. The purpose of this Marketing Guide is to provide expanded discussions of, and guidance on resolving, implementation issues that may arise related to the use of the label. For example, USDA anticipates that there will be questions related to the best way to apply the label on very small products, such as those within the designated item "lip care products." USDA believes that a Marketing Guide, that can be updated frequently, is the most efficient way to keep label users informed of guidance provided by USDA in response to implementation issues that arise.

Who May Use the Label?

Any manufacturer or vendor who has received notice of certification from USDA, and any designated representative of such manufacturers and vendors, may use the label on the product and its associated packaging and in the advertising of the certified biobased product. As proposed, only the manufacturer or vendor (and their designated representatives) of a certified biobased product would be granted the authority to affix the label to the product. The process of applying for and receiving certification requires specific knowledge of the product and its characteristics and formulation. Obtaining certification also imposes the requirement on the manufacturer and vendor to provide certain information to USDA, which USDA will then post on the USDA BioPreferred Web site.

Other entities may use the label to advertise or promote certified biobased products (e.g., in catalogs or procurement databases), as long as the manufacturer or vendor of the product (or one of their designated representatives) has affixed the label to the product or its packaging. USDA believes that allowing other entities to use the label in informational, promotional, and educational materials for certified biobased products will promote the goal of encouraging the use of biobased products.

Use of the Label

The label may be affixed only to products (or associated packaging) for which a manufacturer or vendor has received a notice of certification under

this part. USDA's intent is for the label to be used by manufacturers, vendors, and other entities to distinguish biobased products that meet or exceed the criteria established by USDA from those that do not meet the criteria. It is also important that the label be used in a consistent manner such that the label and its meaning will become recognizable in the marketplace. Use of the label on non-certified products or alterations in the appearance of the label may confuse consumers and diminish the value of not only the label, but also the entire biobased product program. Therefore, USDA has identified correct and incorrect uses of the label, which are discussed in the following paragraphs.

Correct Uses. Proposed section 2904.7 identifies correct usages of the label. These include, but are not limited to the following:

- The label may be used in advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials;
- The label may appear next to a picture of the product(s) or text describing the product(s); and
- The label may be used without reference to a specific certified biobased product only when informing the public about the purpose of the label. For example, the following or similar claim is acceptable: "Look for the 'USDA Certified Biobased Product' label. It means the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred Web site." This exception allows manufacturers, vendors, and other entities to use the label in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

Incorrect Uses. Proposed § 2904.7 also identifies incorrect usages of the label. These include, but are not limited to the following:

- The label may not be used on non-certified products or in advertisements or informational materials for non-certified products;
- The label may not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company; and
- The label may not be used in any form that could be misleading to the consumer, or on business cards, company letterhead, or company stationery.

Imported Products

Because other countries may have different definitions of "biobased"

and/or use other terms, it is necessary to address the use of the label on products for import. The "USDA Certified Biobased Product" label signifies that a product meets specific USDA criteria for biobased products. Therefore, in order for products imported for sale in the U.S. to carry the label, they must meet the same criteria as U.S.-sourced biobased products, and their manufacturers and vendors must apply for certification to use the label, even if the products are considered biobased products in the country in which they are manufactured.

Contents of the Label

The label must consist of the following:

- The logo with the phrase "USDA Certified Biobased Product" and, where applicable, the letters "FP" to indicate that the product is within a Federally preferred designated item (this label content is collectively referred to as the "label artwork"); and
- A statement that identifies the biobased content of the product, as reported in the approved application for the product at the time the label is affixed to the product or its packaging, and whether the label applies to the product or packaging.

USDA is proposing that the statement that identifies the biobased content also indicate whether the label applies to the product or the packaging (e.g., Product: 57% biobased; Packaging: 90% biobased). The USDA is proposing that this statement be included in the label in order to make it clear as to what the certified biobased product is. USDA believes that there will be instances where the placement of the label on a product or its packaging will not clearly identify the certified biobased product. For example, it is possible that a label placed on a container will refer to the container itself (in which case the statement "Packaging: XX% biobased" would be used) or to the contents within the container (Product: YY% biobased). It may also be possible that both the container and its contents are certified biobased products, in which case two statements would appear (Product: YY% biobased. Packaging: XX% biobased). Without tying the label to the product or the packaging, the consumer may be unable to determine which product is the certified biobased product. Therefore, USDA is proposing that the appropriate statement(s) be included in the label in order to identify clearly the product or products to which the label applies.

Furthermore, the proposed rule requires that, at the time the label is affixed to the product or its packaging,

the biobased content shown on the label is the same as the biobased content found in the approved application for the product. It is possible, however, that the biobased content of a certified product could be changed by the manufacturer. If a certified product's biobased content is changed to a level below that shown on the label, the product is considered a reformulated product and a new application is required. If a certified product's biobased content is increased and the manufacturer wishes to change the label to the higher value, a new application is also required.

USDA also requires manufacturers and vendors to include the USDA BioPreferred Web site address on or in close proximity to the label. USDA is not proposing to require that the Web site address be on the label itself because the label on many products will not be large enough to accommodate this extra information. USDA believes that, where practicable, the presence of the USDA BioPreferred Web site address on the label will assist consumers in obtaining information about biobased products.

Physical Aspects of the Label

The rule addresses the physical aspects of the label artwork and the presentation of the biobased product statement. In addition to the requirements of the rule, USDA anticipates that guidance on specific issues related to the physical aspects of the label will be provided in the Marketing Guide.

Label Artwork

To maintain the distinctiveness of the label artwork (which consists of the logo, the phrase "USDA Certified Biobased Product" and, where applicable, the letters "FP") and to make sure that it is readily recognizable, USDA has established requirements related to the physical appearance of the label artwork. The applicable label artwork provided by the BioPreferred Program must be used.

USDA is also proposing color requirements to ensure that the label artwork remains distinctive and recognizable. USDA is proposing to require that one of three label versions be used, depending on the need of the product. (1) A three-color version of the label artwork (white plus two shades of green); (2) a one-color version of the label artwork as long as the color used is one of the two greens specified in section 2904.7(f) of today's proposed rule; and (3) a black and white version of the label artwork is also acceptable. The contrast between the light and dark

sections of the label artwork should be great enough to maintain the distinctiveness of the design.

Finally, the label artwork may not be altered, cut, separated into components, or distorted in appearance or perspective.

Biobased product statement. The applicable biobased product statement(s), which identifies the product(s) to which the label applies and the biobased content(s), would be placed below the label artwork. The biobased content must be expressed as

“XX%,” where XX% represents the actual biobased content of the product. The biobased content must be easily readable. Figure 1 illustrates the placement of the biobased product statement.

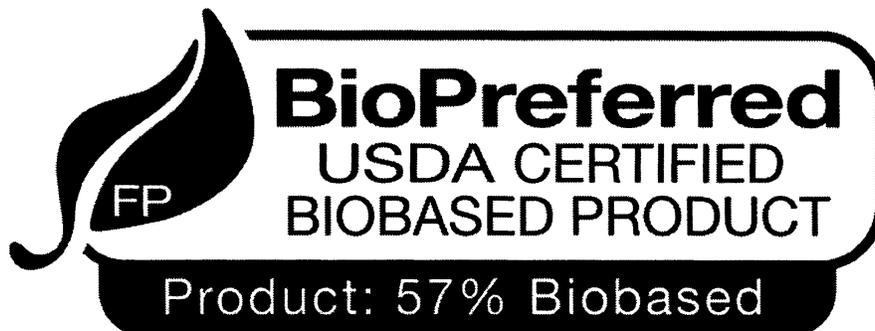


Figure 1. Label, with Biobased Product Statement, for a Product that is Within a Designated Item

Placement of the Label

Whether the label is placed directly on a product, on associated packaging, in user manuals, or in other material, it should always be placed in a manner that ensures that the label (label artwork and biobased product statement(s)) can be readily associated with the applicable certified biobased product. The label should not be placed in a manner that is ambiguous about which product is a certified biobased product or that could indicate certification of a non-certified product. If all products on a printed page are certified biobased products, the label may be placed anywhere on the page. However, if a printed page contains a mix of certified biobased products and non-certified products, the label must be placed in close proximity to the certified biobased products. An individual label located near each certified biobased product may be necessary to avoid confusion.

