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Memorandum of August 5, 2009

The President

Designation of Officers of the Office of Science and Technology Policy to Act as Director

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, the following officials of the Office of Science and Technology Policy (OSTP), in the order listed, shall act as and perform the functions and duties of the office of the Director of OSTP (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, until such time as the Director is able to perform the functions and duties of that office:

- (a) Associate Director (National Security and International Affairs);
- (b) Associate Director (Technology);
- (c) Associate Director (Science); and
- (d) Associate Director (Environment).

Sec. 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. *Revocation.* The President's memorandum of December 11, 2002 (Designation of Officers of the Office of Science and Technology Policy to Act as Director), is hereby revoked.

Sec. 4. This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, August 5, 2009.

Rules and Regulations

Federal Register

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

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

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590-AA25

2009 Enterprise Transition Affordable Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) transferred the authority to establish, monitor and enforce the affordable housing goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) from the Department of Housing and Urban Development (HUD) to the Federal Housing Finance Agency (FHFA). Section 1128(b) further provides that the annual housing goals in effect for 2008 as established by HUD shall remain in effect for 2009, except that the Director of FHFA shall review such goals to determine their feasibility given current market conditions, and make appropriate adjustments consistent with such market conditions. Pursuant to this directive, FHFA has analyzed current market conditions and is adopting a final rule that adjusts the housing goal, home purchase subgoal and special affordable multifamily housing subgoal levels for the Enterprises for 2009. The final rule also permits loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Making Home Affordable Program (also known as the Homeowner Affordability and Stability Plan) announced on March 4, 2009, to be treated as mortgage purchases and count for purposes of the housing goals. In addition, the final rule excludes purchases of jumbo conforming loans

from counting towards the 2009 housing goals. FHFA's housing goals regulation is set forth in a new part of FHFA's regulations, and is generally consistent with the housing goals provisions previously established by HUD, except as modified herein. Pursuant to section 1302 of HERA and 12 U.S.C. 4603, to the extent FHFA is adopting provisions from HUD regulations in new FHFA regulations, those provisions in the HUD regulations are no longer in effect.

DATES: The final rule is effective on August 10, 2009.

FOR FURTHER INFORMATION CONTACT:

Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, (202) 408-2993, Brian Doherty, Acting Manager, Housing Mission and Goals-Policy, (202) 408-2991, or Paul Manchester, Acting Manager, Housing Mission and Goals-Quantitative Analysis, (202) 408-2946 (these are not toll-free numbers); Kevin Sheehan, Attorney-Advisor, (202) 414-8952 (these are not toll-free numbers), Lyn Abrams, Attorney-Advisor, (202) 414-8951, or Sharon Like, Associate General Counsel, (202) 414-8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law 110-289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), 12 U.S.C. 4501 *et seq.*, and created the FHFA as an independent agency of the Federal government.¹ HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from HUD to FHFA. HERA provides for the abolishment of

OFHEO one year after the date of enactment. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513.

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*, and the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*, (Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations. *See* HERA at section 1302, 122 Stat. 2795; 12 U.S.C. 4603.

The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1716 *et seq.*; 12 U.S.C. 1451 *et seq.* Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation. *Id.*

B. Statutory and Regulatory Background

Prior to HERA, the Safety and Soundness Act provided the Secretary with the authority to establish, monitor and enforce affordable housing goals for the Enterprises. *See* 12 U.S.C. 4561 *et seq.* (2008). HUD issued regulations establishing affordable housing goals for the Enterprises, which were periodically updated, most recently in 2004 when HUD established new housing goal levels for 2005 through 2008. *See* 24 CFR part 81. HUD's regulations provide

¹ *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

that the housing goal levels for 2008 continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD. See 24 CFR 81.12 through 81.14.

Section 1331(c) of the Safety and Soundness Act, as amended by section 1128(b) of HERA, provides that the housing goal levels established by HUD for 2008 "shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on the date of the enactment of [HERA], the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions." See 12 U.S.C. 4561(c). Under section 1336 of the Safety and Soundness Act, as amended by section 1130 of HERA, the Director of FHFA has authority to monitor and enforce compliance with the 2009 housing goals, as well as the housing goals established by FHFA for subsequent years. See 12 U.S.C. 4566.²

C. Conservatorship

On September 7, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition. The Enterprises remain under conservatorship at this time.

II. Proposed Rule

Section 1128(b) of HERA authorizes the Director of FHFA to adjust the housing goal levels established by HUD for 2009 based on current market conditions. FHFA reviewed the current market conditions and determined that the 2009 housing goal and home purchase subgoal levels established in 24 CFR part 81 are not feasible unless they are adjusted. Accordingly, on May 1, 2009, FHFA published proposed adjustments to the housing goal and home purchase subgoal levels in the **Federal Register** for a 21-day comment period, which closed on May 22, 2009. See 74 FR 20236 (May 1, 2009). FHFA received a total of 25 comment letters on the proposed rule, representing 26 commenters.³ Commenters included:

² Sections 1331 through 1335 of the Safety and Soundness Act, as amended by HERA, also contain new housing goal requirements for the Enterprises effective for 2010 and thereafter, as well as duty to serve underserved markets requirements. FHFA will implement these requirements pursuant to separate rulemaking. See 12 U.S.C. 4561 through 4565.

³ One of the letters contained joint comments from two trade associations.

Fannie Mae; Freddie Mac; twelve trade associations; seven not-for-profit lenders or lending consortia; one credit risk scoring corporation; one credit risk reporting corporation; a not-for-profit mortgage lending policy advocacy organization; one labor union; and one Member of Congress. FHFA has considered all of the comments it received on the proposed rule, and has determined to adopt a final rule adjusting the 2009 housing goal, home purchase subgoal, and special affordable multifamily housing subgoal levels, and to make certain other revisions, as further discussed below. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but may be considered by FHFA at a future date.

III. Summary of Final Rule

A. Adoption of Housing Goals Provisions in New 12 CFR Part 1282

HUD's regulations on establishing, monitoring and enforcing the housing goals for the Enterprises are set forth in 24 CFR part 81, Subparts A and B. Under section 1302 of HERA, part 81 continues in effect and is enforceable by the Director of FHFA until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. Consistent with the proposed rule, the final rule establishes housing goal requirements for the Enterprises for 2009 in new part 1282 of title 12 of FHFA's regulations. The housing goal requirements are generally consistent with the HUD housing goal provisions in Subparts A and B, except as modified herein. Upon the effective date of this final rule, the related housing goal provisions adopted by FHFA in chapter XII from 24 CFR part 81 will no longer be in effect pursuant to section 1302 of HERA.

B. Adjustment of Housing Goal, Home Purchase Subgoal, and Special Affordable Multifamily Housing Subgoal Levels

Section 1128(b) of HERA authorizes the Director of FHFA to adjust the housing goal levels established by HUD for 2009 based on current market conditions. FHFA has reviewed current market conditions and has determined that the 2009 housing goal and home purchase subgoal levels established in 24 CFR part 81 are not feasible unless they are adjusted.⁴ Adverse market

⁴ Performance under each of the housing goals is measured using a fraction that is converted into a percentage. See § 1282.15(a); 24 CFR 81.15(a). The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward

conditions, such as stricter underwriting standards, the increased standards of private mortgage insurers, and the high rate of unemployment will result in the origination of fewer goals-qualifying loans, as will a surge in refinancing. Moreover, the increase in the share of the mortgage market of mortgages insured by the government and the decline in private label securities backed by mortgages are two of several factors that will contribute to fewer goals-qualifying mortgages available for purchase by the Enterprises.

Based on FHFA's review of the public comments on the proposed rule and a revised and updated assessment of current market conditions, FHFA has determined that the overall housing goal levels in the proposed rule should be adjusted downward, the three home purchase subgoal levels should remain as proposed, and the dollar-based special affordable multifamily housing subgoal levels in the proposed rule should be adjusted upward for each Enterprise as indicated below. Specifically, the final rule sets the goal and subgoal levels as follows:

- Low- and moderate-income housing goal*: 43 percent;
- Special affordable housing goal*: 18 percent;
- Underserved areas housing goal*: 32 percent;
- Low- and moderate-income home purchase subgoal*: 40 percent;
- Special affordable home purchase subgoal*: 14 percent;
- Underserved areas home purchase subgoal*: 30 percent;
- Special affordable multifamily housing subgoal for Fannie Mae*: \$6.56 billion;
- Special affordable multifamily housing subgoal for Freddie Mac*: \$4.60 billion.

FHFA's market analysis that serves as the basis for these determinations is set forth in section IV. Analysis of Final Rule below.

C. New Counting Requirements

Exclusion of jumbo conforming loans. Consistent with the proposed rule, the final rule excludes the Enterprises' purchases of jumbo conforming loans from counting towards the 2009 housing goals.

MHA loan modifications. Consistent with the proposed rule, the final rule

achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator may not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by the FHFA or transactions that are specifically excluded as ineligible under the rule. See *id.*

permits loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Making Home Affordable Program, announced on March 4, 2009 (MHA), to be treated as mortgage purchases and count for purposes of the housing goals.

IV. Analysis of Final Rule

A. Scope of Part—§ 1282.1

Consistent with the proposed rule, § 1282.1 of the final rule sets forth the scope of new part 1282. Section 81.1 of HUD's regulations describes the scope with regard to the respective duties of HUD and OFHEO in relation to the Enterprises. 24 CFR 81.1. Section 1282.1 describes the scope with reference to the Director of FHFA's regulatory authority, since HUD's housing goals authority and OFHEO's safety and soundness supervisory authority were transferred to FHFA by HERA.

B. Definitions—§ 1282.2

Consistent with the proposed rule, § 1282.2 sets forth definitions of terms used in the final rule that are generally consistent with the definitions in § 81.2 of HUD's regulations, except for minor technical and clarifying changes and the addition of several new definitions in light of the transfer of the housing goals authority from HUD to FHFA and other changes made by HERA. See 24 CFR 81.2.

C. Housing Goal and Subgoal Levels for 2009—§§ 1282.12 Through 1282.14

In 2004, HUD established by regulation new housing goal levels for years 2005 through 2008, with the 2008 levels applicable in 2009 pending establishment by HUD of goals for 2009 (2004 Rule). See 69 FR 63639 (Nov. 2, 2004) (codified at 24 CFR 81.12 through 81.14). The 2004 Rule also implemented home purchase subgoals under each housing goal and established target levels for each subgoal. *Id.* These levels rose in yearly increments, capping out at the highest levels in 2008. HUD had not established new goal levels for 2009 before HERA was enacted and HUD's housing goals authority was transferred to FHFA.

1. Adjustment of Housing Goal and Home Purchase Subgoal Levels

Section 1128(b) of HERA provides that the housing goals established by HUD for the Enterprises shall continue in effect for 2009 at their 2008 levels, unless the Director of FHFA adjusts the levels based on current market conditions. FHFA reviewed the feasibility of the 2009 housing goal and subgoal levels established by HUD, and determined that the current goal and

home purchase subgoal levels are not feasible given current market conditions. The proposed rule would have adjusted downward the housing goal levels for 2009, as follows:

- *Low- and moderate-income housing goal*—51 percent (down from the 56 percent level set by HUD for 2008 and 2009).
- *Underserved areas housing goal*—37 percent (down from the 39 percent level set by HUD for 2008 and 2009).
- *Special affordable housing goal*—23 percent (down from the 27 percent level set by HUD for 2008 and 2009).
- *Low- and moderate-income home purchase subgoal*—40 percent (down from the 47 percent level set by HUD for 2008 and 2009).
- *Underserved areas home purchase subgoal*—30 percent (down from the 34 percent level set by HUD for 2008 and 2009).
- *Special affordable home purchase subgoal*—14 percent (down from the 18 percent level set by HUD for 2008 and 2009).

The majority of commenters on the proposed housing goal levels either supported the proposed levels or recommended higher levels than those proposed. Four trade associations supported the proposed levels but expressed caution about the potential for increased risk of default that could result from inappropriate or overly ambitious housing goals. Two other trade associations stated that overly stringent goals have not supported affordable housing, as shown by foreclosures, neighborhood blight and the Enterprises' serious financial problems. One mortgage lending policy advocacy organization, the Center for Responsible Lending, stated that the goals must be responsibly attainable under current market conditions. The commenter expressed concern that the goal levels in the proposed rule may not be low enough, given the extreme impairment of the credit and housing markets, and the economic hardships for low- and moderate-income families in particular. The commenter stated that the goal levels in the proposed rule could be lowered still further, and urged that they be applied flexibly in 2009 to ensure that they can be responsibly met.

One trade association recommended higher levels than those proposed for the special affordable and underserved area housing goals, stating that the past performance of the Enterprises and the current primary mortgage market levels indicate that higher levels should be achievable. Another trade association recommended higher levels than those proposed for the low- and moderate-income housing goal and home

purchase subgoals, stating that the manufactured housing industry is in an unprecedented decline largely because of the unavailability of private financing fueled by Enterprise policy, and that reduction of these levels would allow the Enterprises to retreat from their mission of providing liquidity for low- and moderate-income home purchasers.

Fannie Mae and Freddie Mac both recommended further lowering the proposed goal levels. Freddie Mac stated that the proposed levels are five percentage points or more above the highest level of expected primary mortgage market origination levels, and that the refinance wave, contraction in the multifamily mortgage sector, and increasingly important role of the Federal Housing Administration (FHA) in the low- and moderate-income segment of the housing market could make it infeasible for the Enterprises to meet the goals. Fannie Mae was concerned that the proposed levels might be higher than current economic conditions support and might ultimately prove to be infeasible.

One trade association expressed concerns about the profound negative impact of lower housing goal levels on low- and moderate-income communities, and the brief comment period of the proposed rule, and urged withdrawal of the proposed rule for reconsideration.

After review of the current market conditions and the comments received on the proposed rule, FHFA has determined that the three overall housing goal levels should be further adjusted downward from the levels set by HUD for 2008 and 2009 and the levels in the proposed rule. Based on the most recent conventional mortgage market size estimates and consistent with current market conditions, the final rule establishes goals for 2009 as follows:

- *Low- and moderate-income housing goal*—43 percent (down from the 56 percent level set by HUD for 2008 and 2009 and the 51 percent level in the proposed rule). That is, under § 1282.12, the 2009 goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families is 43 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.
- *Underserved areas housing goal*—32 percent (down from the 39 percent level set by HUD for 2008 and 2009 and the 37 percent level in the proposed rule). That is, under § 1282.13, the 2009 goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas is 32 percent of the

total number of dwelling units financed by that Enterprise's mortgage purchases.

- *Special affordable housing goal*—18 percent (down from the 27 percent level set by HUD for 2008 and 2009 and the 23 percent level in the proposed rule). That is, under § 1282.14, the 2009 goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families is 18 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.

In addition, based on review of current market conditions and the comments received on the proposed rule, FHFA has determined that the three home purchase subgoal levels for 2009 should be adjusted downward from the levels set by HUD for 2008 and 2009 and remain at the levels in the proposed rule, as follows:

- *Low- and moderate-income home purchase subgoal*—40 percent (down from the 47 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.12, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the low- and moderate-income housing goal for 2009. This level is slightly above the upper end of the market estimate (39 percent) in light of the significant improvements in the affordability of housing, as reflected in data published by the National Association of Realtors.