Minimum Size and Clear Space Recommendations for the Label

USDA recognizes that a specific size requirement for the label would not be appropriate because of the variety of sizes and shapes of products that may be certified. Therefore, the label may be sized to be appropriate for the particular application as long as the correct proportions are maintained and the label remains legible.

A border of clear space must surround the label and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the

label's color is similar to the background color, an outlining color may be used to enhance contrast.

Where To Obtain Copies of the Label Artwork

The two versions of the label artwork (with and without the letters “FP”, as applicable) will be available at the USDA BioPreferred Web site. Only manufacturers and vendors approved for use of the label for certified biobased products will be able to obtain the label from the Web site. USDA will provide the necessary access (through the notice of certification) once a manufacturer or vendor has provided USDA with the required information, which USDA will post to the USDA BioPreferred Web site, for a product whose application for certification has been approved by USDA.

H. Violations

Although the decision to participate in the certified biobased products labeling program is voluntary, compliance with the program requirements and specifications will be essential to the success of the program. Proposed section 2904.8 identifies examples of the types of actions that would be violations of the labeling program.

To enforce the provisions of the voluntary labeling program, USDA will implement an audit program. This audit program will include, but not necessarily be limited to, conducting inspections of manufacturer and vendor

facilities, visiting retail facilities, and testing the biobased content of certified biobased products. Visiting manufacturer and vendor facilities and inspecting their records, for example, will help USDA identify potential label and application violations. Testing certified biobased products for their biobased contents will help USDA determine any violations associated with biobased contents. Manufacturers, vendors, and their designated representatives are required to cooperate fully with all USDA audit efforts for the enforcement of the voluntary labeling program. USDA envisions selecting five to ten percent of labeled products at random for audit each year.

Both the violations being proposed and any penalties associated with a violation would be applied on a per product basis. For example, a manufacturer has two certified biobased products, Product A and Product B. The manufacturer has been cited for a labeling violation for Product A and the certification for Product A has been revoked. As proposed, the manufacturer would be required to discontinue labeling Product A, and USDA would remove the information for Product A from the USDA BioPreferred Web site. If no actions were taken against the manufacturer with regard to Product B, the manufacturer's certification for Product B would not be affected by the violation associated with Product A. Thus, the manufacturer would still be allowed to affix the label to Product B, and Product B's information would

remain on the USDA BioPreferred Web site.

Finally, the appeals process described previously is also applicable when a notice of violation, suspension, or revocation is issued.

Biobased Content Violations. As noted earlier, as part of its audit program, USDA will conduct random tests of certified biobased products taken from market shelves to determine their biobased contents and compare the results to a product's applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in the approved application. USDA will conduct such testing using ASTM D6866, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis.

If the USDA testing shows that the biobased content of a certified biobased product is less than the applicable minimum biobased content identified in the approved application for the product, then a violation of the labeling regulations has occurred.

If USDA testing shows that the biobased content of a certified biobased product is less than that reported in the approved application, but is still equal to or greater than the applicable minimum biobased content, USDA will notify the manufacturer or vendor of its results. USDA may forward the test results to the Federal Trade Commission for possible enforcement. The manufacturer or vendor would then have 30 days to submit a new application, showing a revised biobased content for the product. The revised biobased content could be either the biobased content from the USDA test or a biobased content reported by the manufacturer or vendor based on a new test conducted by the manufacturer or vendor. If the manufacturer or vendor elects to conduct a new biobased content test, the manufacturer or vendor must test a current sample of the product. Failure to provide a new application (including new test results) with a revised biobased content within 30 days of receipt of USDA's written notification would be considered a violation.

USDA notes that if its testing shows that the biobased content of a certified biobased product is greater than the biobased content reported in the approved application, no violation would have occurred. USDA will, however, notify the manufacturer or vendor of the results of the testing, ask if they would like to submit a second product test, and potentially be allowed

to increase the biobased content shown on their label.

Label Violations. Any usage or display of the label that does not conform to the requirements proposed in section 2904.7 would be considered a violation of the proposed labeling regulations. For example, applying a label to a product that does not have a valid certification would be a label violation.

Application Violations. Knowingly providing false or misleading information in any application for certification of a biobased product would be a violation of the proposed labeling regulations. For example, certifying in the application that the product meets the definition of a biobased product when it does not would be an application violation.

USDA BioPreferred Web site Violations. As proposed, failure to provide to USDA updated information on a certified biobased product when the information for the certified biobased product becomes outdated (e.g., a change in a product's biobased content), would be a violation.

Notice of Violations and Associated Actions. When a violation has been identified, USDA will provide written notification of the violation to the applicable entity, which may be the manufacturer, vendor, or its designated representative or other entity. In all instances, the manufacturer of the product for which USDA has identified the violation will also be notified. The notice of violation will identify the violation. In the case of biobased content violations, the offending party will then have 30 days from the date the notice of violation is received to correct the violation. For other types of violations, the offending party will have 60 days from the date the notice of violation is received to correct the violation. The 30-day period for resolving violations of biobased content violations is more stringent than the 60-day period allowed for resolving other types of violations because biobased content violations, whether intentional or not, are viewed as misleading consumers and could result in inappropriately influencing their purchasing decisions.

If the party receiving the notice of violation is an "other entity," USDA will pursue remedies as provided for under proposed section 2904.8(c). If the party is a manufacturer, vendor, or one of its designated representatives, USDA will first pursue notices of suspension and revocation, as discussed below. USDA also reserves the right to pursue other remedies as provided in § 2904.8(c).

Suspension of Certification. After receiving a notice of violation, if the manufacturer, vendor, or designated representative, as applicable, fails to make the required corrections within 60 days (or 30 days, in the case of biobased content violations), USDA will notify the manufacturer or vendor of the continuing violation and will suspend USDA certification for that product. As of the date the manufacturer or vendor receives a notice suspending product certification, the manufacturer or vendor and any designated representatives must not affix the label to any of that product, or associated packaging, not already labeled. Also, the manufacturer or vendor must not distribute any additional products bearing the label after receiving a notice of suspension of product certification. When USDA suspends a product's certification, USDA will issue a press release informing the public of the suspension and will also remove the information on that product from the USDA BioPreferred Web site. If USDA learns that entities whose certification has been suspended continue to use the label, USDA will refer that information to the Federal Trade Commission for enforcement.

In order to resume use of the label for a product whose certification has been suspended, the manufacturer, vendor, or designated representative must correct the violation and notify USDA that the violation has been corrected within 30 days from receipt of the notice of suspension and must receive approval from USDA before use of the label can be resumed. Once USDA has approved the corrections to the violation, USDA will restore the product information to the USDA BioPreferred Web site.

Revocation of Certification. If a manufacturer or vendor whose USDA product certification has been suspended fails to make the required corrections within 30 days of the date of the suspension, USDA will notify the manufacturer or vendor that the certification for that product is revoked. As of the date that the manufacturer or vendor receives the notice revoking USDA certification, the manufacturer or vendor and any designated representatives must not affix the label to any of that product, or associated packaging, not already labeled. In addition, the manufacturer or vendor and its designated representatives are prohibited from further sales of the product to which the label has already been affixed to any entity. However, if, prior to receipt of a notification of revocation, a manufacturer or vendor has stored a supply of product with the label that has already been sold to

another entity, the manufacturer or vendor must notify the entity of the label revocation and allow the entity to cancel the transaction. If a manufacturer or vendor whose product certification has been revoked wishes to use the label, the manufacturer or vendor must follow the procedures required for original certification.

Other Remedies. In addition to the suspension or revocation of the certification to use the label, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with part 3017 of this title. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

I. Recordkeeping Requirements

Manufacturers and vendors who choose to participate in the voluntary labeling program will be required to keep certain records related to their labeled biobased products. USDA believes these records are necessary to ensure compliance with the labeling regulations. Manufacturers and vendors may keep these records in either electronic or hard copy format. The records that must be kept include:

- The results of all tests, and any associated calculations, performed to determine the biobased content of the product;
- The results, and the supporting documentation, of industry standard functional performance tests to support product performance claims made by the manufacturer or vendor;
- The results, and the supporting documentation, of analyses the manufacturer or vendor has performed to support claims of environmental or human health effects, life cycle costs, and sustainability benefits of the product;
- Documentation that the product for which certification is sought meets the definition of biobased product, as defined in § 2904.2 of this part; and
- The date of the certification by USDA and the dates when the biobased content of certified biobased products was tested.

Records created under the requirements of today's proposed rule must be maintained for at least three years beyond the end of the label certification period (*i.e.*, three years beyond the period of time when manufacturers and vendors cease using the label). If electronic records are maintained, they must be readily accessible during an audit by USDA. USDA believes that a three-year record

retention period is the minimum necessary to allow verification of the information supporting active certifications. Manufacturers, vendors, and their designated representatives must allow Federal representatives access to these records for inspection and copying during normal Federal business hours to determine compliance with the applicable regulations.

J. Reporting

USDA encourages manufacturers certified to use the label to provide data in order to enable USDA to estimate and publicly report the benefits and general effectiveness of the Voluntary Labeling Program. The quantity, frequency, and format of the data will be as the parties mutually agree. Such data may include, if and as available: (1) The total number of units of each product shipped by manufacturer for sale in the U.S., and (2) the type of customer (*e.g.*, government, other public institution, private/corporate institution, private individual) to whom such products were sold.

USDA recognizes that manufacturers and vendors may consider some of the requested information to be confidential. USDA stresses that information claimed as confidential by the manufacturer or vendor will not be released and that individual manufacturer or vendor data will not be reported. Only summary information regarding the benefits and impacts of the entire program will be released.

IV. Suggested Comment Topics

USDA invites comment on any aspect of today's proposed requirements for the voluntary labeling program for biobased products. USDA invites specific comments in the areas identified below.

1. *Who can apply for the label?* Under the proposed rule, both manufacturers and vendors of biobased products can apply for use of the label for their products. USDA is interested in comments on whether it is appropriate to include vendors as an entity eligible to apply for use of the label. Some of the requirements associated with approval for use of the label will require information generally only available to the manufacturer. In addition, it is the manufacturer, not the vendor, who determines a product's formulation and production process. What issues would a vendor face in complying with the proposed rule in light of this?

2. *Applicable minimum biobased contents.* For products (including intermediate ingredients and feedstocks) not within a designated item, USDA is interested in comments associated with: (a) the 51 percent applicable minimum

biobased contents that products within this category must meet in order to be eligible for use of the label, and (b) the procedure under which an applicant can request an alternative applicable minimum biobased content (*i.e.*, an applicable minimum biobased content other than 51 percent).

3. *The labeling of "complex products."* In addition to the three categories of products (products within designated items, those that are not within designated items, and those that are intermediate ingredients and feedstocks that are not within designated items) that would be eligible to use the label under today's proposed rule, USDA also intends to develop provisions for the labeling of "complex products" once several implementation issues have been resolved. A complex product is considered to be a finished, consumer product that is composed of many different types of components. Examples of complex products would be products such as computers, vacuum cleaners, lawn mowers, and automobiles. Each of these products contains many component parts made of different materials. For products such as these, it may be feasible to produce one or more of the component parts with biobased materials.

Today's proposed rule does not contain provisions to allow for the labeling of complex products because there is currently no approved method to determine the biobased content of a complex product. USDA has consulted with ASTM representatives regarding the lack of an approved test method. ASTM is gathering information on complex products and they intend to proceed with the development of a method that can be used to determine the biobased content of complex products. USDA will continue to work closely with ASTM and the manufacturers of complex products and, once an acceptable test method is available, expects to amend the voluntary labeling rule to allow for the labeling of complex products.

USDA requests that commenters provide information on the types of complex products containing biobased components that are in the marketplace today, as well as those which may be in the developmental stage. Information on the types of components that contain biobased materials, the typical biobased content of these components, and the market share of the biobased components is requested by USDA. Information on current research efforts to develop new biobased components for complex products is also requested. USDA is also interested in commenters' opinions regarding how complex

products and their biobased components should be addressed in the designation process as well as the voluntary labeling program.

4. *The labeling of "mature market products."* The proposed rule does not allow the label to be applied to products that are considered to be "mature market products" (*i.e.*, products that had significant market penetration in 1972), except on a case-by-case basis. Section 2902.5(c)(2) of the final Guidelines also excludes mature market products from the designation process. However, USDA is proposing to allow manufacturers of mature market products to appeal (on a case-by-case basis) the exclusion of their products from the voluntary labeling program if they believe that conditions justify special consideration for their products. A possible example would be the manufacturer of a traditional biobased product that had a significant market share in 1972, lost that market share to petroleum-based alternative products during the years between 1980 and 2000, is now attempting to re-enter the market, and believes the label will be helpful in this attempt. Other instances where USDA might consider granting appeals of the exclusion of mature market products include those where labeling a product could be shown to: reduce dependence on foreign petroleum sources; create new "green" jobs; or reduce greenhouse gas emissions.

USDA welcomes comment on whether mature market products should be eligible for labeling and whether the labeling of mature market products could negatively affect the entry of new (*i.e.*, post-1972) biobased products into market segments in which mature products already have significant market shares. USDA also requests comments regarding what criteria should be used to evaluate *appeals* to include mature market products in the labeling program and what types of information manufacturers and vendors should be required to submit as justification for their appeal. Commenters should provide specific reasons why the use of the label on mature market products should be considered, including information on the expected benefits of the label. USDA is also seeking comments on why this label might be preferred over, or how it could be used in conjunction with, other available labels such as the "cotton," "renewable," or "organic" labels that can be used on many mature market products.

5. *The appropriate lengths for the certification periods.* USDA is proposing that certifications remain valid for as

long as the certified product is manufactured in accordance with the approved application. USDA considered a certification of either three or five years, but chose not to propose a specified time period, primarily to reduce the burden that would be associated with reapplying for certification. USDA welcomes comments on the appropriate length of time that a certification should be valid. Be sure to include rationale for any recommendations of alternative certification periods.

6. *Preliminary notice of violations.* USDA welcomes comments on whether a preliminary notice of violation for any of the proposed violations should be issued before action is taken by USDA against the violators and, if so, how long a violator should be given to correct the violation before action is taken.

7. *Biobased content testing facilities.* USDA solicits comments on the appropriateness of requiring that labs be ISO 9001 conformant. Specifically, are there benefits in such a requirement in terms of the quality of the resulting data and, if so, is ISO 9001 the appropriate standard? Commenters are encouraged to provide their opinions on whether there are other standards (such as ISO 17025) that would be more appropriate.

8. *Clarification of biobased content of product vs. packaging on label.* As discussed earlier in this preamble, USDA believes that it is important to identify for the consumer the item to which the label applies. Therefore, USDA is proposing that the label include the appropriate biobased product statement(s) to make this clear. USDA seeks comments to determine if the use of the word "product" in the statement "Product: YY% biobased" is clear enough. For example, if the label applies to a biobased hydraulic fluid, but not to its container, does the statement "Product: YY% biobased" found on the container clearly convey that the label applies to the hydraulic fluid and not the container? If this statement does not clearly convey this, please suggest alternatives that would more clearly accomplish this.

When the label applies to both the product and its packaging, is it necessary to provide the biobased content of both the product and its packaging? As proposed, two statements would be included on the label (Product: YY% biobased. Packaging: XX% biobased). USDA welcomes suggestions on how to address providing biobased content information when the label applies to both the product and its packaging.

9. *Identifying products that are also eligible for a Federal procurement*

preference under the preferred procurement program. As proposed, biobased products that fall within designated items and are, therefore, eligible for Federal preferred procurement, would use a label with the letters "FP" included in the label artwork. USDA considered simply allowing manufacturers to indicate in the product's literature that the product is eligible for preferred procurement rather than requiring such information on the label itself. USDA decided that there may be a benefit to either Federal agencies or to the public consumers to have this information on the label. USDA is seeking comments on whether the "FP" lettering on the label will be sufficient to distinguish products that are eligible for Federal preferred procurement. USDA is also requesting comments on whether consumers will recognize that the lettering on products means that these products, or similar products, have undergone life cycle costs and environmental performance analyses. USDA also welcomes comments on how the labeling program and the preferred Federal procurement program should work together.