- *Underserved areas home purchase subgoal*—30 percent (down from the 34 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.13, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the underserved areas housing goal for 2009.

- *Special affordable home purchase subgoal*—14 percent (down from the 18 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.14, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the special affordable housing goal for 2009.

At the time the 2008 and 2009 housing goal levels were established in HUD's 2004 Rule, mortgage markets were still evidencing significant expansion. However, as discussed further below, based on current market conditions, FHFA estimates that the market shares for certain goals and home purchase subgoals have declined significantly. Adjusting the 2009 housing goals and home purchase subgoals to levels that reflect market conditions consistent with current projections is necessary to ensure that the Enterprises continue to serve their secondary market purposes at feasible and appropriate levels that reflect their capacity to lead the market.

Notably, this rule, for the first time, allows housing goal credit for certain loan modifications, which will tend to improve the Enterprises' performance on the housing goals. By adjusting the housing goal and home purchase subgoal levels to challenging levels for 2009, and by allowing housing goal credit for loan modifications that directly affect the 2009 housing market through the prevention of foreclosures, FHFA seeks to ensure that the Enterprises place a high priority on the achievement of their affordable housing mission based on performance standards that align with current market conditions.

2. Special Affordable Multifamily Housing Subgoals—§ 1282.14

The final rule increases the 2009 minimum dollar-based special affordable multifamily housing subgoal levels to \$6.56 billion for Fannie Mae, and \$4.60 billion for Freddie Mac. In the 2004 Rule, these subgoal levels were established at 1.0 percent of the average aggregate dollar volume of total mortgage purchases by each Enterprise in a base period (2000, 2001 and 2002), and were set at \$5.49 billion for Fannie Mae and \$3.92 billion for Freddie Mac for 2008 and 2009. 24 CFR 81.14. In the proposed rule, FHFA did not propose to adjust these levels downward for 2009 because both Enterprises have exceeded their respective multifamily subgoals by wide margins in recent years, especially in 2007. FHFA also did not propose to increase these levels for 2009 because the prospects for multifamily mortgage market volume in 2009 are significantly less favorable than in recent years.

Most commenters on the special affordable multifamily housing subgoals, including nonprofit organizations and trade associations, recommended raising the subgoal levels. Many of the nonprofit organizations stated that maintaining the existing goals levels for 2009 would exacerbate

lenders' liquidity crises, limit the ability to meet the housing needs of a growing number of families, and undermine economic recovery. These commenters urged that the Enterprises purchase performing seasoned multifamily mortgages that are held in the portfolios of conventional lenders, which they stated would help stabilize communities.

One trade association stated that the Enterprises are the main sources for multifamily rental development, and with multifamily originations projected at \$43 to \$65 billion in 2009, the Enterprises should be expected to surpass the existing subgoal levels for 2009. The commenter noted that the Enterprises have restricted credit for multifamily loans by tightening underwriting standards and increasing risk-based delivery fees, resulting in higher mortgage rates for borrowers and impairing their ability to obtain credit.

Two trade associations cautioned that meeting the existing special affordable multifamily housing subgoals levels may be challenging. The commenters stated that, with increased risk of default and the impact of deteriorating market conditions, there will be limited property acquisitions, declining reinvestment and fewer loan originations and refinancing opportunities for the Enterprises. These commenters also anticipated that the Enterprises' portfolio of maturing loans would present challenges in meeting capital requirements and loan terms for new debt, and expected that 2009 multifamily loan and transaction volume will be less than 2008 volume.

A Member of Congress urged higher multifamily special affordable housing subgoal levels that would be commensurate with the Enterprises' historical performance levels and purchase opportunities, and that would send a clear message to the Enterprises about their critical role in providing liquidity in light of current multifamily mortgage market dislocations.

FHFA review of the Enterprises' special affordable multifamily mortgages goals performance through May 2009 suggests that the Enterprises will not have the high performance level in this area in 2009 that they experienced in recent years. Based on the comments received and FHFA's review of current market conditions, FHFA has set "stretch" special affordable multifamily housing subgoal levels by changing the base for these subgoals from 2000–2002 in the 2004 Rule and the proposed rule to 1999–2008, which includes years with very high mortgage volume such as 2003 and years with lower volume such as 2000.

FHFA is applying the same 1.0 percent of average total mortgage purchases factor to this base period in setting these subgoal levels. Total mortgage purchases averaged \$656 billion for Fannie Mae and \$460 billion for Freddie Mac over the 1999–2008 period. Thus, FHFA is setting the subgoal levels at 1.0 percent of these amounts—\$6.56 billion for Fannie Mae (an increase of 19 percent over the 2008 and proposed 2009 subgoal level of \$5.49 billion), and \$4.60 billion for Freddie Mac (an increase of 17 percent over the 2008 and proposed 2009 subgoal level of \$3.92 billion).

Several nonprofit organizations and a trade association commented that the Enterprises should be more active in the purchase of seasoned multifamily loans held by portfolio lenders, many of which purchased such loans as a result of Community Reinvestment Act (CRA) responsibilities. FHFA expects each Enterprise to actively purchase CRA-related multifamily loans from portfolio lenders, among other avenues, in meeting the special affordable multifamily housing subgoals.

3. Market Conditions

a. Market Conditions Do Not Support the Current Housing Goals and Home Purchase Subgoals Levels

FHFA has determined that the current turmoil in the housing and mortgage markets has created less than favorable conditions for expansions in credit to borrowers on the margins of homeownership. The adverse market conditions considered in setting the proposed and final housing goal and subgoal levels for 2009 include: (1) Tightened credit underwriting practices; (2) the sharply increased standards of private mortgage insurance companies; (3) the increased role of FHA in the marketplace; (4) the collapse of the mortgage private label securities (PLS) market; (5) increasing unemployment; (6) multifamily market volatility; and (7) a refinancing surge in 2009. FHFA finds that while the existence of lower home prices and lower mortgage interest rates has increased affordability, there is ample evidence to support a conclusion that the housing goal and home purchase subgoal levels for 2009 that were set in 2004 are not attainable.

Tightened underwriting practices. In general, tighter underwriting standards result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 in response to

declining market conditions and early payment defaults, among other factors. For example, in May 2008, responding to private mortgage insurance underwriting changes, Fannie Mae revised its down payment policy to lower the maximum loan-to-value (LTV) for loans underwritten by Desktop Underwriter and for manually underwritten loans. Freddie Mac similarly tightened its underwriting standards. These industry-wide underwriting standards are expected to remain in place for the balance of 2009.

Sharply increased standards of private mortgage insurers. Much like tighter underwriting standards generally, higher underwriting standards of private mortgage insurance (MI) result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Beginning in late 2007, MI providers implemented profound and sweeping changes in the types of risk they were willing to insure. Most MI providers faced substantial ratings downgrades and acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs. For example, on February 12, 2009, Moody's downgraded the internal strength rating of the Mortgage Guaranty Insurance Corporation (MGIC) to Ba1 from A1, and downgraded the ratings of other mortgage insurers. These actions may limit the ability of MI providers to write new business in 2009 and reduce the overall mortgage lending volume, particularly for higher LTV mortgages, which tend to be more goals-rich. By increasing the cost of borrowing and the difficulty in obtaining loan approval, the tighter underwriting standards limit the number of goals-qualifying mortgages. This has an adverse effect on high-LTV loan purchases by the Enterprises, which generally require some form of credit enhancement.

MI providers have implemented measures in "declining markets" that have sharply limited the insurability of certain higher LTV mortgage loans. Generally, the availability of MI for high-LTV or low credit score loans is much reduced relative to a few years ago. The goals-qualifying portion of loans in the market is thereby reduced as it becomes more difficult and more expensive for borrowers requiring mortgages with lower down payments to qualify for mortgages eligible for purchase by the Enterprises.

Increased role of FHA in the marketplace. Another factor having a much greater impact on the Enterprises' housing goals in 2009 than in recent years is the increase in the share of the mortgage market of mortgages insured

by the FHA and guaranteed by the Veterans Administration (VA). These loans generally are pooled into mortgage-backed securities issued by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and VA ordinarily do not receive goals credit. In general, the impact of the FHA market on the goal-richness of the conventional market depends on: (1) The goal-richness of the overall market (conventional plus FHA); (2) the share of the market accounted for by FHA mortgages; and (3) the goal-richness of FHA mortgages.

The market share of mortgages insured by FHA and VA has risen dramatically. A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs.

As discussed in the proposed rule, in order to assess the impact that the increased FHA share is likely to have on the housing goals for 2009, FHFA analyzed mortgages originated in 2007 with loan amounts no greater than the conforming loan limit for Fannie Mae and Freddie Mac for 1-unit properties in that year—\$417,000 for most areas, but 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands. Loans guaranteed by VA or the Rural Housing Service were excluded from this analysis, as were loans with missing information necessary to determine whether they qualified for the housing goals. The remaining loans included both conventional and FHA loans with information about whether they qualified for the housing goals, resulting in a total of 2.7 million home purchase mortgages and 3.3 million refinance mortgages.

The shares of FHA mortgages that would have qualified for the Enterprises' housing goals were much higher than the goal-qualifying shares of conventional mortgages. Specifically, 60 percent of FHA home purchase mortgages qualified for the low- and moderate-income housing goal in 2007, but only 40 percent of conventional home purchase mortgages so qualified. Similarly, 23 percent of FHA home purchase mortgages qualified for the special affordable housing goal, but only 15 percent of conventional home purchase mortgages so qualified. The discrepancy was comparable for underserved areas, where 46 percent of FHA home purchase mortgages

qualified for the underserved areas housing goal versus 34 percent of conventional home purchase mortgages.

The discrepancies between the goal-qualifying shares of FHA refinance mortgages and conventional refinance mortgages were similar to those for home purchase mortgages. For example, 56 percent of FHA refinance mortgages qualified for the low- and moderate-income housing goal, but only 42 percent of conventional refinance mortgages so qualified.

This analysis measures the degree to which FHA mortgages “siphon off” goal-rich mortgages from the overall mortgage market. That is, in 2007, 42 percent of all home purchase mortgages were for low- and moderate-income families, but because 60 percent of FHA home purchase mortgages were for such families, only 40 percent of conventional conforming mortgages were in this category. While in 2007 the goal-qualifying shares of FHA mortgages were much higher than the corresponding shares of conventional mortgages, the impact on the goal-qualifying shares of conventional mortgages was mitigated by the fact that in 2007, FHA accounted for only 9.9 percent of home purchase mortgages and only 4.7 percent of refinance mortgages. Although Home Mortgage Disclosure Act (HMDA) data for 2008 is not yet available, this data will likely show a much larger impact of FHA mortgages because FHA’s share of the mortgage market was much higher in 2008 than it was in 2007.

Based on FHA’s estimated market share in late 2008, its shares of both the home purchase mortgage and refinance mortgage markets may be significantly higher in 2009 than they were in 2008. The impact of these higher shares may be mitigated to some extent by reduced goal-richness of FHA mortgages as higher-income borrowers obtain FHA loans. The net impact of the FHA market on the goal-richness of the conventional mortgage market in 2009, however, is likely to be greater than it was in either 2007 or 2008. Accordingly, the projected increase in the size of the FHA market was a major factor taken into account in adjusting the Enterprises’ housing goal levels for 2009.

Collapse of PLS market. The lack of PLS backed by mortgages will make it more difficult for the Enterprises to achieve the existing housing goals in 2009. FHFA will determine, in its upcoming rulemaking for the 2010 housing goals, whether, and if so, under what conditions PLS investment may contribute to meeting housing goals.

Between 2005 and 2008, the period covered by the 2004 Rule, Fannie Mae and Freddie Mac were major purchasers of the AAA-rated tranches of PLS that included substantial amounts of subprime mortgages. These purchases were due in part to the goal-richness of the securities and, particularly, their subgoal-richness.

While the size and nature of the Enterprises’ subprime holdings differed, such purchases had an impact on the achievement of the housing goals for each Enterprise, particularly for the home purchase subgoals. Such loans were not a large factor in the mortgage marketplace in 2008, and are unlikely to be a major factor in 2009. FHFA guidance incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the National Credit Union Administration now restricts the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.⁵

Increasing unemployment. Unemployment increased significantly during 2008 and in 2009, which added to demands on mortgage servicers to address increasing delinquencies and foreclosures. Unemployment and underemployment have an effect on mortgage default rates and on the number of borrowers seeking and obtaining a purchase money mortgage or a refinance.

NeighborWorks, a national network of approximately 230 community-based organizations actively involved in foreclosure mitigation counseling, has estimated that the two leading causes of mortgage default rates were a reduction in income (28 percent of defaults) and loss of income (17 percent of defaults).⁶ While a reduction in income by itself does not necessarily lead to a mortgage default, with falling home prices it is

⁵ In 2007, OFHEO issued letters directing the Enterprises to apply the principles and practices of the interagency *Statement on Subprime Mortgage Lending* to their purchases of subprime loans in the regular flow of business, including bulk purchases. OFHEO directed that, not later than September 13, 2007, nontraditional and subprime loans purchased by Fannie Mae and Freddie Mac as part of PLS transactions comply with the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending*. This application to PLS conforms to the underwriting provisions of the guidance. Further, OFHEO directed that the Enterprises adopt such business practices and take such quality control steps as necessary to ensure the orderly and effective implementation of the guidance with respect to the purchase of PLS.

⁶ NeighborWorks, *National Foreclosure Mitigation Counseling Program Update*, January 23, 2009.

difficult for the home owner with little or no home equity to either sell the home or refinance into an affordable mortgage. The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market in 2009.

Multifamily market volatility. The multifamily housing market faces great uncertainty in 2009. Recent housing data suggests that multifamily housing activity (new construction and refinances) will continue to decline in 2009 after slowing significantly in 2008. Because multifamily housing tends to have high percentages of units that qualify for one or more housing goals, declines in multifamily housing activity make it more difficult for the Enterprises to achieve the housing goals.

As a result of the financial crisis and ensuing credit crunch, important sources of affordable multifamily financing have been diminished, including Commercial Mortgage-Backed Securities (CMBS) and Low-Income Housing Tax Credits (LIHTCs). Other traditional providers of financing for multifamily housing, including thrifts, commercial banks and life insurance companies, have significantly reduced their multifamily financing activities. The Enterprises, FHA and GNMA are the principal sources of multifamily financing now.

New multifamily construction is not expected to provide a significant source of goals-eligible units in 2009. Multifamily housing starts amounted to 277,300 units in 2007 and 266,000 units in 2008, but have fallen to an average annual rate of 129,000 units for the first six months of 2009.⁷ Some traditionally strong markets, such as New York City, San Francisco and San Jose, have seen apartment rents fall and vacancy rates rise from the fourth quarter of 2008 to the first quarter of 2009. During the same period, multifamily vacancy rates were highest in the Southeast, Arizona and Nevada, according to recent commercial real estate data. Declining rents, increasing vacancy rates and decreasing multifamily property values in many markets are significant obstacles confronting Enterprise multifamily activity in 2009.⁸ Additional fees and tighter underwriting standards may make it difficult for many multifamily investors to qualify for financing. Declining multifamily prices will especially impact owners who financed with interest only loans over the past decade. As these loans

⁷ U.S. Census Bureau press release, July 17, 2009.