10. *Other possible label content.* As discussed above, USDA is proposing that the label include the biobased content (expressed as a percentage), a statement indicating whether the biobased content refers to the product or the packaging or both, and the BioPreferred Web site address (either on or in close proximity to the label). USDA also considered the possible advantages and disadvantages of requiring additional information on the label. For example, USDA is proposing that information on product performance and on the life-cycle costs and environmental and human health effects of the labeled products be maintained if manufacturers make claims regarding these attributes for their products. USDA considered whether providing this type of additional information on the label would be beneficial to purchasers.

The primary advantage of providing additional information on the label is to further educate purchasers about the attributes of the biobased products they choose to purchase. However, because the results of these analyses would typically be available only for labeled biobased products, a comparison to non-labeled biobased, or non-biobased, competing products may often be impossible. Also, the amount of space that would be needed for a legible presentation of this information could be a serious drawback for many small products (*e.g.*, household cleaners, hair care products, lip care products).

USDA is proposing to require manufacturers to include the BioPreferred Web site address either on or in close proximity to the label. USDA is requesting comments on the possible benefits of this proposed requirement and also on any expected drawbacks or negative impacts.

USDA requests comments and recommendations regarding the value of providing the types of additional information discussed above on the label and specifically requests input on what types of information should be included and how it should be presented.

11. *Legibility of the label.* As proposed, the label would consist of two items, the label artwork and the biobased product statement(s) with the accompanying biobased content(s). This is a significant amount of information and, for some small products, could result in a label that is difficult to read. Therefore, USDA is seeking comment on ways to help ensure that the information proposed to be included will be legible. Depending on the comments it receives and the rationale behind those comments, USDA may require a different presentation of this information.

12. *Timeframe for correcting violations.* Under the proposed rule, USDA would allow up to 60 days for entities to correct violations (30 days for biobased content violations) before a notice of suspension or other remedy is sought. USDA is seeking comment on whether it is preferable for the timeframe to correct a violation to be fixed, including the appropriate length to allow (e.g., are the 30- and 60-day periods in the proposed rule reasonable?) or to be determined on a case-by-case basis to be specified in the notice of violation.

13. *Recordkeeping.* The proposed rule requires certain records be kept in order to allow USDA to verify information associated with the labeling program and that these records be kept for at least three years beyond the end of the label certification period (i.e., three years beyond the period of time when manufacturers and vendors cease using the label). USDA welcomes comments on the specific records to be kept and the length of time they must be kept, including comments related to recordkeeping costs.

14. *Benefits and Costs.* USDA requests comments on the potential benefits (social and private) and costs (e.g., testing, submitting applications and associated information, and recordkeeping) of the proposed rule.

15. *Application Fee.* USDA is considering the option of charging an

application fee for each application to use the label. While Departmental Administration does not currently have the statutory authority to collect such a fee, available options are being explored. As discussed elsewhere in this preamble, USDA plans to implement an audit program to ensure compliance with the requirements for the use of the label. Based on experience with other programs, USDA believes it may be necessary to assess user fees in order to maintain a viable audit program. The proceeds from the application fee would, therefore, be used to help offset the cost of the audit program. USDA believes that it is in the best interest of not only USDA but also the manufacturers of labeled products that an audit program be implemented so that the integrity of the label can be assured. Were authority provided to do so, USDA would consider charging a fee of \$500 for each submitted application and requests comments on the appropriateness of that amount as well as on the charging of a fee at all.

Please be sure to include your rationale for all suggested changes to the proposed rule. Comments must be submitted as directed in the **ADDRESSES** section of this notice.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant. Today's proposed rule establishes a voluntary labeling program that allows manufacturers and vendors of certified biobased products to use the "USDA Certified Biobased Product" label. Although the labeling program is voluntary, there will be costs associated with meeting the criteria for, and applying for, certification to use the label.

1. Costs of the Proposed Rule

The primary costs associated with participating in this program are those for developing applications, testing to document the biobased content of products, providing information to USDA for posting by USDA on the USDA BioPreferred Web site, maintaining applicable records, and redesigning the product packaging to incorporate the label. USDA estimates that the combined annualized cost of the voluntary program, as proposed, to manufacturers and vendors would average approximately \$2,813,811 per

year for the first three years of the program. USDA estimates an average of 352 manufacturers and vendors per year will submit applications to participate in the labeling program for the first three years of the program. This yields an average annualized cost per manufacturer/vendor of approximately \$7,994.

The level of presumed impact is not expected to exceed \$100 million because of the offsetting nature of the labeling program (i.e., an increase in demand for biobased products is likely to be offset by a decrease in demand for non-biobased products). While the program is anticipated to have a widespread effect on the marketplace (including shifting purchases away from non-biobased products toward the purchase of biobased products), it is not expected to have a widespread adverse effect on the economy.

2. Benefits of the Proposed Rule

As an integral part of USDA's BioPreferredSM Program, the voluntary labeling program is expected to raise public awareness of, and increase the demand for, biobased products. While the benefits of the labeling program are not quantifiable at this time, an increased demand for biobased products will, in turn, achieve the benefits as outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items. The program is also expected to promote economic development for biobased product manufacturers and vendors by creating new jobs and providing new markets for farm commodities.

B. Regulatory Flexibility Act (RFA)

Under the RFA, an agency is not required to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute if the agency can certify that the rule will not have a significant economic impact on

a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Of these three types of entities, the labeling requirements in today's rulemaking would be applicable to small businesses only. For purposes of assessing the impacts on small entities, a small business is defined by the RFA using the definitions for small business based on Small Business Administration size standards, which vary depending on the type of business (e.g., less than 500 employees, less than 1,000 employees). Most of the manufacturing companies and vendors associated with products within items that USDA has designated or proposed for designation would qualify as small businesses under SBA guidelines.

While we do not have enough information to evaluate fully the potential effect of this proposed rule on small entities, we have some information to make some initial conclusions. We identified six North American Industrial Classification System (NAICS) categories under which many biobased products are manufactured: Petroleum lubricating oil and grease manufacturing, plastics material and resin manufacturing, soap and other detergent manufacturing, urethane and other foam product (except polystyrene) manufacturing, carpet and rug mills manufacturing, and fertilizer manufacturing. We then used economic census data to determine the average value of shipments, a reasonable surrogate for annual sales, for companies in these categories. The analysis indicates that the average value of shipments in 2002, the most recent year for which there are complete census data, for the six NAICS categories examined is over \$10 million per year per establishment. USDA requests comments on the quality of this analysis and ways to improve it.

More recent manufacturing census data on firm size, from 2006, indicates that, collectively, over 94 percent of the firms in the six categories meet the Small Business Administration definition of small business for the six categories.

The benefit-cost analysis USDA conducted for the proposed rule, discussed in Section I. below, indicates that the annualized cost associated with participating in the voluntary labeling program is about \$7,994 on average and, relative to total sales by small businesses in the NAICS categories where many biobased products are manufactured, appears not to represent an undue burden in most cases.

Moreover, participation in the voluntary labeling program would provide manufacturers and vendors a marketing advantage over those who choose not to participate. This marketing advantage could lead to greater sales, thus offsetting some of the costs associated with participating in the labeling program.

Finally, the program requirements for the voluntary labeling program are applicable to all manufacturers and vendors of biobased products seeking to use the label under this program, regardless of the size of their business. For instance, all manufacturers and vendors are required to submit an application, conduct certain testing, and provide to USDA certain information that USDA will post to the BioPreferred Web site. These requirements are necessary to certify biobased products and are independent of the size of the manufacturer or vendor. The integrity of the labeling program would be compromised if biobased products manufactured by small businesses were allowed to be subject to different criteria in order to reduce costs to small businesses.

Based on this initial analysis, USDA has not prepared a Regulatory Flexibility Analysis because USDA has determined that this rule does not have a significant impact on a substantial number of small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 13132: Federalism

This proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates as defined under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement

under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any mandate on tribal governments or impose any duties on these entities. Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), USDA is seeking OMB approval of the reporting and recordkeeping requirements contained in this proposed rule. USDA conducted a burden analysis of the costs associated with this proposed rule, as well as a benefit-cost analysis. The primary costs of participating in the voluntary labeling program are the costs of testing the biobased content of products and the costs of labor associated with reading the rule, applying for certification, gathering and submitting the information for posting to the BioPreferred Web site, and keeping applicable records for the products for which certification is sought. See the contact information at the end of this section for details on how to request a copy of materials related to the Information Collection Request.

Methodology

To estimate the average annual burden over the first three years of the rule, USDA estimated the number of hours that each activity (e.g., read the rule, complete the application, submit information to USDA, appeal denied applications, keep records) would take, summed the estimates for each activity to get an average total number of hours per manufacturer/vendor, and multiplied that total by the estimated number of manufacturers/vendors. The total cost of biobased content testing was then projected by multiplying the estimated total number of biobased

products for which certification is expected to be sought by the cost of the test. The labor component of the cost and the testing component were then summed to give a total estimated burden.

Assumptions

In estimating the costs for the burden analysis, USDA made the following assumptions.

1. In the first year of the voluntary labeling program, USDA estimates that 100 items will have been designated as eligible to receive the procurement preference, another 36 items will have been designated in the second year of the labeling program, and another 30 items will have been designated in the third year of the labeling program.

2. Based on information gathered during the item designation rulemakings, USDA estimates that approximately 830 manufacturers of products within these 166 designated items and an additional 830 manufacturers of biobased products (including intermediate ingredients or feedstocks) within items that are not designated for preferred procurement are expected to have an interest in using the label, yielding 1,660 manufacturers with eligible biobased products over the first three years. USDA estimates that an additional 200 vendors over the first three years would be interested in the voluntary labeling program. This yields a total of 1,860 manufacturers and vendors. Finally, USDA estimates that 166 other entities over the first three years would be interested in the voluntary labeling program.

3. Because the voluntary labeling program is new and the benefits to manufacturers of labeling their biobased products are not yet demonstrated, USDA anticipates that many manufacturers may be reluctant to participate during the first few years of the program. USDA expects that during the first three years of the program, participation by one half to two thirds of eligible manufacturers/vendors would be a reasonable estimate. Therefore, USDA assumed that sixty percent of the manufacturers of products within designated items, sixty percent of the manufacturers of products that are not within designated items, and thirty percent of the vendors with eligible biobased products would apply for certification to use the label. Thus, $1,056$ manufacturers and vendors $((830 \times 0.6) + (830 \times 0.6) + (200 \times 0.3) = 1,056)$ would apply to use the label over the first three years (an average of 352 per year).

4. Based on information gathered to support the designation of items for

preferred procurement, the average number of biobased products per manufacturer is between six and seven. For this analysis, USDA estimates that each applicant would submit applications for six products. This results in the submittal of 2,112 applications (352 applicants times 6 products per applicant) for products, on average, for each of the first three years. Of these, USDA estimates that 95 percent will be approved for use of the label.

5. In estimating the cost of the labor for reading the rule, completing applications, gathering and submitting information for posting on the BioPreferred Web site, and maintaining the applicable records, USDA used an average labor cost of \$49.98 per hour. This hourly rate is based on the Federal salary schedule, step 6, GS 14 "rest of the United States" salary of \$103,957 per annum (with 2080 hours worked per annum). The salary level is deemed reasonable under the expectation that at least half the burden hours would likely be provided by private sector employees earning less than this hourly rate and up to half the private sector employees would be earning more.

6. Based on the biobased content testing performed to support the item designation rulemakings, USDA estimated an average cost of \$500 to perform biobased content testing.

Estimated Burden

During the first three years the labeling program is in effect, the total annual burden on all respondents is estimated to be \$2,813,811. For the estimated 352 manufacturers/vendors (see item 3 above) certified to use the label, the average burden is, therefore, estimated to be \$7,994 $(\$2,813,811 \div 352 = \$7,994)$.

Abstract

The Farm Security and Rural Investment Act of 2002 (2002 Act), as amended by the Food, Conservation, and Energy Act of 2008, established the Biobased Markets Program under Title IX, Section 9002. The 2002 Act requires the Secretary of Agriculture to create a voluntary labeling program for biobased products.

The information requirements contained in this proposed rule require information from manufacturers and vendors of biobased products that seek to use the label on qualified biobased products. The information is vital for USDA to evaluate the qualifications of biobased products to carry the USDA label and to ensure that the label is used properly. This collection of information is necessary in order to implement the

voluntary labeling program for biobased products established under the 2002 Act.

Copies of this information collection can be obtained from Ron Buckhalt at the following address: Ron Buckhalt, USDA, Office of the Assistant Secretary for Administration, Room 300, Reporters Building, 300 Seventh Street SW., Washington, DC 20024; e-mail: biopreferred@usda.gov; phone (202) 205-4008.

As part of our continuing effort to reduce paperwork and respondent burdens, USDA invites the public and other Federal agencies to comment on any aspect of the reporting burden in the proposed rule. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA in the operation and management of this labeling program; (2) the accuracy of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Agriculture, Margaret Malanoski, 725 17th Street, NW., Room 10202, Washington, DC 20503. Comments should reference OMB control number 0503-NEW. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

I. Government Paperwork Elimination Act Compliance

USDA is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information submitted by manufacturers and vendors on the products they intend to label under the voluntary labeling program for biobased products. For information pertinent to GPEA compliance related to this rule, please contact Ron Buckhalt at (202) 205-4008.

J. Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

List of Subjects in 7 CFR Part 2904

Biobased products, Labeling.

For the reasons stated in the preamble, the U.S. Department of Agriculture (USDA) proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—DEPARTMENTAL ADMINISTRATION, DEPARTMENT OF AGRICULTURE

1. A new part 2904 is added to chapter XXIX to read as follows:

PART 2904—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

- Sec.
- 2904.1 Purpose and scope.
 - 2904.2 Definitions.
 - 2904.3 Applicability.
 - 2904.4 Criteria for product eligibility to use the label.
 - 2904.5 Initial approval process.
 - 2904.6 Appeals process.
 - 2904.7 Requirements for the use of the label.
 - 2904.8 Violations.
 - 2904.9 Recordkeeping requirements.
 - 2904.10 Oversight and monitoring.

Authority: 7 U.S.C. 8102.

§ 2904.1 Purpose and scope.

The purpose of this part is to set forth the terms and conditions for voluntary use of the “USDA Certified Biobased Product” label. This part establishes the criteria that biobased products must meet in order to be eligible to become certified biobased products to which the “USDA Certified Biobased Product” label can be affixed, the process manufacturers and vendors must use to obtain and maintain USDA certification, and the recordkeeping requirements for manufacturers and vendors who obtain

certification. In addition, this part establishes specifications for the correct and incorrect uses of the label, which apply to manufacturers, vendors, and other entities. Finally, this part establishes actions that constitute voluntary labeling program violations.

§ 2904.2 Definitions.

Applicable minimum biobased content. The biobased content at or above the level set by USDA to qualify for use of the label.

ASTM International (ASTM). A nonprofit organization that provides an international forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

Biobased content. The amount of biobased carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product. For products within designated items, the biobased content shall be defined and determined as specified in the applicable section of subpart B of part 2902. For all other products, the biobased content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is:

- (1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
- (2) An intermediate ingredient or feedstock. For the purposes of this subpart, the term ‘biobased product’ does not include motor vehicle fuels, heating oil, electricity produced from biomass, or any mature market products. Products from a mature market will be determined on a case-by-case basis.

Certified biobased product. A biobased product for which the manufacturer or vendor of the product has received approval from USDA to affix to the product the “USDA Certified Biobased Product” label.

Days. As used in this part means calendar days.