⁸ “Landlords See a Jump in Vacancy Rates Even as Rents Drop,” Wall Street Journal, April 8, 2009.

come due, properties with interest only loans may not have accumulated additional equity over the term of the loan to counter the effects of declining property values. The lack of new CMBS issuances will also significantly affect the number of multifamily units financed by the Enterprises, thereby making the housing goals more difficult to achieve.

Refinancing surge in 2009. A significant increase in the volume of refinancings of single-family mortgages makes it more difficult for the Enterprises to achieve the housing goals. Higher income borrowers are more likely to take advantage of falling interest rates and refinance. Furthermore, when single-family owner-occupied refinance loans dominate both the market and the Enterprises' purchases, the share of goals-rich multifamily mortgages declines, which hampers the ability of the Enterprises to meet goal targets.

Many forecasters expect 2009 to be a high refinancing year. Projections of the 2009 refinance rate have been up to around 70 percent since March of this year, with the Mortgage Bankers Association (MBA) projecting 66 percent in its July 10, 2009 forecast,⁹ Fannie Mae projecting 70 percent in its June 11, 2009 forecast,¹⁰ and Freddie Mac projecting 67 percent in its July 8, 2009 forecast.¹¹ In addition, the

Administration's MHA Program includes an initiative to allow more borrowers with loans owned or guaranteed by Fannie Mae or Freddie Mac to refinance into a new mortgage that will be held or guaranteed by Fannie Mae or Freddie Mac.

FHFA will continue to monitor the size of the refinance market closely in 2009. Refinances may continue to be a very large part of the market in 2009, with the likely effect of a lower percentage of goals-qualifying loans available for purchase by the Enterprises, thus making it more difficult to achieve the goals. FHFA will consider the size of the refinance market in any determination as to the feasibility of any goal an Enterprise fails to achieve in 2009.

b. Size of the Mortgage Market That Qualifies for the Housing Goals

FHFA recognizes that there is no single, comprehensive data set for estimating the size of the affordable lending market, and that the available databases on different sectors of the market must be combined in order to implement FHFA's market share model. The major public data sources from which these market estimates were developed are: (1) Market originations data submitted by lenders in accordance with HMDA for the years 2003 through 2007; (2) the 2000 Decennial Census; (3) the American Community Survey (ACS) for years 2005 and 2006; (4) the American Housing Survey (AHS); and (5) the 2001 Residential Finance Survey (RFS). To a lesser extent, other privately

available data and information, including market forecasts, were also used. Sources included the MBA,¹² *Inside Mortgage Finance Publications, Inc.*,¹³ First American Loan Performance,¹⁴ Global Insight,¹⁵ Fannie Mae, and Freddie Mac.

Refinance Activity. The 2009 refinancing surge has a major impact on the size of the mortgage market that qualifies for the housing goals. Refinances in the early part of 2009 may have accounted for more than 70 percent of all single-family mortgage originations. This rate has increased from the anticipated 59 percent refinance rate used by FHFA as the basis for the market estimates in the proposed rule.

Table 1 contains FHFA's housing goals market estimates, using a 70 percent refinance volume and share of the single-family conventional conforming market, which is derived from the forecasts of the MBA, Fannie Mae and Freddie Mac cited above.

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¹² The MBA is a national association representing the real estate finance industry.

¹³ *Inside Mortgage Finance Publications, Inc.* is a company providing business-to-business news and statistics on the residential mortgage market.

¹⁴ First American Loan Performance databases track the delinquency and prepayment performance of 50 million active individual mortgage payments per month, and provide loan-level information on more than \$2.0 trillion in non-agency mortgage-backed and asset-backed securities.

¹⁵ Global Insight is a privately-held company formed from two former economic and financial information and forecasting companies: DRI (Data Resources, Inc.) and WEFA (Wharton Econometric Forecasting Associates).

⁹ *MBA Mortgage Finance Forecast*, June 22, 2009.

¹⁰ *Fannie Mae Economics and Mortgage Market Analysis*, June 11, 2009.

¹¹ *Freddie Mac Economic and Housing Market Outlook*, June 11, 2009.

Table 1

2009 Housing Goals Market Estimates

Mortgage Market Affordability by Mortgage Characteristic

Market Estimates (units)	2009 Projected		
	Low-End ¹	High-End ²	Mid-Point ³
Single-Family Owner-Occupied Home Purchase in Metropolitan Areas			
Low- and Moderate-Income Borrowers	34	- 39%	36.5%
Underserved Areas	27	- 31%	29.0%
Special Affordable Borrowers	10	- 14%	12.0%
Total Market (Single-Family and Multifamily)⁴			
Low- and Moderate-Income Borrowers	39	- 45%	42.5%
Underserved Areas	30	- 35%	32.5%
Special Affordable Borrowers	15	- 19%	17.0%

Mortgage Market by Property Type

Market Estimates (units)	2009 Projected		
	Range		Mid-Point
Single-Family Owner-Occupied Units	84.8	- 80.8%	82.3%
Single-Family Rental Units	10.1	- 12.1%	11.1%
Multifamily Rental Units	5.1	- 7.1%	6.6%
	100.0%		100.0%

¹ Assumes investor mortgages are seven percent of all single-family mortgage originations and a multifamily mortgage origination volume of \$30 billion (or five percent of all units, including B and C grade mortgages).

² Assumes investor mortgages are nine percent of all single-family mortgage originations and a multifamily mortgage origination volume of \$40 billion (or seven percent of all units, including B and C grade mortgages).

³ Assumes investor mortgages are eight percent of all single-family mortgage originations and a multifamily mortgage origination volume of \$37.5 billion (or 6.5 percent of all units, including B and C grade mortgages).

⁴ The FHFA total market projections in this table result from the various combinations of investor shares (7 - 8 percent), multifamily mixes (5 - 7 percent) and single-family owner-occupied home purchase mortgages in metropolitan areas affordabilities from this table.

The Multifamily Market. In the first quarter of 2009, multifamily mortgage acquisitions by the Enterprises accounted for less than half of the average first quarter acquisitions in the previous three years. Under current economic conditions, it is estimated that the Enterprises and FHA represent at least 90 percent of the entire multifamily mortgage market, which

results in total estimated multifamily mortgage originations of \$8.3 billion in the first quarter of 2009.

Using the monthly HMDA time series data of multifamily mortgage origination volume provided by the Federal Reserve Board, FHFA has projected the quarterly share of multifamily mortgage originations for 2009. The distributions of quarterly shares for each quarter were

normally and independently distributed. The first quarter share was significantly lower than the other three quarters, and the fourth quarter share was significantly higher. These shares are shown in Table 2, along with the ranges associated with a 95 percent confidence level.

Table 2
2009 Multifamily Mortgage Origination Volume Estimate

Quarter	Historical Quarterly Volume Shares*		Projected 2009 Volume (\$ bil.)		Based on Confidence Interval (C.I.) Limits	
	Average	C. I. Limits (95%) Lower Upper	Historical Patterns	No 4th Qtr. Spike	Historical patterns Lower Upper	No 4th Qtr. Spike Lower Upper
1 **	21.4%	20.5% 22.3%	\$8.34	\$8.34	\$8.34	\$8.34
2	25.7%	24.9% 26.5%	\$10.02	\$10.02	\$9.69	\$10.32
3	25.0%	24.0% 26.1%	\$9.74	\$9.74	\$9.35	\$10.16
4	27.9%	26.7% 29.1%	\$10.87	\$9.37	\$10.40	\$9.13
Total	100.0%		\$38.98	\$37.47	\$37.78	\$36.51
					\$40.18	\$38.43

Scenarios

	A	B	C	D	E
2009 Multifamily Market (\$ bil.):	\$30.1	\$36.5	\$37.5	\$39.0	\$40.2

- A: 2009 multifamily mortgage origination market including only loans maturing in 2009 as the source for originations***
- B: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, lower limit C. I., and no 4th quarter spike
- C: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, no 4th quarter spike
- D: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, historical pattern
- E: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, upper limit of C. I.

* Federal Reserve Board of Governors, HMDA timeseries data, 1995-2007.

** First quarter 2009 multifamily origination volume estimate of \$8.34 billion is based on the Enterprises reported acquisitions.

*** Mortgage Bankers Association. 2009, Commercial/Multifamily Survey of Loan Maturity Volumes, as of December 31, 2008, p.11.

Based on the historical patterns, FHFA made quarterly estimates of the multifamily mortgage origination volume, as well as estimates based on the upper and lower limits of the confidence intervals. Given current economic conditions, it is likely that the “end of the year” spike in multifamily mortgage originations that has occurred in prior years will not occur in 2009. Therefore, FHFA made a second set of estimates with the fourth quarter multifamily mortgage origination volume equal to the average of the three prior quarters. From these estimates, FHFA derived scenarios B through E. Scenario A, which is the “bottom end of the market” estimate, includes only loans maturing in 2009. To the extent that these loans are able to qualify for refinancing, new mortgages will be originated to replace them as these mortgages mature. Scenarios A, C and E were used to derive the market estimations in Table 1, with scenario C estimates based on historical averages with no fourth quarter spike, as the most likely to occur.

As indicated in scenarios A through E, FHFA estimates that the size of the multifamily mortgage origination market will be between \$30 billion and \$40 billion in 2009. This is lower than FHFA’s estimate of \$43 billion to \$65 billion used to project the 9 to 13 percent multifamily mix in the proposed rule.¹⁶ Under FHFA’s revised estimate, which reflects a higher rate of refinance and a lesser amount of goal-rich multifamily activity than assumed in the proposed rule, FHFA’s estimates of the size of the conventional mortgage market for the income-based housing goals and subgoals are lower than those in the proposed rule or in the 2004 Rule. FHFA’s revised market size estimates for the three overall housing goals categories for 2009 are as follows:

- 39–45 percent of units financed in the conventional conforming primary mortgage market will qualify for the low- and moderate-income housing goal. This is a downward adjustment from the estimate in the proposed rule that 43–51 percent of units financed in the conventional conforming primary mortgage market would qualify for the low- and moderate-income housing goal;
- 30–35 percent of units will qualify for the underserved areas housing goal. This is a downward adjustment from the estimate in the proposed rule that 32–37 percent of units would qualify for the underserved areas housing goal;
- 15–19 percent of units will qualify for the special affordable housing goal.

This is a downward adjustment from the estimate in the proposed rule that 16–23 percent of units would qualify for the special affordable housing goal.

FHFA’s revised market size estimates for the three home purchase subgoal categories for 2009 are close to those in the proposed rule, as follows:

- 34–39 percent of owner-occupied single-family home purchase mortgages on properties in metropolitan areas will qualify for the low- and moderate-income home purchase subgoal. This is a slight downward adjustment from the 35–41 percent market size estimate in the proposed rule;
- 27–31 percent of such mortgages will qualify for the underserved areas home purchase subgoal. This is identical to the market size estimate in the proposed rule;
- 10–14 percent of such mortgages will qualify for the special affordable home purchase subgoal. This is a slight downward adjustment from the 10–15 percent market size estimate in the proposed rule.

As discussed in the proposed rule, the Economic Stimulus Act of 2008 (Stimulus Act) temporarily increased the conforming loan limits for certain high-cost areas for loans originated between July 1, 2007 and December 31, 2008. Public Law 110–185, § 201, 122 Stat. 618, 619. The Stimulus Act also excluded purchases of jumbo conforming loans (those which exceed the nationwide conforming loan limits in certain high-cost areas and exceed 150% of the nationwide conforming loan limits in Alaska, Guam, Hawaii and the Virgin Islands) from counting towards the housing goals for 2008. The limit for each high-cost area was set at 125% of the area median price of a residence, up to a limit of \$729,750 for one-unit properties (175% of the overall conforming loan limit for 2008). HERA established the 2009 conforming loan limit at \$417,000 for one-unit properties and correspondingly higher for two- to four-unit properties. Public Law 110–289, § 1124, 122 Stat. 2654, 2691 (2008) (to be codified at 12 U.S.C. 1717, 1454). HERA also established permanent increases in the loan limit for certain high-cost areas, at 115% of the area median price of a residence, up to a limit of \$625,500 for one-unit properties in 2009 (150% of the overall conforming loan limit for 2009). The American Recovery and Reinvestment Act of 2009 (Recovery Act), signed into law by the President on February 17, 2009, generally established the limits that were in place in 2008 as a floor for the 2009 limits. Public Law 111–5, § 1203, 123 Stat. 115.

FHFA has determined that the treatment of jumbo conforming loans in 2008 should remain in effect for 2009, *i.e.*, that purchases of such loans should not be counted toward the housing goals in 2009. This treatment is consistent with section 1336(a)(2) of the Safety and Soundness Act, which provides FHFA with authority to exclude certain categories of mortgage purchases from counting towards the housing goals. See 12 U.S.C. 4566(a)(2). Accordingly, in determining the market share estimates for the three housing goal categories for 2009, FHFA has excluded all jumbo conforming loans on one- to four-unit properties.

FHFA’s revised analysis of the mortgage market for 2009, which includes a detailed description of FHFA’s market model, is contained in a document entitled “Estimating the Size of the Conventional Conforming Market for each Housing Goal in 2009: Final Rule,” of June 2009, which is available at <http://www.fhfa.gov>.

4. Past Performance of the Enterprises on the Housing Goals

This section describes the Enterprises’ past performance on the three overall housing goals, the three home purchase subgoals, and the special affordable multifamily housing subgoals as determined by HUD for 2005 and 2006, and by FHFA for 2007 and 2008.¹⁷ As discussed in the proposed rule, although HERA does not explicitly require consideration of the Enterprises’ past performance on the housing goals in determining whether to adjust the 2009 goal levels, FHFA believes that the Enterprises’ past performance is relevant to this determination. Consideration of past performance was required in establishing the goal levels for 2008 and prior years, and is required in establishing the goal levels for 2010 and thereafter. See 12 U.S.C. 4562(e)(2)(B)(iii). Current market conditions depend in part on the Enterprises’ loan purchase activities, including their goal performance, in previous years. For example, if the Enterprises purchased a substantial volume of a certain type of loan to meet the housing goals in 2008, lenders might be induced to originate more loans of that type in 2009. In addition, the Enterprises’ combined shares of the single-family conventional conforming

¹⁷ The Enterprises submitted to FHFA their Annual Housing Activities Reports (AHARs), tables on 2008 goals performance, and loan-level data on mortgages purchased on March 16, 2009. FHFA notified the Enterprises of the official performance figures for the 2008 goals and subgoals in letters dated June 11, 2009, and these results are posted on FHFA’s Web site.