Designated item. For the purposes of this part means a generic grouping of

biobased products designated for preferred procurement under subpart B of part 2902 of this title.

Designated representative. An entity authorized by a manufacturer or vendor to affix the USDA label to the manufacturer’s or vendor’s certified biobased product or its packaging.

Intermediate ingredients or feedstocks. A material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product. For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all of the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the International Organization for Standardization’s standards and guidelines relating to “quality management” systems. “Quality management” is defined as what the manufacturer does to ensure that its products or services satisfy the customer’s quality requirements and comply with any regulations applicable to those products or services.

Label. Collectively, the label artwork (as defined in this section) and the biobased product statement(s), including the applicable biobased content(s).

Label artwork. The certification marks, “USDA Certified Biobased Product” and the “USDA Certified Biobased Product” logo, and, where applicable, the letters “FP” to indicate that the product is within a designated item and eligible for Federal preferred procurement, as shown in Figure 1. Application of either certification mark by a manufacturer or vendor signifies that USDA has certified that the product meets the qualifications in this part.

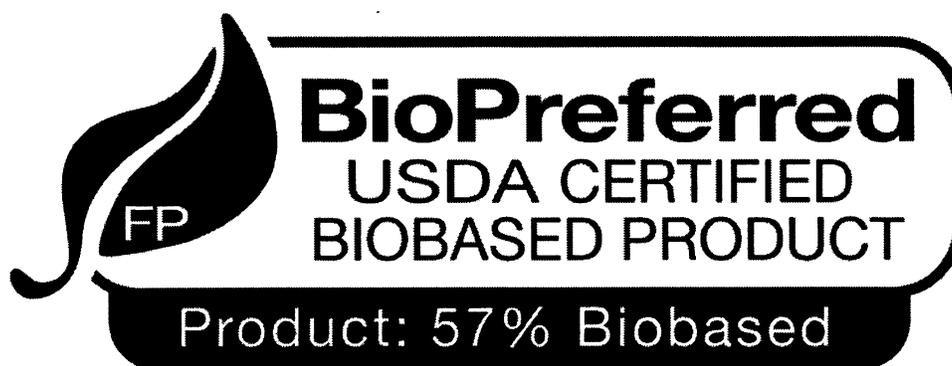


Figure 1. USDA Certified Biobased Product Label Artwork (Including Product Statement) for a Product that is Within a Designated Item

Manufacturer. An entity that performs the necessary chemical and/or mechanical processes to make a final marketable product.

Mature market products. Biobased products that are not eligible for designation for BioPreferred preferred procurement or labeling as defined under subpart B of part 2902 of this title because they had significant national market penetration in 1972. The eligibility of mature market products for the voluntary labeling program will be considered on a case-by-case basis, based on manufacturer's or vendor's appeal of the exclusion.

Other entity. Any person, group, public or private organization, or business other than USDA, or manufacturers or vendors of biobased products that may wish to use the "USDA Certified Biobased Product" label in informational or promotional material related to a certified biobased product.

Program Manager. The manager of the BioPreferred Program.

USDA. The United States Department of Agriculture.

Vendor. An entity that offers for sale final marketable biobased products that are produced by manufacturers.

§ 2904.3 Applicability.

(a) **Manufacturers, vendors, and designated representatives.** The requirements in this part apply to all manufacturers and vendors, and their designated representatives, who wish to participate in the USDA voluntary labeling program for biobased products. Manufacturers and vendors wishing to participate in the voluntary labeling program are required to obtain and maintain product certification.

(b) **Other entities.** The requirements in this part apply to other entities who wish to use the label in promoting the sales or the public awareness of certified biobased products.

§ 2904.4 Criteria for product eligibility to use the label.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product.*

(1) Except as specified in paragraph (a)(2) of this section, the product for which certification is sought must be a biobased product as defined in § 2904.2 of this part.

(2) Products that meet the definition of mature market products, as defined in § 2904.2 of this part, will be considered for certification only in those cases where the Program Manager sustains an appeal by the manufacturer or vendor of the product for inclusion in the voluntary labeling program, as specified in § 2904.6(c) of this part.

(b) **Minimum biobased content.** The biobased content of the product must be equal to or greater than the applicable minimum biobased content, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) *Biobased products within designated items.*

(i) *Product is within a single designated item.* If the product is within a single item that, at the time the application for certification is submitted, has been designated by USDA for preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

(ii) *Product is within multiple designated items.* If a biobased product is marketed within more than one designated item, uses the same packaging for each designated item, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable designated items in order to use the label on the product. However, if the manufacturer packages the product differently for each designated item then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each designated item for which the applicant seeks to use the label.

(2) *Finished biobased products that are not within designated items.*

(i) If the product is not an intermediate ingredient or feedstock and is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content is 51 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the product.

(ii) If a product certified under paragraph (2)(i) of this section is within an item that USDA subsequently designates for preferred procurement, the applicable minimum biobased content shall become, as of the effective

date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

(3) *Products that are intermediate ingredients or feedstocks and are not within designated items.*

(i) If the product is an intermediate ingredient or feedstock that is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content is 51 percent.

(ii) If a product certified under paragraph (3)(i) of this section is within an item that USDA subsequently designates for preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

(4) [reserved]

§ 2904.5 Initial approval process.

(a) *Application.* Manufacturers and vendors seeking USDA certification to use the label for an eligible biobased product must submit a USDA-approved application for certification for each biobased product. A standardized application form and instructions are available on the USDA BioPreferred Web site (<http://www.biopreferred.gov>). The contents of an acceptable application are as specified in paragraphs (a)(1) through (3) of this section.

(1) *General content.* The applicant must provide contact information and product information including all brand names or other identifying information, biobased content and testing information, product category, intended uses, and, if applicable, the corresponding designated item type. The applicant must attach to the application documentation demonstrating that the reported biobased content was tested by a third-party testing entity that is ISO 9001 conformant.

(2) *Certifications.* The applicant must certify in the application that the product for which use of the label is sought is a biobased product as defined in § 2904.2 of this part.

(3) *Commitments.* The applicant must sign a statement in the application that commits the applicant to submitting to USDA the information specified in paragraph (c)(1) through (4) of this section, which USDA will post to the USDA BioPreferred Web site, and to providing USDA with up-to-date information for posting on this Web site.

(b) *Evaluation of applications.*

(1) USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section. If USDA determines that the application is not complete, USDA will return the application to the applicant with an explanation of its deficiencies. Once the deficiencies have been addressed, the applicant may resubmit the application, along with a cover letter explaining the changes made, for re-evaluation by USDA. USDA will evaluate resubmitted applications separately from first-time applications, and those with the earliest original application submittal date will be given first priority.

(2)(i) USDA will evaluate each complete application to determine compliance with the criteria specified in § 2904.4. USDA will provide a written response to each applicant within 60 days after the receipt of a complete application, informing the applicant of whether the application has been conditionally approved or has been disapproved.

(ii) For those applications that are conditionally approved, a notice of certification, as specified in paragraph (c) of this section, must be issued before the use of the label can begin.

(iii) For those applications that are disapproved, USDA will issue a notice of denial of certification and will inform the applicant in writing of each criterion not met. Applicants who receive a notice of denial of certification may appeal using the procedures specified in § 2904.6.

(c) *Notice of certification.* After notification that its application has been conditionally approved, the applicant must provide to USDA (for posting by USDA on the USDA BioPreferred Web site) the information specified in paragraphs (c)(1) through (4) of this section. Once USDA confirms that the information is received and complete, USDA will issue a notice of certification to the applicant. Upon receipt of a notice of certification, the applicant may begin using the label on the certified biobased product.

(1) The product's brand name(s), or other identifying information.

(2) Contact information, including the name, mailing address, e-mail address, and telephone number of the applicant.

(3) The biobased content of the product.

(4) A hot link directly to the applicant's Web site (if available).

(d) *Term of certification.*

(1) The effective date of certification is the date that the applicant receives a notice of certification from USDA. Except as specified in paragraphs (2)(i) through (2)(iv) of this section,

certifications will remain in effect as long as the product is manufactured and marketed in accordance with the approved application and the requirements of this subpart.