¹⁶ See 74 FR 20236, 20248 (May 1, 2009).

market and the multifamily market were likely at record levels in 2008. Given these high levels and the collapse of the subprime market, combined Enterprise past performance on the goals is likely a good measure of the goals-qualifying shares of the primary market. Thus, FHFA has analyzed combined Enterprise past performance, and finds that it is of the same magnitude as FHFA's estimates of the 2008 mortgage market goal-qualifying shares.

a. Housing Goals

The three overall goal levels for 2005 through 2008 were set to increase each year so that by 2008, the levels would correspond with the top end of the range of estimates for the goals-qualifying shares of units financed in the primary mortgage market. Analysis of loan-level data for 2005 through 2008 indicates the following results for overall goal performance:

- *Low- and moderate-income housing goal*—This goal level was set at 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. Fannie Mae's performance was 55.1 percent in 2005, 56.9 percent in 2006, and 55.5 percent in 2007. Freddie Mac's performance was 54.0 percent in 2005, 55.9 percent in 2006, and 56.1 percent in 2007. Both Enterprises' performance exceeded the low- and moderate-income housing goal levels from 2005 through 2007. In 2008, both Enterprises fell significantly short of meeting the 56 percent goal level, with Fannie Mae at 53.7 percent and Freddie Mac at 51.5 percent. In letters to Fannie Mae and Freddie Mac, dated March 16, 2009, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 goal level, and that achievement of the goal was not feasible for each Enterprise.¹⁸

- *Underserved areas housing goal*—This goal level was set at 37 percent for 2005, 38 percent for 2006 and 2007, and 39 percent for 2008. Fannie Mae's performance was 41.4 percent in 2005, 43.6 percent in 2006, and fell slightly to 43.4 percent in 2007. Freddie Mac's performance was 42.3 percent in 2005, 42.7 percent in 2006, and 43.1 percent in 2007. Both Enterprises' performance exceeded the underserved areas housing goal levels from 2005 through 2007. In

2008, Fannie Mae exceeded the 39 percent goal level, at 39.4 percent, and Freddie Mac fell short at 37.7 percent. In the 2008 Goals Feasibility Letter to Freddie Mac, FHFA notified the Enterprise of its final determination that there was a substantial probability of failure by Freddie Mac to meet this 2008 goal level, and that achievement of the goal was feasible but challenging.

- *Special affordable housing goal*—This goal level was set at 22 percent for 2005, 23 percent for 2006, 25 percent for 2007, and 27 percent for 2008. Fannie Mae's performance was 26.3 percent in 2005, 27.8 percent in 2006, and 26.8 percent in 2007. Freddie Mac's performance was 24.3 percent in 2005, 26.4 percent in 2006, and 25.8 percent in 2007. Both Enterprises surpassed this goal level from 2005 through 2007. In 2008, Fannie Mae's performance fell slightly to 26.4 percent, below the 27 percent goal level, and Freddie Mac's performance fell sharply to 23.1 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 goal level, and that achievement of the goal was not feasible for each Enterprise.

These results are shown in Table 3.

b. Special Affordable Multifamily Housing Subgoals

In order to encourage the Enterprises to play a significant role in the multifamily mortgage market, HUD established minimum dollar-based special affordable multifamily housing subgoals. These subgoals were established at 1.0 percent of the average aggregate dollar volume of total mortgage purchases by each Enterprise in a base period (2000, 2001 and 2002). Unlike the overall goal levels, these subgoal levels differ between the Enterprises. Specifically, for 2005 through 2008, the subgoal level was established at \$5.49 billion per year for Fannie Mae, and \$3.92 billion per year for Freddie Mac.

Results for these special affordable multifamily housing subgoals are also presented in Table 3. As indicated, the Enterprises surpassed the subgoal levels by wide margins in each year through 2008. In 2008, Fannie Mae's performance was 242 percent of its subgoal level (\$13.31 billion compared with its subgoal level of \$5.49 billion), and Freddie Mac's performance was 191 percent of its subgoal level (\$7.49 billion compared with its subgoal level of \$3.92 billion).

c. Home Purchase Subgoals

In the 2004 Rule, HUD established home purchase subgoals for the first time. The overall housing goals are expressed in terms of minimum qualifying shares of all dwelling units financed by the Enterprises, combining mortgages on both single-family and multifamily, owner-occupied and rental housing. They include all mortgages, whether for home purchase, refinancing, or some other purpose. The home purchase subgoals are expressed in terms of minimum qualifying shares of each Enterprise's acquisitions of single-family home purchase mortgages in metropolitan areas. The subgoals specify minimum shares of home purchase mortgages that the Enterprises must purchase under each category of the housing goals. The home purchase subgoals are expressed in terms of mortgages, rather than dwelling units.

Analysis of loan-level data for 2005 through 2008 indicates the following results for the Enterprises' home purchase subgoal performance, as shown in Table 4:

- *Low- and moderate-income home purchase subgoal*—This subgoal level was set at 45 percent for 2005, 46 percent for 2006, and 47 percent for 2007 and 2008. Fannie Mae's performance was 44.6 percent in 2005 (falling slightly short of the subgoal), 46.9 percent in 2006, and 42.1 percent in 2007. Freddie Mac's performance was 46.8 percent in 2005, 47.0 percent in 2006, and 43.5 percent in 2007. Neither Enterprise met this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008, HUD declared that the subgoal for 2007 was not feasible. In 2008, Fannie Mae's performance was 38.8 percent, and Freddie Mac's performance was 39.3 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

- *Underserved areas home purchase subgoal*—This subgoal level was set at 32 percent for 2005, 33 percent for 2006 and 2007, and 34 percent for 2008. Fannie Mae's performance was 32.6 percent in 2005, 34.5 percent in 2006, and decreased to 33.4 percent in 2007, slightly exceeding the subgoal level in that year. Freddie Mac's performance was 35.5 percent in 2005, exceeding both Fannie Mae's performance and the 32 percent subgoal level by wide margins. In 2006 and 2007, Freddie Mac exceeded this subgoal level by narrow

¹⁸ See Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to Herb Allison, Chief Executive Officer, Fannie Mae, dated March 16, 2009; Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to John Koskinen, Interim Chief Executive Officer, Freddie Mac, dated March 16, 2009 (2008 Goals Feasibility Letters).

margins at 33.6 percent and 33.8 percent, respectively. In 2008, both Enterprises fell short of the subgoal level, at 30.4 percent and 30.2 percent for Fannie Mae and Freddie Mac, respectively. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

- *Special affordable home purchase subgoal*—This subgoal level was set at

17 percent for 2005 and 2006, and 18 percent for 2007 and 2008. Fannie Mae's performance was 17.0 percent in 2005, and 17.9 percent in 2006, and decreased to 15.5 percent in 2007. Freddie Mac's performance was 17.7 percent in 2005, and 17.0 percent in 2006, and decreased further to 15.9 percent in 2007. Thus, Freddie Mac surpassed this subgoal level in 2005, and barely met it in 2006. Conversely, Fannie Mae barely met the subgoal level in 2005, and surpassed it in 2006. Both Enterprises fell short on this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008,

HUD declared that the subgoal for 2007 was not feasible. In 2008, Fannie Mae's performance was 13.6 percent, and Freddie Mac's performance was 15.1 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this subgoal level, and that achievement of the 2008 subgoal was not feasible for each Enterprise.

Table 3
Overview of the Enterprises' Housing Goals and Performance, 2005-2008¹

Goal ²	2005	2006	2007	2008 ³	2005 Goals	2006 Goals	2007 Goals	2008 Goals
Low- and Moderate-Income:								
Fannie Mae	55.1%	56.9%	55.5%	53.7%	52%	53%	55%	56%
Freddie Mac	54.0%	55.9%	56.1%	51.5%				
Ratio ⁴	0.98	0.98	1.01	0.96				
Underserved Areas:								
Fannie Mae	41.4%	43.6%	43.4%	39.4%	37%	38%	38%	39%
Freddie Mac	42.3%	42.7%	43.1%	37.7%				
Ratio ⁴	1.02	0.98	0.99	0.96				
Special Affordable:								
Fannie Mae	26.3%	27.8%	26.8%	26.4%	22%	23%	25%	27%
Freddie Mac	24.3%	26.4%	25.8%	23.1%				
Ratio ⁴	0.92	0.95	0.96	0.88				
Special Affordable Multifamily⁵:								
Fannie Mae	\$10.39	\$13.31	\$19.84	\$13.31	\$5.49	\$5.49	\$5.49	\$5.49
Freddie Mac	\$12.35	\$13.58	\$15.12	\$7.49	\$3.92	\$3.92	\$3.92	\$3.92

Source: HUD and FHFA analysis of data submitted by the Enterprises. Some results differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs).

¹ Percentages of dwelling units in properties whose mortgages were purchased by the Enterprises that qualified for each goal in 2005-08, based on HUD's November 2004 rule, and goals for 2005-2008. Underserved areas goals for 2005-08 based on 2000 census data.

² Abbreviated definitions of goals:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved Areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent and tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

³ Performance for 2008 as determined by FHFA; in some cases the figures differ slightly from those reported by the Enterprises in March 2009 and included in the May 1, 2009 proposed rule. In March 2009 FHFA declared that the 2008 low- and moderate-income goal and the special affordable goal were infeasible, and so notified the Enterprises and Congress.

⁴ Ratio of Freddie Mac goal performance to Fannie Mae goal performance.

⁵ Performance and goals in billions of dollars. Goals for 2005-08 were 1.0 percent of each Enterprise's average total mortgage purchases in 2000-02.

Table 4
Enterprises' Single-Family Home Purchase (HP) Mortgages in Metropolitan Areas Qualifying for the Housing Subgoals, 2005-08

Category ¹	2005 HP Subgoal		2006 HP Subgoal		2007 HP Subgoal ²		2008 HP Subgoal ³	
	Required	Actual	Required	Actual	Required	Actual	Required	Actual
Low- and Moderate-Income:								
Fannie Mae	45%	44.6%	46%	46.9%	47%	42.1%	47%	38.8%
Freddie Mac	45%	46.8%	46%	47.0%	47%	43.5%	47%	39.3%
Ratio ⁴	1.05		1.00		1.03		1.01	
Underserved areas:								
Fannie Mae	32%	32.6%	33%	34.5%	33%	33.4%	34%	30.4%
Freddie Mac	32%	35.5%	33%	33.6%	33%	33.8%	34%	30.2%
Ratio ⁴	1.09		0.97		1.01		0.99	
Special Affordable:								
Fannie Mae	17%	17.0%	17%	17.9%	18%	15.5%	18%	13.6%
Freddie Mac	17%	17.7%	17%	17.0%	18%	15.9%	18%	15.1%
Ratio ⁴	1.04		0.95		1.03		1.11	

Source: HUD and FHFA analysis of data submitted by the Enterprises. Some results differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs). Home purchase subgoals first took effect in 2005.

¹ Abbreviated definitions of categories:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent and tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

² In April 2008 HUD declared that the 2007 low- and moderate-income and special affordable home purchase subgoals were infeasible.

³ Performance for 2008 as determined by FHFA; in some cases the figures differ slightly from those reported by the Enterprises in March 2009 and included in the May 1, 2009 proposed rule. In March 2009 FHFA declared that the 2008 home purchase subgoals were infeasible, and so notified the Enterprises and Congress.

⁴ Ratio of Freddie Mac performance to Fannie Mae performance.

D. General Requirements—§ 1282.15

Consistent with the proposed rule, § 1282.15 of the final rule sets forth general requirements for the counting of mortgage purchases toward the achievement of the housing goals. These requirements are generally consistent with those established by HUD in 24 CFR 81.15.

E. Special Counting Requirements—§ 1282.16

Consistent with the proposed rule, § 1282.16 of the final rule sets forth the requirements for receipt of full, partial or no credit for a transaction toward achievement of the housing goals. These requirements are generally consistent with those established by HUD in 24

CFR 81.16, with the addition of the counting requirements for jumbo conforming loans and MHA loan modifications discussed below. In some provisions, where the HUD regulatory language cites to specific statutory provisions that no longer appear in the statute due to amendment by HERA, the

final rule incorporates the applicable statutory language.

Comments received on counting issues were generally limited to jumbo conforming loans and loan modifications. Several commenters, however, made recommendations on other counting issues that are beyond the scope of this rulemaking. Specifically, a trade association recommended that personal property manufactured housing loans insured under FHA Title I, a program that insures mortgage loans made by private lending institutions to finance the purchase of a new or used manufactured home, be given full credit rather than half credit towards the housing goals. A mortgage lending policy advocacy organization recommended that the Enterprises' guidelines for loan purchases should also apply to private label securities, and that goals credit should be given only to those loans in private label securities that satisfy the guidelines. A trade association urged that the Enterprises be required to assist insured depository institutions meet their CRA obligations as set forth in section 1335 of the Safety and Soundness Act, and recommended that the Enterprises be given extra goals credit for the purchase of CRA loans. Another trade association recommended that mortgages required by the Enterprises to be repurchased should be subtracted from the goals calculation in the year in which they were repurchased. One trade association stated that the slowdown in commercial lending has made it difficult for owners of land-lease manufactured housing communities to refinance, and recommended that, while it may be difficult to estimate the income of the manufactured housing community residents, commercial loans to such communities should be eligible to count towards the special affordable multifamily housing subgoal.

Because these comments relate to issues that are beyond the scope of this rulemaking, the final rule does not address these issues. However, these issues may be considered by FHFA in its upcoming rulemaking on the 2010 affordable housing goals.

1. Exclusion of Jumbo Conforming Loans—§ 1282.16(b)(10)

Consistent with the proposed rule, § 1282.16(b)(10) of the final rule excludes purchases of jumbo conforming loans from counting towards the 2009 housing goals. Jumbo conforming loans will not be included in the numerator or the denominator when calculating performance under the housing goals. Commenters generally

supported the exclusion of jumbo conforming loans from counting towards the 2009 housing goals. A trade association supported the exclusion of jumbo conforming loans, but also stated that the lack of jumbo loan availability is hindering the economic and housing recoveries. Another trade association opposed the exclusion of jumbo conforming loans, stating that there are many areas of the country where the low end of the jumbo conforming loan limits encompasses borrowers who satisfy housing goals criteria.

As discussed in the proposed rule, the Stimulus Act excluded purchases of jumbo conforming loans from counting towards the housing goals for 2008. Consistent with this treatment of jumbo conforming loans in 2008, and in accordance with FHFA's authority under the Safety and Soundness Act to exclude certain categories of mortgage purchases from counting towards the housing goals, FHFA has determined that purchase of jumbo conforming loans shall not be counted toward the housing goals in 2009. *See* 12 U.S.C. 4566(a)(2).

2. Making Home Affordable (MHA) Loan Modifications—§ 1282.16(c)(10)

Currently, Enterprise purchases of loans that have been modified by third parties are eligible for goals credit. To address the increasing importance of loan modifications, consistent with the proposed rule, § 1282.16(c)(10) of the final rule provides that an Enterprise's modification of a loan in accordance with the Administration's MHA Program that is held in portfolio, or in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase and count for purposes of the housing goals. The MHA Program, also known as the Homeowner Affordability and Stability Plan (HASP), was announced by the Administration on March 4, 2009.¹⁹

As discussed in the proposed rule, many homeowners face the prospect of sharp increases in monthly mortgage costs as a result of rate resets. While loan modifications cannot prevent all defaults or foreclosures from occurring, they can help some existing homeowners stay in their homes, which will enhance the stability and liquidity of the housing and credit markets. In addition, such loan modifications may help to stabilize local communities and preserve the home values of homeowners who are not in danger of

losing their jobs. The Administration's MHA initiative is designed to help families modify or refinance their troubled mortgages to achieve an affordable payment and avoid foreclosure. MHA includes access to low-cost refinance loans for borrowers with loans that are owned or guaranteed by the Enterprises. Many borrowers may also be eligible for loan modification assistance under MHA. Allowing goals credit for MHA loan modifications may encourage the Enterprises to modify more loans.

The general rule for counting mortgages in § 1282.16(a), consistent with 24 CFR 81.16(a), permits FHFA to assign goals credit upon its determination that a transaction or activity is substantially equivalent to a mortgage purchase, adds liquidity to an existing market, and fulfills an Enterprise's purpose and is in accordance with its Charter Act. As discussed in the proposed rule, FHFA believes that MHA loan modifications meet the standards in § 1282.16(a) for goals credit. In today's unique market conditions, the largest threat to home ownership, including for the low- and moderate-income borrowers and communities at whom the housing goals are targeted, is the risk of default and foreclosure. The Administration's MHA loan modification initiative is a principal means of combating that risk. Therefore, during these unique conditions, FHFA finds that loan modifications within the MHA initiative are "substantially equivalent to a mortgage purchase" for purposes of the housing goals. FHFA also finds that they add liquidity, fulfill an Enterprise's purpose, and are consistent with the Charter Acts.

A number of commenters (Fannie Mae, Freddie Mac, five trade associations and one nonprofit organization) supported the proposed loan modification proposal, primarily because it would provide further incentive for the Enterprises to assist efforts by financial institutions to modify the loans of at-risk borrowers and lower the incidence of defaults and foreclosures. A trade association stated that loan modifications ensure ongoing home ownership unlike loan refinancings that are executed to realize home-equity appreciation, or promote consumption spending or other goals not directly related to maintaining home ownership. Freddie Mac stated that loan modifications extend the life of a mortgage and that, by avoiding foreclosure, these modifications will potentially avoid the dislocation, financial distress, and community

¹⁹ See <http://makinghomeaffordable.gov>. The proposed rule referred to this Program by the name "HASP." The final rule uses the name "MHA" in lieu of "HASP," consistent with the usage on the MHA Program Web site.

destabilization that can occur in the wake of foreclosure.

Fannie Mae requested technical clarifications regarding counting loan modifications toward the housing goals, including the appropriate date for determining the unpaid principal balance and affordability of the loan, the appropriate date for treating loan modifications with trial periods as purchases, and the treatment of loan modifications with missing data. These issues will be addressed in forthcoming guidance to the Enterprises.

A number of comments were received in response to FHFA's specific request for comment in the proposed rule on whether other types of loan modifications in addition to MHA loan modifications should receive goals credit. Several trade associations suggested that loan modifications on multifamily properties receive goals credit. Fannie Mae stated that providing goals credit to other types of loan modifications would not have a significant impact on goals performance.

FHFA believes that the large number of loans subject to some form of modification, and the often complex nature of the loans and their resulting modifications, present operational difficulties in determining when to count a modified loan toward the housing goals. In addition, only owner-occupied loans are eligible for consideration under the MHA Program. Accordingly, under the final rule, only loans that are modified under the MHA Program will receive credit towards the 2009 housing goals. Other types of loan modifications may be considered for housing goals credit in future rulemakings.

3. HOEPA Mortgages and Mortgages With Unacceptable Terms and Conditions—§ 1282.2, and § 1282.16(c)(12), (c)(13)

The proposed rule did not propose changes to the existing regulatory provisions regarding HOEPA mortgages and mortgages with unacceptable terms or conditions, or mortgages contrary to good lending practices. Section 1282.16(c)(12) provides that Enterprise purchases of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1282.2, shall not receive credit towards the three housing goals. Section 1282.16(c)(13) provides that, based on the results of the Director's monitoring of the Enterprises' practices, the Director may determine, pursuant to § 1282.16(d), that mortgages contrary to good lending practices, as defined in § 1282.2, shall not receive credit towards the three housing goals.

Nonetheless, a number of commenters suggested that additional types of loans should be excluded from receiving housing goals credit under these regulatory provisions, and recommended specific factors that should be considered in determining whether loans should be excluded. A labor union suggested that mortgages originated by the affiliated lender of homebuilders should not receive goals credit, stating that homebuilders use tactics to entice or frighten borrowers into loans with affiliated lenders that are contrary to good lending practices or that contain unacceptable terms and conditions. Two trade associations recommended that a loan be excluded unless the underwriting standards are at least as stringent as those for HOEPA loans or under the recently-revised Regulation Z (12 CFR part 226, Truth in Lending). One of these trade associations also suggested that loans violating the Home Valuation Code of Conduct (HVCC) should not be counted towards goal performance. Two trade associations encouraged FHFA to take the lead in prohibiting the Enterprises from financing loans with abusive terms and conditions, to impose penalties for loans that go into early default, and to develop mandates to ensure Charter Act compliance.

Because these comments relate to issues that are beyond the scope of this rulemaking, the final rule does not address these issues. However, these issues may be considered by FHFA in its upcoming rulemaking on the 2010 affordable housing goals.

F. Affordability—Income Level and Rent Level Definitions—§§ 1282.17 through 1282.19

Consistent with the proposed rule, §§ 1282.17 through 1282.19 of the final rule include income level and rent level definitions for purposes of determining whether a dwelling or rental unit is affordable to very low-, low- or moderate-income families. The definitions are consistent with the definitions established by HUD in 24 CFR 81.17 through 81.19.

G. Actions To Meet the Goals—§ 1282.20

Consistent with the proposed rule, § 1282.20 of the final rule provides that to meet the housing goals under this rule, the Enterprises shall operate in accordance with 12 U.S.C. 4565(b). This is generally consistent with 24 CFR 81.20.

H. Notice and Determination of Failure To Meet Goals—§ 1282.21

Consistent with the proposed rule, § 1282.21 of the final rule provides that if the Director of FHFA preliminarily determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal, the Director shall follow the procedures in 12 U.S.C. 4566(b) for purposes of making a final determination on the Enterprises' achievement of the goals and the feasibility of the goals. This is generally consistent with 24 CFR 81.21.

I. Housing Plans—§ 1282.22

Consistent with the proposed rule, § 1282.22 of the final rule includes requirements for submission of a housing plan by an Enterprise for failure or substantial probability of failure to meet any housing goal that was or is feasible. The requirements are generally consistent with 24 CFR 81.22, except that the requirement to submit a housing plan will be at the discretion of the Director, pursuant to the amendments made by HERA to § 1336(c) of the Safety and Soundness Act. See 12 U.S.C. 4566(c).

J. Other Issues

Credit Score Terminology. The proposed rule provided a market analysis to support the proposed adjustment of the housing goals levels for 2009, and discussed the effect of tighter underwriting standards of private mortgage insurers and the reduction in mortgage insurance availability for borrowers with low credit scores. A credit reporting corporation and a credit scoring corporation commented that FHFA's analysis should not specifically reference "FICO" credit scores, stating that the reference implies endorsement of the Fair Isaac Corporation product and creates an unfair advantage. FHFA did not intend to endorse a specific product. Accordingly, the market analysis in the final rule refers generally to credit scores rather than to a specific product.

Other HERA Requirements. Two trade associations requested that FHFA address HERA's requirements that FHFA determine an annual publication date for housing goals for the years 2010 and beyond, and establish a manner for evaluating the Enterprises' duty to serve the manufactured housing market. These statutory mandates are beyond the scope of this rulemaking and, therefore, are not addressed in the final rule. However, these statutory

provisions will be implemented by FHFA in upcoming rulemakings.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

■ Accordingly, for the reasons stated in the preamble, FHFA hereby amends chapter XII of title 12 of the Code of Federal Regulations, by adding new part 1282 to subchapter E to read as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

Subpart A—General

- 1282.1 Scope of part.
- 1282.2 Definitions.

Subpart B—Housing Goals

- 1282.11 General.
- 1282.12 Low- and Moderate-Income Housing Goal.
- 1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.
- 1282.14 Special Affordable Housing Goal.
- 1282.15 General requirements.
- 1282.16 Special counting requirements.
- 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).
- 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

- 1282.19 Affordability—Rent level definitions—tenant income is not known.
- 1282.20 Actions to be taken to meet the goals.
- 1282.21 Notice and determination of failure to meet goals.
- 1282.22 Housing plans.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561(c), 4565(b), 4566, 4603.

Subpart A—General

§ 1282.1 Scope of part.

The Director has general regulatory and supervisory authority over Fannie Mae and Freddie Mac, and is required to make such regulations as are necessary to carry out the Director's duties under the Safety and Soundness Act, the Fannie Mae Charter Act, and the Freddie Mac Act, and to ensure that the purposes of such statutes are accomplished.

§ 1282.2 Definitions.

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term—

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System. Book-entry GSE Security also means the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Fannie Mae Charter Act or the Freddie Mac Act.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any rent concessions. Contract rent is net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Definitive GSE Security means a GSE Security in engraved or printed form, or that is otherwise represented by a certificate.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

ECOA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

Entitlement Holder means a Person or a GSE to whose account an interest in a Book-entry GSE Security is credited on the records of a Securities Intermediary.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

Fannie Mae Charter Act means the Federal National Mortgage Association Charter Act (12 U.S.C. 1715 *et seq.*).

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

GSE Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive GSE Security or a Book-entry GSE Security.

HOEPA mortgage means a mortgage for which the annual percentage rate (as calculated in accordance with the relevant provisions of section 107 of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1606)) exceeds the threshold described in section 103(aa)(1)(A) of HOEPA (15 U.S.C. 1602(aa)(1)(A)), or for which the total points and fees payable by the borrower exceed the threshold described in section 103(aa)(1)(B) of HOEPA (15 U.S.C. 1602(aa)(1)(B)), as those thresholds may be increased or decreased by the Federal Reserve Board or by Congress, unless the Enterprises are otherwise notified in writing by FHFA. Notwithstanding the exclusions in section 103(aa)(1) of HOEPA, for purposes of this part, the term "HOEPA mortgage" includes all types of mortgages as defined in this section, including residential mortgage transactions as that term is defined in section 103(w) of HOEPA (15 U.S.C. 1602(w)), but does not include reverse mortgages.

Home Purchase Mortgage means a residential mortgage for the purchase of an owner-occupied single-family property.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area ("MSA"), or a portion of such an area for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) *American Indian or Alaskan Native*—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains Tribal affiliation or community attachment;

(2) *Asian*—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) *Black or African American*—a person having origins in any of the black racial groups of Africa;

(4) *Hispanic or Latino*—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) *Native Hawaiian or Other Pacific Islander*—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member

by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Mortgages contrary to good lending practices means a mortgage or a group or category of mortgages entered into by a lender and purchased by an Enterprise where it can be shown that a lender engaged in a practice of failing to:

(1) Report monthly on the borrower's repayment history to credit repositories on the status of each Enterprise loan that a lender is servicing;

(2) Offer mortgage applicants products for which they qualify, but rather steer applicants to high cost products that are designed for less credit worthy borrowers. Similarly, for consumers who seek financing through a lender's higher-priced subprime lending channel, lenders should not fail to offer or direct such consumers toward the lender's standard mortgage line if they are able to qualify for one of the standard products;

(3) Comply with fair lending requirements; or

(4) Engage in other good lending practices that are:

(i) Identified in writing by an Enterprise as good lending practices for inclusion in this definition; and

(ii) Determined by the Director to constitute good lending practices.

Mortgages with unacceptable terms or conditions or resulting from unacceptable practices means a mortgage or a group or category of mortgages with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of \$1000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(i) For purposes of this definition, points and fees include:

- (A) Origination fees;
- (B) Underwriting fees;
- (C) Broker fees;
- (D) Finder's fees; and

(E) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party.

(ii) For purposes of this definition, points and fees do not include:

(A) Bona fide discount points;

(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(C) The cost of mortgage insurance or credit-risk price adjustments;

(D) The costs of title, hazard, and flood insurance policies;

(E) State and local transfer taxes or fees;

(F) Escrow deposits for the future payment of taxes and insurance premiums; and

(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount.

(2) Prepayment penalties, except where:

(i) The mortgage provides some benefits to the borrower (*e.g.*, a rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments.

(3) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(4) Evidence that the lender did not adequately consider the borrower's ability to make payments, *i.e.*, mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration of the borrower's income and other obligations. Ability to repay must be determined and must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments; or

(5) Other terms or conditions that are:

(i) Identified in writing by an Enterprise as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and

(ii) Determined by the Director as an unacceptable term or condition of a

mortgage for which goals credit should not be received.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

Participant means a Person or GSE that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participation means a fractional interest in the principal amount of a mortgage.

Person, as used in subpart H of 24 CFR part 81, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a GSE, or a Federal Reserve Bank.

Portfolio of loans means 10 or more loans.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending

Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(6) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means, for a dwelling unit:

(1) When the contract rent includes all utilities, the contract rent; or

(2) When the contract rent does not include all utilities, the contract rent plus:

(i) The actual cost of utilities not included in the contract rent; or

(ii) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

Rural area means any underserved area located outside of any metropolitan area.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, codified generally at 12 U.S.C. 4501 *et seq.*

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of

abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Securities Documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry GSE Security.

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security".

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

Underserved area means:

(1) For purposes of the definitions of "Central city" and "Other underserved area", a census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of "Rural area", a whole census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(ii) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(3) Any Federal or State American Indian reservation or Tribal or

individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by FHFA. In such cases, FHFA will notify the Enterprises as to applicability of other definitions and counting conventions.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued periodically by FHFA; or

(2) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very low-income means, for purposes of the 2009 housing goals:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

Wholesale exchange means a transaction in which an Enterprise buys or otherwise acquires mortgages held in portfolio or securitized by the other Enterprise, or where both Enterprises swap such mortgages.

Working day means a day when FHFA is officially open for business.

(c) *Subpart H terms.* Unless the context requires otherwise, terms used in subpart H of 24 CFR part 81 that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

Subpart B—Housing Goals

§ 1282.11 General.

This subpart establishes three housing goals for 2009 as required by section 1331(c) of the Safety and Soundness Act, requirements for measuring performance under the goals, and procedures for monitoring and enforcing the goals.

§ 1282.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each Enterprise of mortgages on housing for low- and moderate-income families ("the Low-

and Moderate-Income Housing Goal") is intended to achieve increased purchases by the Enterprises of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families shall be 43 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal for 2009.

§ 1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each Enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the Enterprises of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Underserved Areas Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas shall be 32 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal for 2009.

(d) *Measuring performance.* The Enterprises shall determine on a mortgage-by-mortgage basis, through

geocoding or any similarly accurate and reliable method, whether a mortgage finances one or more dwelling units located in a central city, rural area, or other underserved area.

§ 1282.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases by the Enterprises of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families shall be 18 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. The goal for the year 2009 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single-family and multifamily) mortgages purchased by the respective Enterprise in the years 1999 through 2008. That is, this multifamily subgoal for 2009 is \$6.56 billion for Fannie Mae and \$4.60 billion for Freddie Mac. In addition, as a Special Affordable Housing Home Purchase Subgoal, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal for 2009.

(d) *Counting of multifamily units.*—(1) Dwelling units affordable to low-income families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgaged property.