(2)(i) If the product formulation of a certified product is changed such that the biobased content of the product is reduced to a level below that reported in the approved application, the existing certification will not be valid for the product under the revised conditions and the manufacturer or vendor, as applicable, and its designated representatives must discontinue affixing the label to the product and must not initiate any further advertising of the product using the label. USDA will consider a product under such revised conditions to be a reformulated product, and the manufacturer or vendor, as applicable, must submit a new application for certification using the procedures specified in paragraph (a) of this section.

(ii) If the product formulation of a certified product is changed such that the biobased content of the product is increased from the level reported in the approved application, and the manufacturer wishes to report the higher value on the label, a new application must be submitted using the procedures specified in paragraph (a) of this section.

(iii) If the product formulation of a certified product is changed such that the biobased content of the product is increased, but the label is not revised, the existing certification will continue to be valid for the product.

(iv) If the applicable required minimum biobased content for a product to be eligible to display the label is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days if they wish to continue to use the label. Manufacturers and vendors who have re-applied for certification may continue using the existing label until they receive notification from USDA on the results of their re-application for certification.

§ 2904.6 Appeal processes.

An applicant for certification may appeal a notice of denial of certification to the Program Manager. Entities that have received a notice of violation, and manufacturers and vendors of certified biobased products who have received a notice of suspension or revocation, may appeal to the Program Manager. Manufacturers and vendors of mature market products may appeal the exclusion of their products from the voluntary labeling program to the Program Manager.

(a)(1) Appeals to the Program Manager must be filed within 30 days of receipt by the appellant of a notice of denial of certification, a notice of violation, a notice of suspension, or a notice of revocation. Appeals must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 300, Reporters Building, 300 Seventh Street SW., Washington, DC 20024.

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with applicable program regulations, policies, or procedures, or otherwise was not proper.

(b)(1) If the Program Manager sustains an applicant's appeal of a notice of denial of certification, USDA will issue a notice of certification to the applicant for its biobased product.

(2) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of violation, USDA will rescind the notice and no further action will be taken by USDA.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of suspension, the manufacturer, vendors, and their designated representative(s) may immediately resume affixing the label to the certified biobased product and USDA will reinstate the product's information to the USDA BioPreferred Web site.

(4) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of revocation, the manufacturer or vendor, and its designated representatives may immediately resume affixing the label to the certified biobased product and sell and distribute the certified biobased product with the label. In addition, USDA will reinstate the product's information to the USDA BioPreferred Web site.

(c)(1) Manufacturers or vendors of mature market products may appeal the exclusion of their products from the voluntary labeling program if they believe that special conditions or circumstances warrant the inclusion of their products in the program. Appeals

to the Program Manager from manufacturers or vendors of mature market products must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 300, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

(2) Appeals for the inclusion of mature market products must include detailed justification showing why the product should be allowed to use the label.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of its product's exclusion from the program, the manufacturers or vendors may then apply for certification to use the label on that product, as specified in § 2904.5(a) of this part.

(4) Mature market products that are certified by USDA to use the label will be considered to be "finished biobased products that are not within designated items" and subject to all provisions of this part that are applicable to that category of certified biobased products.

(d) Appeals of any of the Program Manager's decisions may be made to the USDA Assistant Secretary for Administration. Appeals must be made, in writing, within 30 days of receipt of the Program Manager's decision and addressed to: Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-0103. If the Assistant Secretary for Administration sustains an appeal, the provisions of paragraph (b) of this section will apply.

§ 2904.7 Requirements associated with the label.

(a) *Who may use the label?*

(1) *Manufacturers and vendors.* Only manufacturers and vendors who have received a notice of certification, or designated representatives of the manufacturer or vendor, may affix the label to the product or its packaging. A manufacturer or vendor who has received a notice of certification for a product under this part:

(i) May use the label on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, procurement databases, promotional material, Web sites, or user manuals for that product, according to the requirements set forth in this section; and

(ii) is responsible for the manner in which the label is used by its companies, as well as its designated representatives, including advertising agencies and subcontractors.

(2) *Other entities.*

(i) Other entities may use the label to advertise or promote certified biobased

products in materials including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, as long as the manufacturer or vendor of the product, or one of their designated representatives, has affixed the label to the product or its packaging.

(ii) Other entities may use the label and the BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified biobased product is certified.

(b) *Correct usage of the label.*

(1) The label can be affixed only to certified biobased products and their associated packaging.

(2) The label may be used in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials to distinguish products that are certified for use of the label from those that are not certified. The label may be used in advertisements for both certified biobased products and non-certified products if the advertisement clearly indicates which products are certified. Care must be taken to avoid implying that any non-certified products are certified.

(3) The label may be used without reference to a specific certified biobased product only when informing the public about the purpose of the label. For example, the following or similar claim is acceptable: "Look for the 'USDA Certified Biobased Product' label. It means that the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred Web site." This exception allows manufacturers, vendors, and other entities to use the label in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The label may appear next to a picture of the product(s) or text describing it.

(5) The label must stand alone and not be incorporated into any other label or logo designs.

(6) The label may be used as a watermark provided the use does not violate any usage restrictions specified in this part.

(7) The text portion of the label must be written in English and may not be translated, even when the label is used outside of the United States.

(c) *Incorrect usage of the label.*

(1) The label shall not be used on any product that has not been certified by

USDA as a “USDA Certified Biobased Product.”

(2) The label shall not be used on any advertisements or informational materials where both certified biobased products and non-certified products are shown unless it is clear that the label applies to only the certified biobased product(s).

(3) The label shall not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company.

(4) The label shall not be used in any form that could be misleading to the consumer.

(5) The label shall not be used by manufacturers or vendors of certified products in a manner disparaging to USDA or any other government body.

(6) The label shall not be used with an altered label or incorporated into other label designs.

(7) The label shall not be used on business cards, company letterhead, or company stationery.

(8) The label shall not be used in, or as part of, any company name, logo, product name, service, or Web site, except as may be provided for in this part.

(9) The label shall not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The label can be used only with a product that is certified by USDA under this part. The label cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S.-sourced biobased products. Any product sold in the U.S. as a “USDA Certified Biobased Product” must have received certification from USDA.

(e) *Contents of the label.* The label shall consist of the items specified in paragraphs (e)(1) through (3) of this section, as applicable.

(1) The label artwork provided by the BioPreferred Program.

(2) The biobased content and applicable biobased product statement(s), as specified in paragraph (f)(2) of this section.

(3) The USDA BioPreferred Web site address must also be included on, or in close proximity to, the label.

(f) *Physical aspects of the label.*

(1) *Label artwork.* The label artwork may not be altered, cut, separated into components, or distorted in appearance or perspective. Labels that are applied to biobased products that have been designated for preferred procurement will include the letters “FP” as part of

the label artwork. The label must appear only in the colors specified in paragraphs (f)(1)(i) through (iii) of this section, unless approval is given by USDA for an exception.

(i) The three-color version of the label is preferred. The colors used must be Pantone-White, Pantone 356C, and Pantone 362C.

(ii) A one-color version of the label may be substituted for the three-color version as long as one of the following colors is used: Pantone 356C or Pantone 362C.

(iii) A black and white version of the label is acceptable.

(2) *Biobased content and applicable biobased product statement(s).* The biobased content and applicable biobased product statement(s) must be placed directly below the label artwork and must be displayed in a manner that makes it easily readable.

(i) One or both of the following two statements, as applicable, must be used to identify the product to which the label applies:

(A) Product: XX% biobased.

(B) Packaging: XX% biobased.

(ii) The biobased content reported in the biobased product statement(s) specified in paragraphs (f)(2)(i)(A) and (B) of this section shall be expressed as “XX%,” where XX% represents the actual biobased content of the product or packaging. The biobased content displayed at the time the label is affixed to the product or its packaging must be the same as the biobased content specified in the most recent approved application for the certified biobased product.

(3) The USDA BioPreferred Web site address must be included either on the label, below the product statement, if space allows or in close proximity to the label on the product or packaging.

(g) *Placement of the label.*

(1) The label can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The label shall not be placed in a manner that is ambiguous about which product is a certified biobased product or that could indicate certification of a non-certified product.