(e) *Full Credit Activities.*—(1) For purposes of this paragraph (e), full credit means that each unit financed by a mortgage purchased by an Enterprise and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that Enterprise.

(2) The following mortgages meet the requirements of paragraph (e)(3) of this section: mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on Tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195.

(3) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or securitization of Federally insured or guaranteed mortgages if such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal Agency, and participation of the Enterprise substantially enhances the affordability of the housing subject to such mortgages, provided the Enterprise submits documentation to FHFA that supports eligibility under this paragraph for FHFA's approval.

(4)(i) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or refinancing of existing seasoned portfolios of loans if the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal, and such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal. For purposes of determining whether a seller meets the requirement in this paragraph (e)(4), a seller must currently operate on its own or actively participate in an on-going, discernible,

active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller for this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers qualifying loans to the seller.

(v) The Enterprise must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraphs (e)(4)(vi) and (vii) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section. Sellers that are institutions that are:

(A) Regularly in the business of mortgage lending;

(B) Depository institutions insured under the Deposit Insurance Fund; and

(C) Subject to, and have received at least a satisfactory performance evaluation rating for:

(1) At least the two most recent consecutive examinations under the Community Reinvestment Act, if the lending institutions have total assets in excess of \$250 million; or

(2) The most recent examination under the Community Reinvestment Act if the lending institutions which have total assets no more than \$250 million are identified as sellers that are presumed to have a primary business of originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) Classes of institutions or organizations that are presumed to have as their primary business originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed in paragraphs (e)(4)(i) through (e)(4)(iv) of this section to meet the requirements are as follows: State housing finance agencies; affordable housing loan consortia; and Federally insured credit unions that are:

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer lending standard of the Community Support Program; or

(B) Community development credit unions; community development financial institutions; public loan funds; or non-profit mortgage lenders. FHFA may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if so, will notify the Enterprises in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section, and the seller has held the loans for six months or less prior to selling the loans to the Enterprise, FHFA will consider that the seller has met the requirements of this paragraph (e)(4).

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of an Enterprise's existing mortgages or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two Enterprises shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (g), "mortgages or mortgage-backed securities portfolios" includes mortgages retained by Fannie

Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 1282.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by FHFA or transactions that are specifically excluded as ineligible under § 1282.16(b).

(3) *Missing data or information.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.* (1) For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgages may be counted under a particular family income level, *i.e.*, especially low-, very low-, low- or moderate-income, the income of the mortgagors is compared to

the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2)(i) When the income of the mortgagor(s) is not available to determine whether an owner-occupied unit in a property securing a single-family mortgage originated after 1992 and purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(A) Excluding from the denominator and the numerator single-family owner-occupied units located in census tracts with median incomes less than, or equal to, area median income based on the most recent decennial census, up to a maximum of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases with missing data in excess of the maximum will be included in the denominator and excluded from the numerator;

(B) For home purchase mortgages and for refinance mortgages separately, multiplying the number of owner-occupied units with missing borrower income information in properties securing mortgages purchased by the Enterprise in each census tract by the percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available; or

(C) Such other data source and methodology as may be approved by FHFA.

(ii) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (d)(2)(i) of this section to estimate affordability information for single-family owner-occupied units.

(iii) If an Enterprise chooses to use an estimation methodology under paragraph (d)(2)(i)(B) or (d)(2)(i)(C) of this section to determine affordability information for owner-occupied units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums for home purchase mortgages and for refinance mortgages that shall be calculated by multiplying, for each census tract, the

percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of single-family owner-occupied units in properties securing mortgages purchased by the Enterprise for each census tract, summed up over all census tracts. If this nationwide maximum is exceeded, then the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which income information may be estimated to the total number of single-family owner-occupied units with missing income information in properties securing mortgages purchased by the Enterprise. Owner-occupied units in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the denominator of the respective goal calculation.

(e) *Counting rental units*—(1) *Use of income, rent*—(i) *Generally*. For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information*.—(A) Each Enterprise shall require lenders to provide to the Enterprise tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the Enterprise shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices*. A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if an Enterprise determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants*. When the income of actual tenants is available, to determine whether a tenant is very low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17.

(4) *Income of prospective tenants*. When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent*. When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very low-, low-, or moderate-income families as provided in § 1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Affordability data unavailable*.—

(i) *Multifamily*.—(A) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(1) Multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(2) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(i)(A) of this section to estimate affordability information for multifamily rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(i)(A) of this section to determine affordability for rental units in properties securing multifamily mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. If this maximum is exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the nationwide maximum number of units for which affordability information may be estimated to the total number of multifamily rental units with missing affordability information in properties securing mortgages purchased by the Enterprise. Multifamily rental units in excess of the maximum set forth in this paragraph (e)(6)(i)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(ii) *Rental units in 1–4 unit single-family properties*.—(A) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a single-family mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability

information in accordance with one of the following methods:

(1) Excluding rental units in 1- to 4-unit properties with missing affordability information from the denominator as well as the numerator in calculating performance under those goals;

(2) Multiplying the number of rental units with missing affordability information in properties securing single family mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(3) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(ii)(A) of this section to estimate affordability information for single-family rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(ii)(A)(2) or (e)(6)(ii)(A)(3) of this section to determine affordability for rental units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums of five percent of the total number of rental units in properties securing non-seasoned single-family mortgage purchases by the Enterprise in the current year and 20 percent of the total number of rental units in properties securing seasoned single-family mortgage purchases by the Enterprise in the current year. If either or both of these maximums are exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which affordability information may be estimated to the total number of single-family rental units with missing affordability information in properties securing seasoned or unseasoned mortgages purchased by the Enterprise, as applicable. Single-family rental units in excess of the maximums set forth in this paragraph (e)(6)(ii)(C), and any units for which estimation information is not available, shall be removed from the

denominator of the respective goal calculation.

(7) *Timeliness of information.* In determining performance under the housing goals, each Enterprise shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of median income.*—(1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

- (i) A census tract;
- (ii) A census place code;
- (iii) A block-group enumeration district;
- (iv) A nine-digit zip code; or
- (v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

(i) *Counting mortgages toward the Home Purchase Subgoals.*—(1) *General.* The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§ 1282.12 through 1282.14. However, performance under the subgoals shall be counted using a fraction that is converted into a percentage for each

subgoal and the numerator of the fraction for each subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year. For purposes of each subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit.* For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each subgoal that applies to the Enterprise's mortgage purchase.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either Enterprise's performance under the housing goals:

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in § 1282.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") insurance program, 12 U.S.C. 1715z-20; mortgages guaranteed under the Rural Housing Service's Single

Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z-13, HUD's Section 184 program, 12 U.S.C. 1515z-13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the Enterprise submits documentation to FHFA that supports eligibility and that FHFA makes such a determination; or

(iv) As provided in § 1282.14(e)(3);

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of mortgages on one- to four-unit properties with maximum original principal obligations that exceed:

(i) The nationwide conforming loan limits for properties of a particular size; or

(ii) 150 percent of the nationwide conforming loan limits for properties of a particular size located in Alaska, Guam, Hawaii and the Virgin Islands; and

(11) Any combination of factors in paragraphs (b)(1) through (10) of this section.

(c) *Other special rules.* Subject to FHFA's primary determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

(1) *Credit enhancements.*—(i) Dwelling units financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage

purchases and count toward achievement of the housing goals when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits ("REMICs").*—(i) An Enterprise's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(1) Guaranteed by the Government National Mortgage Association; or

(2) Previously counted toward any housing goal by the Enterprise; and

(B) The Enterprise has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the Enterprise, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the Enterprise purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the Enterprise shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the Enterprise (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the Enterprise had purchased or guaranteed the whole

REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the Enterprise.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the Enterprises and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.*—(i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where an Enterprise purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where:

(i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year; or

(ii) FHFA determines, based upon a written request by an Enterprise, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as otherwise provided in this part, the purchase of a refinanced mortgage by an Enterprise is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.*—(i) The purchase of a State or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such mortgage revenue bond shall count toward achievement of the goals where:

(A) The mortgage revenue bond is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the mortgage revenue bond; and

(B) The mortgage revenue bond is not a general obligation of a State or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward achievement of a housing goal to the extent such dwelling units otherwise qualify under this part.

(9) *Expiring assistance contracts.* Actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997, shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(10) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where an Enterprise holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the Enterprise shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where an Enterprise undertakes more than one action to assist a single project or where an Enterprise engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the Enterprise must submit the

transaction to FHFA for a determination on appropriate goals counting treatment.

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Homes Affordable Program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved]

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in § 1282.2 shall not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Director shall monitor the practices and processes of the Enterprises to ensure that they are not purchasing loans that are contrary to good lending practices as defined in § 1282.2. Based on the results of such monitoring, the Director may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices shall not receive credit toward the three housing goals.

(14) *Seller dissolution option.*—(i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases and receive credit toward the achievement of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *FHFA review of transactions.* FHFA will determine whether a class of transactions counts as a mortgage

purchase under the housing goals. If an Enterprise seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the Enterprise may provide FHFA detailed information regarding the transactions for evaluation and determination by FHFA in accordance with this section. In making its determination, FHFA may also request and evaluate additional information from an Enterprise with regard to how the Enterprise believes the transactions should be counted. FHFA will notify the Enterprise of its determination regarding the extent to which the class of transactions may count under the goals.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable to very low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

- (1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and
- (2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

* 100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

- (1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and
- (2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

* 80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

* 60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Especially-low-income* means, in the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	*

* 50% plus (4.0% multiplied by the number of persons in excess of 4).

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable to very low-, low-, or moderate-income families where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income*, the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

* 104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	*

* 83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

* 62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For especially low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	*

* 52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable to very low-, low-, or moderate-income families where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit

is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

* 31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

* 24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

* 18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *For especially low-income*, maximum affordable rents to count as housing for especially low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5

Unit size	Percentage of area median income
3 bedrooms or more	*

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(6)(i).

§ 1282.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each Enterprise shall operate in accordance with 12 U.S.C. 4565(b).

§ 1282.21 Notice and determination of failure to meet goals.

If the Director determines that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal, the Director shall follow the procedures at 12 U.S.C. 4566(b).

§ 1282.22 Housing plans.

(a) If the Director determines, under § 1282.21, that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

- (1) Be feasible;
- (2) Be sufficiently specific to enable the Director to monitor compliance periodically;
- (3) Describe the specific actions that the Enterprise will take:
 - (i) To achieve the goal for the next calendar year; and
 - (ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and
- (4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 30 days after issuance of a notice under § 1282.21 requiring the Enterprise to submit a

housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

Dated: July 28, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9-18517 Filed 8-7-09; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2009-5]

Fees for Special Handling of Registration Claims

AGENCY: Copyright Office, Library of Congress.

ACTION: Temporary rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing an interim rule relating to fees for special handling of registration claims that have been pending for at least six months. Special handling is the expedited processing of an application and is granted in certain circumstances when compelling reasons are present. Ordinarily a special handling fee is charged for special handling in addition to the regular fee for an application to register a copyright claim. Because of current delays in the processing of applications for registration occurring in the course of the Office's implementation of its business process reengineering program, the Office has determined that the special handling fee shall not be assessed for conversion of a pending application to special handling status when the application has been pending for more than six months and the applicant has satisfied the Office that expedited handling of the

registration is needed because the applicant is about to file a suit for copyright infringement.

EFFECTIVE DATES: This rule is effective August 10, 2009 through July 1, 2011.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Stephen Ruwe, Attorney-Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024-0400, Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Although the copyright law provides that a work of authorship obtains copyright protection from the moment it is fixed in a tangible medium of expression and that copyright registration is not a prerequisite for such protection, copyright registration nevertheless is required in order to obtain certain remedies for copyright infringement. Section 411 of the Copyright Act provides that, with certain exceptions, a suit for infringement of a United States work¹ may not be filed until registration of the copyright claim has been made or refused by the Copyright Office. Section 412 provides that, with certain exceptions, the remedies of statutory damages and awards of attorney's fees are not available to a copyright owner when (1) infringement of copyright in an unpublished work commenced before the effective date of its registration; or (2) infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration was made within three months after the first publication of the work.

Because the effective date of registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office," 17 U.S.C. 410(d), a delay by the Copyright Office in its processing of an application for copyright registration will not adversely affect the ability of a copyright owner to

¹ While a detailed definition of "United States work" may be found at 17 U.S.C. 101 (definition of "United States work"), we offer a somewhat simplified description here: A "United States work" is a work that (1) is first published in the United States (unless it was simultaneously published in a country that has a copyright treaty relationship with the United States and where the term of copyright protection is shorter than the term in the United States), (2) is first published in a country with which the United States has no copyright treaty relations, and the authors of which are all nationals, domiciliaries, or habitual residents of the United States, or (3) is unpublished and all the authors of which are nationals, domiciliaries, or habitual residents of the United States.

obtain an award of statutory damages or attorney's fees. No matter how long it takes for the Office to issue the certificate of registration, the effective date of registration will be the date the application, fee and deposit arrived at the Copyright Office.

However, a delay in the issuance of a certificate of registration can create difficulties for a copyright owner of a United States work who wishes to file a suit for copyright infringement. The copyright owner will have to wait until the Office has either registered the copyright or refused to register the copyright; the copyright owner may not file suit the moment the application, fee and deposit have been submitted to the Copyright Office. See 17 U.S.C. 411(a).²

Special Handling

In recognition that copyright owners sometimes need to file suits for copyright infringement before they can reasonably expect the Office to issue (or refuse to issue) a certificate of registration, the Copyright Office has long offered a service called "Special Handling." Special Handling provides expedited processing of an application for copyright registration. See Copyright Office Circular 10, at <http://www.copyright.gov/circs/circ10.pdf>, which states, "Special handling is the expedited processing of an application for registration of a claim to copyright or for the recodation of a document pertaining to copyright. It is granted in certain circumstances to those who have compelling reasons for this service. It is subject to the approval of the chief of the Receipt Analysis and Control Division, who must consider the workload of the Copyright Office at the time the request is made." Special Handling may be justified for any of the following three reasons: pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Once a request for special handling is received and approved, every attempt is made to process the claim within five working days, although the Office cannot guarantee that all applications for which Special Handling has been approved will be processed within that time. For more

details on Special Handling, see Circular 10. See also Notice of Policy Decision, Policy Decision Announcing Fee for Special Handling Of Applications for Copyright Registration, 47 FR 19254 (May 4, 1982); Policy Decision: Revised Special Handling Procedures, 56 FR 37528 (Aug. 7, 1991).

Since 1982, the Copyright Office has charged a fee for special handling, in addition to the basic fee for an application for copyright registration. As the Office explained when it first imposed the Special Handling fee, "In the past the Copyright Office absorbed the additional costs of special handling but cannot continue to do so in the face of the rising number of such requests and the fiscal restraints under which it must operate. ... A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims." 47 FR at 19254. See also Notice of Policy Decision, Policy Decision Announcing Increase in the Fee for Special Handling of Applications for Copyright Registration, 49 FR 39741 (Oct. 10, 1984). Special Handling fees, along with other Copyright Office fees, are set forth at 37 CFR 201.3(d). See also Final Rule: Fees, 74 FR 32805 (July 9, 2009).

Delays in Registration Processing

As the Office has implemented its business process reengineering program, which has involved converting the registration system from the old, paper-based process to a new system of electronic processing and included a reorganization of the operations of the Office that has given new duties to copyright registration specialists, the pendency rates for applications for registration have risen to unacceptably high levels due to issues relating to the transition to the new system, especially with respect to paper applications. As a result, some applicants whose applications have been pending for several months may find that events occurring after an application was submitted require the applicant to seek expedited registration. In particular, an applicant may discover that a work that is the subject of a pending application

has been infringed since the application was submitted. Because a suit for copyright infringement may not be instituted until after the work has been registered (or after registration has been refused), the applicant may need to convert the pending application to Special Handling.

Although the Office believes that as a general proposition, the imposition of an additional fee for Special Handling is fully justified, it is difficult to justify imposition of that fee for expedited registration of a claim when both (1) the applicant needs a certificate of registration in order to file an imminent suit for copyright infringement, and (2) the application has been pending longer than would ordinarily be reasonable to expect. We note that before the commencement of the delays caused by the conversion to the new registration processing system, 90% of all registration claims were processed within 6 months. Currently, a similar percentage of claims that are submitted electronically are processed within 6 months, but it is taking up to 19 months to process 90% of all claims submitted on paper applications. Only 5% of claims submitted on paper applications are processed within 6 months.

Waiver of Special Handling Fee

Under the circumstances, the Office has concluded that it is appropriate to waive the fee for conversion of a pending application to Special Handling status in cases where (1) the applicant satisfies the Office that the applicant is about to file suit for infringement of the copyright in the work that is the subject of the application; and (2) the application has been pending for more than 6 months without any action by the Copyright Office. The first requirement is based on the recognition that a copyright owner simply cannot file a copyright infringement suit unless the Office has acted upon an application for registration. Because of this requirement, a copyright owner who has been waiting for longer than it would ordinarily take for a registration decision and who now needs to file a suit for copyright infringement should not have to pay an additional fee in order to "expedite" the registration.

The second requirement is based on the fact that prior to the inception of the current delays, almost all (90%) applicants could expect to receive their certificates of registration within 6 months. Because an applicant could ordinarily expect to receive the certificate within that time frame, 6 months is an appropriate period of time after which persons meeting the first requirement should be relieved of the

² A minority of courts have misread section 411(a) as providing that the prerequisite of copyright registration has been satisfied the moment the application, fee and deposit have been received in the Copyright Office. That interpretation of the statute ignores the text and purpose of section 411(a). See *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195 (10th Cir. 2005); Brief for the United States as Amicus Curiae Supporting Vacatur and Remand at 24 n.14, *Reed Elsevier, Inc. v. Muchnick*, No. 08-103 (U.S. June 8, 2009).

obligation to pay for Special Handling. However, there is less justification for providing such relief in cases where the delay is due, in whole or in part, to the fact that the Office had to correspond with the applicant due to questions about the application. For that reason, an application must have been pending for more than six months without any action (including correspondence) by the Copyright Office.

In order to ensure that the Special Handling fee is waived only in cases where litigation is truly imminent and the need for Special Handling is therefore crucial, persons requesting conversion of their applications to Special Handling status with a waiver of the Special Handling fee must supply satisfactory proof that they are about to file a copyright infringement suit by submitting to the Copyright Office General Counsel (1) an affidavit or a declaration under penalty of perjury, signed by the applicant or by the applicant's attorney, identifying the work for which registration is pending and which is the subject of the request for Special Relief and providing basic information about the prospective litigation, including the identity of the defendant and the court in which suit will be filed, and (2) a draft of the complaint that will be filed once the certificate of registration has been issued. The purpose of these requirements is to ensure that waivers of the Special Handling fee are given only in cases where Special Handling is in fact needed in order to facilitate imminent litigation.

In order to facilitate identification of the pending claim that is the subject of the request, the request should include the exact title of the work as it appears on the application, as well as the name(s) of the author(s) and claimant(s), the date the application was submitted to the Copyright Office and the means (e.g., by mail, by hand delivery, or by electronic submission) by which it was submitted, and a description of the deposit. A person requesting conversion of a pending copyright registration application to Special Handling status should also, whenever possible, provide a photocopy of the application.

This interim regulation will expire on July 1, 2011. The Office anticipates that by that date, processing time for applications will have returned to normal and that almost all claims (apart from those that require correspondence because of problems or questions pertaining to the application) will be processed within 6 months.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Rule

■ In consideration of the foregoing, part 201 of 37 CFR chapter II is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Part 201 is amended by adding § 201.15 to read as follows:

§ 201.15 Special Handling of Pending Claims Requiring Expedited Processing for purposes of Litigation.

(a) Special Handling is the expedited processing of an application for registration of a claim to copyright or for the recordation of a document pertaining to copyright. It is granted in cases where a compelling need for the service exists due to pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate of registration.

(b) *Fee.* The fee for Special Handling is set forth at section 201.3(d) of this chapter.

(c) *Waiver of fee.* When no action (including communication from the Copyright Office) has been taken on an application for registration within six months after the time the application, fee and deposit were received by the Copyright Office, the applicant may request Special Handling of the application and request that the fee for Special Handling be waived. The fee may be waived only when the applicant satisfies the Copyright Office that the applicant is about to file suit for infringement of the copyright in a work that is the subject of the application.

(d) *Form of request for Special Handling and for waiver of fee.* A request for Special Handling and for a waiver of the Special Handling fee must be submitted in the form of an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, signed by either the applicant or an attorney acting on behalf of the applicant, which

(1) Provides the following information relating to the application for registration:

(i) The exact title of the work for which registration is sought, as reflected on the application;

(ii) The name(s) of the author(s) of the work, as reflected on the application;

(iii) The name(s) of claimants, as reflected on the application;

(iv) The date the application was submitted to the Copyright Office;

(v) The means (e.g., by hand delivery, by electronic submission, by first class mail, by Express Mail, or by registered

or certified mail) by which the application was submitted to the Copyright Office; and

(vi) A description of the material deposited for registration, to assist in identifying the deposit;

(2) Includes a copy of the application that was submitted to the Copyright Office, or states that the applicant does not have access to a copy of the application;

(3) States that the applicant or a person acting with the authorization of the applicant is about to file suit for infringement of the copyright in a work that is the subject of the application;

(4) Identifies the defendant(s) and the court in which the suit will be filed; and

(5) Includes a copy of the complaint for copyright infringement that the applicant or a person acting with the authorization of the applicant intends to file in a United States District Court or the United States Court of Federal Claims. The copy of the complaint may omit allegations identifying the certificate of copyright registration, but must otherwise be complete.

(e) *Submission of request for Special Handling and for waiver of fee.* The materials identified in paragraph (d) of this section may be delivered to the Copyright Office by hand or by United States Postal Service Express Mail. Delivery by regular United States mail or overnight delivery services such as Federal Express and United Parcel Service cannot be accepted. The materials shall be delivered as follows:

(1) *By hand.* (i) If hand-delivered by a private party, the materials shall be placed in an envelope addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office" and brought to the James Madison Building, Library of Congress, U.S. Copyright Office, Room 401, 101 Independence Avenue, SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. E.D.T.

(ii) If hand-delivered by a commercial courier, the materials shall be placed in an envelope or package, no larger than 12 inches by 18 inches by 4 inches, addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office, LM 403, James Madison Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC 20559" and delivered to the Congressional Courier Acceptance Site ("CCAS"), located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m.

(2) *By Express Mail.* If sent by Express Mail, the materials should be placed in an envelope or package, no larger than 12 inches by 18 inches by 4 inches,

addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024," and deposited with the United States Postal Service.

Dated: July 29, 2009.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. E9-19101 Filed 8-7-09; 8:45 am]

BILLING CODE 1410-33-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0808061060-91139-03]

RIN 0648-AW77

Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment; Final Rule

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule to revise the regulatory language that appeared in a final rule that published in the **Federal Register** of June 19, 2009. The final rule designated critical habitat for the Atlantic salmon (*USalmo salar*) Gulf of Maine Distinct Population Segment (GOM DPS) under the Endangered Species Act (ESA). We designated as critical habitat 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. We excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to the ESA. We issue this final rule to revise the designated critical habitat for the expanded GOM DPS of Atlantic salmon to exclude all trust and fee holdings of the Penobscot Indian Nation, and we correct the table to add an "E" to indicate that Belfast Bay is

excluded from critical habitat under the ESA for reasons of economics.

DATES: Effective August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Dan Kircheis, National Marine Fisheries Service, Maine Field Station, 17 Godfrey Drive, Orono, ME 04473 at (207) 866-7320, or Marta Nammack at (301) 713-1401 ext. 180.

SUPPLEMENTARY INFORMATION: In the proposed rule to designate critical habitat for the expanded GOM DPS of Atlantic salmon (73 FR 51747; September 5, 2008), we proposed to exclude under section 4(b)(2) of the ESA all tribal lands from the critical habitat designation, based on Secretarial Order 3206 that recognizes Tribes as having the governmental authority and the desire to protect and manage their resources in a manner that is most beneficial to them.

In the final rule to designate critical habitat for the expanded GOM DPS of Atlantic salmon (74 FR 29300; June 19, 2009), we included as critical habitat Trust and Fee lands owned by the Penobscot Indian Nation, based on our interpretation of comments that we received from the Penobscot Indian Nation. In their comments, the Penobscot Indian Nation stated that "the Nations Trust landholdings are adequately identified and appropriately excluded from Critical Habitat Designation." Then they stated, "Given the extent of important salmon habitat located within the Penobscot Indian Reservation the Penobscot Nation asks that the services do not exclude any portion of the Penobscot Indian Reservation from the designation as Critical Habitat. The bed, banks, and islands that make up the Penobscot Indian Reservation are indeed "critical" to the survival of wild Atlantic salmon in the Penobscot River watershed. In fact, the Penobscot Nation believes that the recovery of the species will not be possible without adequate access to the Atlantic salmon habitat that is contained within the Penobscot Indian Reservation." We interpreted this to mean that all of the Penobscot Indian Nation's land should be included as critical habitat.

On June 22, 2009, we received notice from the Tribe that we incorrectly included Trust and Fee lands as critical habitat when they were seeking to include reservation lands. This final rule corrects the final rule published on June 19, 2009 (74 FR 29300) to exclude all areas that are Trust and Fee lands of the Penobscot Indian Nation. Critical habitat on Penobscot Indian lands will remain designated only for those lands that make up the Penobscot Reservation.

The exclusion of the Trust and Fee lands from the designation of critical habitat does not diminish the number of functional habitat units below those needed for the recovery of the species in the Penobscot Bay salmon habitat recovery unit.

The effect of this correction is to exclude 1,400 instead of 1,256 km of river, stream, and estuary habitat and 127 instead of 100 sq km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

Recent information provided by the Penobscot on Tribal ownership of lands within the occupied range designated as critical habitat discloses that the Penobscot Tribe hold approximately 60,500 acres (244.8 sq km) of Fee lands and lands held in Trust within the areas occupied by GOM DPS. We have determined that all the rivers, streams, lakes, and estuaries of approximately 9,500 acres (38.4 sq km) of land held for the Passamaquoddy tribe already disclosed in the final rule and approximately 60,500 acres (244.8 sq km) of Fee lands and lands held in Trust by the Penobscot Nation (not disclosed in the final rule) within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. The rivers, lakes, and streams within the approximately 4,400-acre (17.8 sq km) Penobscot Reservation are included as critical habitat per request of the Penobscot Nation.

We do not believe that exclusion of Penobscot Tribal Trust lands and Passamaquoddy tribal lands, including their lands in the Downeast Coastal Salmon Habitat Recovery Unit (SHRU), will reduce the conservation value or functional habitat units of Atlantic salmon habitat within those particular areas, given the ongoing cooperative efforts between the Tribes and the agencies. The Penobscot Indian Nation and the Passamaquoddy Tribe own lands within the range of the GOM DPS and have actively pursued or participated in activities to further promote the health and continued existence of Atlantic salmon and their habitats. The Penobscot Indian Nation has developed and maintained its own water quality standards that state "it is the official policy of the Penobscot Nation that all waters of the Tribe shall be of sufficient quality to support the ancient and historical traditional and customary uses of such tribal waters by members of the Penobscot Nation." The Tribe is also currently participating in the Penobscot River Restoration Project that has the intended goal of restoring 11 species of diadromous fish, including

Atlantic salmon. The Passamaquoddy Tribe has continued to maintain efforts to balance agricultural practices with natural resources. In a tract of Tribal land in Township 19, which accounts for approximately 12 km of the 28 km of rivers and streams on Passamaquoddy land that contain physical and biological features essential to salmon, the Tribe has established an ordinance to govern its water withdrawals for these lands. This ordinance states, "it is important to the Tribe that its water withdrawals at T. 19 do not adversely affect the Atlantic salmon in any of its life stages, or its habitat," and restricts water withdrawals to avoid adverse impact on the Atlantic salmon.

The benefits of excluding Tribal lands from critical habitat include maintenance of a long-term working relationship between the Tribes and government agencies that promotes environmental conservation and Atlantic salmon conservation and the continued promotion of established national policies, our Federal trust obligations, and our deference to the Tribes in management of natural resources on their lands.

Also, in § 226.217(b)(2)(i) of the June 19, 2009, final rule (74 FR 29300), we inadvertently left out the "E" in the table to indicate that the Belfast Bay HUC 10 watershed was excluded from critical habitat based on economic impacts. This final rule corrects that omission.

Correction

In FR Doc. E9-14268 appearing on page 29300 in the **Federal Register** of Friday, June 19, 2009, the following corrections are made:

On page 29330, under the heading *Other Relevant Impacts: Tribal Lands*, third column, the first paragraph is corrected to read: "Secretarial Order

3206 recognizes that Tribes have governmental authority and the desire to protect and manage their resources in the manner that is most beneficial to them. Pursuant to the Secretarial Order, and consistent with the Federal government's trust responsibilities, the Services must consult with the affected Indian Tribes when considering the designation of critical habitat in areas that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights."

Classification

The determinations made by the agency in the Classification section in the final rule published June 19, 2009 (74 FR 29300), with respect to Executive Order 12866, the Coastal Zone Management Act, the Regulatory Flexibility Act, the Information Quality Act, the Paperwork Reduction Act, the National Environmental Policy Act, Federalism, and Takings are unaltered by this correction.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it is "unnecessary". Exclusion of the Penobscot Nation's Trust and fee lands was part of the proposed rule on which public comment was solicited. The only comment received on this aspect of the proposed rule was from the Penobscot Nation. As such, this correction is considered a minor rule regarding which the public is not particularly interested. This correction actually responds to a further comment from the Penobscot Nation which pointed out that the agency had misinterpreted the intent of its comment on the proposed rule.

The AA further finds pursuant to 5 U.S.C. 553(d)(3) good cause to waive the

thirty (30) day delayed effectiveness period because it relieves a burden. Activities that are funded, authorized, or carried out by a Federal agency, such as agriculture, development, and transportation, on Tribal lands might be negatively impacted by the designation. If the activity may affect critical habitat, then the Federal agency would be required to consult with NMFS under ESA section 7 to ensure that the activity does not destroy or adversely modify critical habitat. Implementing this correction as soon as possible would remove this burden that might impact Federal activities on Tribal lands.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 3, 2009.