(3) When used to distinguish a certified biobased product in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, the label must appear near a picture of the product or the text describing it.

(i) If all products on a page are certified biobased products, the label may be placed anywhere on the page.

(ii) If a page contains a mix of certified biobased products and non-certified products, the label shall be placed in close proximity to the certified biobased products. An individual label near each certified biobased product may be necessary to avoid confusion.

(h) *Minimum size and clear space recommendations for the label.*

(1) The label may be sized to fit the individual application as long as the correct proportions are maintained and the label remains legible.

(2) A border of clear space must surround the label and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the label’s color is similar to the background color, an outlining color may be used to enhance contrast.

(i) *Where to obtain copies of the label artwork.* The label artwork is available at the USDA BioPreferred Web site.

§ 2904.8 Violations.

This section identifies the types of actions that USDA considers violations under this part and the penalties (e.g., the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 2904.6. If certification for a product is revoked, the manufacturer or vendor whose certification has been revoked may seek re-certification for the product using the procedures specified under the provisions in § 2904.5.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to, the following specific examples:

(1) *Biobased content violations.* The Program Manager will utilize occasional random testing of certified biobased products to compare the biobased content of the tested product with the product’s applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in its approved application. Such testing will be conducted using ASTM Method D6866. USDA will provide a copy of the results of its testing to the applicable manufacturer or vendor.

(i) If USDA testing shows that the biobased content of a certified biobased product is less than its applicable

minimum biobased content, then a violation of this part will have occurred.

(ii) If USDA testing shows that the biobased content is less than that reported by the manufacturer or vendor in its approved application, but is still equal to or greater than its applicable minimum biobased content(s), USDA will provide written notification to the manufacturer or vendor. The manufacturer or vendor must submit, within 30 days from receipt of USDA written notification, a new application for the lower biobased content. Failure to submit a new application within 30 days will be considered a violation of this part.

(A) The manufacturer or vendor can submit in the new application the biobased content reported to it by USDA in the written notification.

(B) Alternatively, the manufacturer or vendor may elect to retest the product in question and submit the results of the retest in the new application. If the manufacturer or vendor elects to retest the product, it must test a sample of the current product.

(2) *Label violations.*

(i) Any usage or display of the label that does not conform to the requirements specified in § 2904.7.

(ii) Affixing the label to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the label to a certified biobased product during periods when certification has been suspended or revoked.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a biobased product constitutes a violation of this part.

(4) *USDA BioPreferred Web site violations.* Failure to provide to USDA updated information when the information for a certified biobased product becomes outdated or when new information for a certified biobased product becomes available constitutes a violation of this part.

(c) *Notice of violations and associated actions.* USDA will provide the applicable manufacturer or vendor or their designated representatives and any involved other entity known to USDA written notification of any violations identified by USDA. Entities who receive a notice of violation for a biobased content violation must correct the violation(s) within 30 days from receipt of the notice of violation. Entities who receive a notice of violation for other types of violations must correct the violation(s) within 60 days from receipt of the notice of violation. If the entity receiving a notice of violation is a manufacturer, a vendor,

or a designated representative of a manufacturer or vendor, USDA will pursue notices of suspensions and revocation, as discussed in paragraphs (c)(1) and (c)(2) of this section. USDA reserves the right to further pursue action against these entities as provided for in paragraph (c)(3) of this section. If the entity receiving a notice of violation is an "other entity" (*i.e.*, not a manufacturer, vendor, or designated representative), then USDA will pursue action according to paragraph (c)(3) of this section. Entities that receive notices of suspension or revocation may appeal such notices using the procedures specified in § 2904.6.

(1) *Suspension.*

(i) If a violation is applicable to a manufacturer, vendor, or designated representative and the applicable entity fails to make the required corrections within 30 days (for biobased content violations) or 60 days (for other types of violations) of receipt of a notice of violation, USDA will notify the manufacturer or vendor, as appropriate, of the continuing violation, and the USDA certification for that product will be suspended. As of the date that the manufacturer or vendor receives a notice of suspension, the manufacturer or vendor and their designated representatives must not affix the label to any of that product, or associated packaging, not already labeled and must not distribute any additional products bearing the label. USDA will issue a press release informing the public of the suspension and will also remove the product information from the USDA BioPreferred Web site.

(ii) If, within 30 days from receipt of the notice of suspension, the manufacturer or vendor whose USDA product certification has been suspended makes the required corrections and notifies USDA that the corrections have been made, the manufacturer or vendor and their designated representatives may, upon receipt of USDA approval of the corrections, resume use of the label. USDA will also restore the product information to the USDA BioPreferred Web site.

(2) *Revocation.*

(i) If a manufacturer or vendor whose USDA product certification has been suspended fails to make the required corrections and notify USDA of the corrections within 30 days of the date of the suspension, USDA will notify the manufacturer or vendor that the certification for that product is revoked.

(ii) As of the date that the manufacturer or vendor receives the notice revoking USDA certification, the manufacturer or vendor and their

designated representatives must not affix the label to any of that product not already labeled. In addition, the manufacturer or vendor and their designated representatives are prohibited from further sales of product to which the label is affixed.

(iii) If a manufacturer or vendor whose product certification has been revoked wishes to use the label, the manufacturer or vendor must follow the procedures required for original certification.

(3) *Other remedies.* In addition to the suspension or revocation of the certification to use the label, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with part 3017 of this title. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

§ 2904.9 Recordkeeping requirements.

(a) *Records.* Manufacturers and vendors shall maintain records documenting compliance with this part for each product that has received certification to use the label, as specified in paragraphs (a)(1) through (3) of this section.

(1) The results of all tests, and any associated calculations, performed to determine the biobased content of the product.

(2) The date the applicant receives certification from USDA, the dates of changes in formulation of certified biobased products, and the dates when the biobased content of certified biobased products was tested.

(3) Documentation of analyses performed by manufacturers to support claims of environmental or human health benefits, life cycle cost, sustainability benefits, and product performance made by the manufacturer.

(b) *Record retention.* For each certified biobased product, records kept under paragraph (a) of this section must be maintained for at least three years beyond the end of the label certification period (*i.e.*, three years beyond the period of time when manufacturers and vendors cease using the label). Records may be kept in either electronic format or hard copy format. All records kept in electronic format must be readily accessible during a USDA audit.

§ 2904.10 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of manufacturers, vendors, designated representatives, and other entities involved with the voluntary labeling

program to ensure compliance with this part. This oversight will include, but not be limited to, conducting facility visits of manufacturers and vendors who have certified biobased products, and of their designated representatives. Manufacturers, vendors, and their designated representatives are required to cooperate fully with all USDA audit

efforts for the enforcement of the voluntary labeling program.

(b) *Biobased content testing.* USDA will conduct biobased content testing of certified biobased products, as described in § 2904.8(b)(1) to ensure compliance with this Part.

(c) *Inspection of records.* Manufacturers, vendors, and their designated representatives must allow

Federal representatives access to the records required under § 2904.9 for inspection and copying during normal Federal business hours.

Dated: July 17, 2009.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

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Federal Register

**Friday,
July 31, 2009**

Part IV

The President

**Notice of July 30, 2009—Continuation of
the National Emergency with Respect to
the Actions of Certain Persons to
Undermine the Sovereignty of Lebanon
or its Democratic Processes and
Institutions**

Presidential Documents

Title 3—

Notice of July 30, 2009

The President**Continuation of the National Emergency with Respect to the Actions of Certain Persons to Undermine the Sovereignty of Lebanon or its Democratic Processes and Institutions**

On August 1, 2007, by Executive Order 13441, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining the sovereignty of Lebanon or its democratic processes or institutions and certain other persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President determined that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in that country and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Despite some positive developments in the past year, including the establishment of diplomatic relations and an exchange of ambassadors between Syria and Lebanon, the actions of certain persons continue to contribute to political and economic instability in Lebanon and continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 30, 2009.

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Federal Register

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H.J. Res. 56/P.L. 111-42
Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes. (July 28, 2009; 123 Stat. 1963)
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