Samuel D. Rauch III,

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

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. In § 226.217 paragraphs (b)(2)(i), (b)(4), and (b)(7)(ii) are revised to read as follows:

§ 226.217 Critical habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon (*Salmo salar*).

* * * * *

(b) * * *

(2) * * *

(i) HUC 10 watersheds in the Penobscot Bay SHRU analyzed for critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

Penobscot Bay SHRU	HUC 10 Code	HUC 10 Name	Status	Economic (E), Military (M), or Tribal (T) exclusions
1	0102000101	North Branch Penobscot River		
2	0102000102	Seeboomook Lake		
3	0102000103	WEST Branch Penobscot River at Chesuncook Lake		
4	0102000104	Caucomgomok Lake		
5	0102000105	Chesuncook Lake		
6	0102000106	Nesowadnehunk Stream		
7	0102000107	Nahamakanta Stream		
8	0102000108	Jo-Mary Lake		
9	0102000109	West Branch Penobscot River (3)		
10	0102000110	West Branch Penobscot River (4)		
11	0102000201	Webster Brook		
12	0102000202	Grand Lake Matagamon	Critical Habitat	T
13	0102000203	East Branch Penobscot River (2)	Critical Habitat	T
14	0102000204	Seboeis River	Critical Habitat	T
15	0102000205	East Branch Penobscot River (3)	Critical Habitat	T
16	0102000301	West Branch Mattawamkeag River	Critical Habitat	T
17	0102000302	East Branch Mattawamkeag River	Critical Habitat	

Penobscot Bay SHRU	HUC 10 Code	HUC 10 Name	Status	Economic (E), Military (M), or Tribal (T) exclusions
18	0102000303	Mattawamkeag River (1)	Critical Habitat	
19	0102000304	Baskahegan Stream		
20	0102000305	Mattawamkeag River (2)	Critical Habitat	
21	0102000306	Molunkus Stream	Critical Habitat	E
22	0102000307	Mattawamkeag River (3)	Critical Habitat	T
23	0102000401	Piscataquis River (1)	Critical Habitat	
24	0102000402	Piscataquis River (3)	Critical Habitat	
25	0102000403	Sebec River		
26	0102000404	Pleasant River	Critical Habitat	T
27	0102000405	Seboeis Stream	Critical Habitat	T
28	0102000406	Piscataquis River (4)	Critical Habitat	"
29	0102000501	Penobscot River (1) at Mattawamkeag	Critical Habitat	T
30	0102000502	Penobscot River (2) at West Enfield	Critical Habitat	T
31	0102000503	Passadumkeag River	Critical Habitat	E
32	0102000505	Sunkhaze Stream	Critical Habitat	
33	0102000506	Penobscot River (3) at Orson Island	Critical Habitat	T
34	0102000507	Birch Stream	Critical Habitat	T
35	0102000508	Pushaw Stream		
36	0102000509	Penobscot River (4) at Veazie Dam	Critical Habitat	
37	0102000510	Kenduskeag Stream	Critical Habitat	
38	0102000511	Souadabscook Stream	Critical Habitat	
39	0102000512	Marsh River	Critical Habitat	
40	0102000513	Penobscot River (6)	Critical Habitat	
92	0105000216	Bagaduce River		
93	0105000217	Stonington Coastal		
94	0105000218	Belfast Bay	Critical Habitat	E
105	0105000219	Ducktrap River	Critical Habitat	
103	0102000504	Olamon Stream		
95	0105000220	West Penobscot Bay Coastal		

* * * * *

(4) Habitat that meets the definition of critical habitat in occupied habitat areas on Passamaquoddy Tribal Indian lands and Fee lands or lands held in Trust by the Penobscot Indian Reservation within the range of the GOM DPS are excluded from designation. Per request of the Penobscot Tribe, critical habitat does include occupied habitat that makes up the Penobscot Indian Reservation. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order 3206, including:

(i) Lands held in Trust by the United States for the benefit of any Indian Tribe;

(ii) Lands held in trust by the United States for the benefit of any Indian Tribe or individual subject to restrictions by the United States against alienation;

(iii) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(iv) Fee lands within the reservation boundaries owned by individual Indians.

The rivers, streams, lakes, and estuaries on approximately 9,500 acres (38.4 sq km) of lands held by the Passamaquoddy Tribe and approximately 60,500 acres (244.8 sq km) of Fee lands and land held in Trust

for the Penobscot Tribe within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Per request of the Penobscot Nation, the rivers, lakes, and streams within the approximately 4,400-acre (17.8 sq km) Penobscot Reservation are included as critical habitat.

* * * * *

(7) * * *

(ii) *Penobscot Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watershed:*

<u>Sub-basin</u>	<u>HUC 10 Code</u>	<u>HUC 10 Watershed Name</u>	<u>Critical Habitat</u>		<u>Excluded Areas[type]*</u>	
			<u>River, stream and estuary (km)</u>	<u>Lake (sq. km)</u>	<u>River, stream and estuary (km)</u>	<u>Lake (sq. km)</u>
East Branch Penobscot sub-basin	0102000202	Grand Lake Matagamon	326	30	6[T]	0.5[T]
	0102000203	East Branch Penobscot River (2)	179	3	1[T]	
	0102000204	Seboeis River	418	31		
	0102000205	East Branch Penobscot River (3)	588	5	3[T]	
	0102000201	Webster Brook	---	---		
West Branch Penobscot sub-basin	0102000101	North Branch Penobscot River	---	---		
	0102000102	Seeboomook Lake	---	---		
	0102000103	W. Br. Penobscot R. at Chesuncook	---	---		
	0102000104	Caucomgomok Lake	---	---		
	0102000105	Chesuncook Lake	---	---		
	0102000106	Nesowadnehunk Stream	---	---		
	0102000107	Nahamakanta Stream	---	---		
	0102000108	Jo-Mary Lake	---	---		
	0102000109	West Branch Penobscot River (3)	---	---		
	0102000110	West Branch Penobscot River (4)	---	---		
Mattawamkeag River sub-basin	0102000301	West Branch Mattawamkeag River	657	22		
	0102000302	East Branch Mattawamkeag River	315	12		
	0102000303	Mattawamkeag River (1)	192	0.5		
	0102000305	Mattawamkeag River (2)	451	8		
	0102000307	Mattawamkeag River (3)	226	3		
	0102000306	Molunkus Stream	0	0	438 [E]	11 [E]
	0102000304	Baskahegan Stream	---	---		
Piscataquis River sub-	0102000401	Piscataquis River (1)	762	15		
	0102000402	Piscataquis River (3)	382	6		

basin	0102000404	Pleasant River	828	17	16[T]	
	0102000405	Seboeis Stream	312	36	12 [T]	5 [T]
	0102000406	Piscataquis River (4)	328	30		
	0102000403	Sebec River	---	---		
Penobscot River sub-basin	0102000501	Penobscot River (1) at Mattawamkeag	292	7	5[T]	2.5[T]
	0102000502	Penobscot River (2) at West Enfield	551	29	80[T]	5.5[T]
	0102000503	Passadumkeag River	0	0	583[E]	79 [E]
	0102000505	Sunkhaze Stream	177	0.5		
	0102000506	Penobscot River (3) at Orson Island	211	0.5	6[T]	
	0102000507	Birch Stream	120	1	15[T]	
	0102000509	Penobscot River (4) at Veazie Dam	225	10		
	0102000510	Kenduskeag Stream	420	1.5		
	0102000511	Souadabscook Stream	341	5.5		
	0102000512	Marsh River	319	3		
	0102000513	Penobscot River (6)	514	29		
	0102000504	Olamon Stream	---	---		
	0102000508	Pushaw Stream	---	---		
Penobscot Bay sub-basin	0105000218	Belfast Bay	---	---	177 [E]	9 [E]
	0105000219	Ducktrap River	76	4		
	0105000216	Bagaduce River	---	---		
	0105000217	Stonington Coastal	---	---		
	0105000220	West Penobscot Bay Coastal	---	---		

*Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal
--- considered unoccupied at the time of listing

* * * * *

* * * * *

[FR Doc. E9-19094 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 152

Monday, August 10, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0536; Airspace Docket No. 09-ASW-14]

Proposed Amendment of Class E Airspace; Many, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Many, LA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Hart Airport, Many, LA, as the Many radio beacon (RBN) is being decommissioned. This action would also update the geographic coordinates of Hart Airport to coincide with the FAA's National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Hart Airport.

DATE: 0901 UTC. Comments must be received on or before September 24, 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-2009-0536/Airspace Docket No. 09-ASW-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-2009-0536/Airspace Docket No. 09-ASW-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 Hart Airport, Many, LA. The Many RBN is being decommissioned, and the approach, which required the Class E airspace defined by the RBN, is being canceled at the same time the new approaches go into effect. This action would also update the geographic coordinates of Hart 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 Hart Airport, Many, 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 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.

* * * * *

ASW LA E5 Many, LA [Amended]

Many, Hart Airport, LA
(Lat. 31°32'41" N., long. 93°29'09" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hart Airport.

* * * * *

Issued in Fort Worth, TX, on July 28, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–19032 Filed 8–7–09; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2009–10; Order No. 269]

Periodic Reporting Rules; Postal Regulatory Commission

ACTION: Proposed rulemaking; availability of rulemaking petition.

SUMMARY: This document announces a proposed rulemaking in response to a recent Postal Service petition involving periodic reporting rules. The petition, which is the third in a recent series, addresses seventeen potential changes. These changes cover matters such as correction of certain errors, updates based on operational changes or data system improvements, and the calculation of Periodicals bundle costs. If adopted, some of the proposed changes would affect certain cost models and revenue and volume reporting. Two other proposals affecting periodic reporting are under consideration in pending dockets.

DATES: Comments are due August 20, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

74 FR 31386 (Jul. 1, 2009).

74 FR 35837 (Jul. 21, 2009).

On July 28, 2009, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.¹

The proposals described by the Petition fall into several groups. The Postal Service describes Proposals Three through Seven as “errors detected in some of the programs and spreadsheets used to prepare the ACR filing * * *.” *Id.* at 1. The Petition notes that providing advance notice of such corrections is not mandatory but observes that it is potentially beneficial to the compliance review process, and for that reason the Postal Service voluntarily provides such notice. *Id.* at 1.

The Postal Service describes Proposals Eight through Ten and Eighteen as “updates based on operational changes or data system improvements.” Proposal Eight involves new distribution factors for Special Purpose Routes; Proposal Nine involves new items in Rural Evaluation Factors; and Proposal Ten involves a new Rural distribution for DPS/Sector Segment (letters). Proposal Eighteen involves a disaggregation of TRACS data to distribute Surface CP costs between

¹ Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Three–Nineteen), July 28, 2009 (Petition).

Canada and the rest of the world. *Id.* at 2.

Proposal Eleven concerns the use of booked versus imputed values for certain international mail costs and revenues. The Petition notes that in preparing its FY 2008 Annual Compliance Determination (ACD), the Commission relied on booked values and adjusted the Postal Service's FY 2008 International Cost and Revenue Analysis (ICRA) to be consistent with that approach. The Petition observes that “if the [Commission's] intent is to consistently use booked values in place of imputed values, the methodology underlying the FY08 ACD needs to be improved.” *Id.* The Postal Service offers what it regards as a suitable improved method of applying booked values which applies booked values for attributable costs as well as for revenues. The Postal Service, however, asserts that providing an ICRA that relies on imputed values continues to have value. Therefore, it requests permission to file an alternative ICRA with its periodic reports that applies imputed values to the costs and revenues in question. It notes that in FY 2010, it will institute a new Foreign Payment System that will use an “accrual methodology that is more similar to the imputed methodology * * *.” *See id.* at 2–3, and Proposal Eleven at 1–2, attached to the Petition. The alternative ICRAs are provided under seal. *See* Library Reference USPS–RM2009–10/NP1, FY 2008 ICRA Report for Imputed and Booked Calculations.

Proposals Twelve through Fourteen concern special studies for Periodicals, Standard Mail, and Parcels, respectively. Proposal Twelve is premised on the belief that the Commission's FY 2008 ACD estimate of the percent of Incoming Secondary Periodicals flats sorted mechanically is contrary to the logic of the Periodicals cost model accepted in Docket No. RM2009–1. *See* supporting rationale for Proposal Twelve attached to the Petition, at 1–3. Proposal Thirteen exploits the fact that with respect to Standard Mail, the FY 2008 CRA report was expanded by adding separate line items for letters, flats, and NFMs/parcels. The Postal Service proposes to use these estimates to develop separate destination entry cost avoidance estimates for Standard Mail letters, flats, and NFMs/parcels.

Proposal Fourteen takes advantage of the fact that FY 2008 mail processing and transportation cost data are separately available for single-piece Parcel Post, Parcel Select, and Parcel Return Service. This makes it possible

to develop mail processing and transportation cost models for each product that separates costs by point of entry. The proposed cost models are presented in library references under seal. See Library Reference USPS—RM2009—10/NP2, Nonpublic Materials Relating to Proposals Fourteen and Eighteen.

Proposals Fifteen through Seventeen are proposals to make refinements to volume and revenue reporting. Proposal Fifteen would expand the use of Point of Sale (POS) data from retail terminals to report revenue and associated attributes from pieces to which a PVS strip has been applied at the window. Proposal Sixteen would establish a new set of distribution factors for allocating Certificate of Mailing fee revenue back to products. Proposal Seventeen would improve revenue, piece, and weight reporting for Free Military Mail. Petition at 3.

Proposal Nineteen² relates to the calculation of bundle costs in the Periodicals “Bundle Passthrough” worksheet. The Petition notes that in the FY 2008 ACD, the Commission used the costs of bundles in sacks, rather than the weighted average costs of bundles in

²The Petition, at 3, inadvertently refers to Proposal Nineteen as “Proposal Twenty.”

both sacks and pallets, to estimate the costs avoided by Periodicals. Proposal Nineteen seeks to explore whether this change was intended or inadvertent.

The attachment to the Postal Service’s Petition explains its proposals in more detail, including the background, objective, rationale, and estimated impact of each.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Three–Nineteen), filed July 28, 2009, is granted.

2. The Commission establishes Docket No. RM2009–10 to consider the matters raised by the Postal Service’s Petition.

3. Interested persons may submit initial comments on or before August 20, 2009.

4. The Commission will determine the need for reply comments after review of the initial comments.

5. Kenneth R. Moeller is designated to serve as the Public Representative representing the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

Authority: 39 U.S.C. 3652.

Issued: July 31, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–19025 Filed 8–7–09; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080721862–8864–01]

RIN 0648–AW51

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations

Correction

In proposed rule document E9–17190 beginning on page 36058 in the issue of Tuesday, July 21, 2009, make the following correction:

On page 36064, in the third column, before the heading **Scientific Research**, Figure 1, Figure 2, and Figure 3 were inadvertently deleted. The three figures are printed to read as set forth below:

Figure 1: Proposed HPTRP New England harbor porpoise management scheme when target bycatch rates are not exceeded

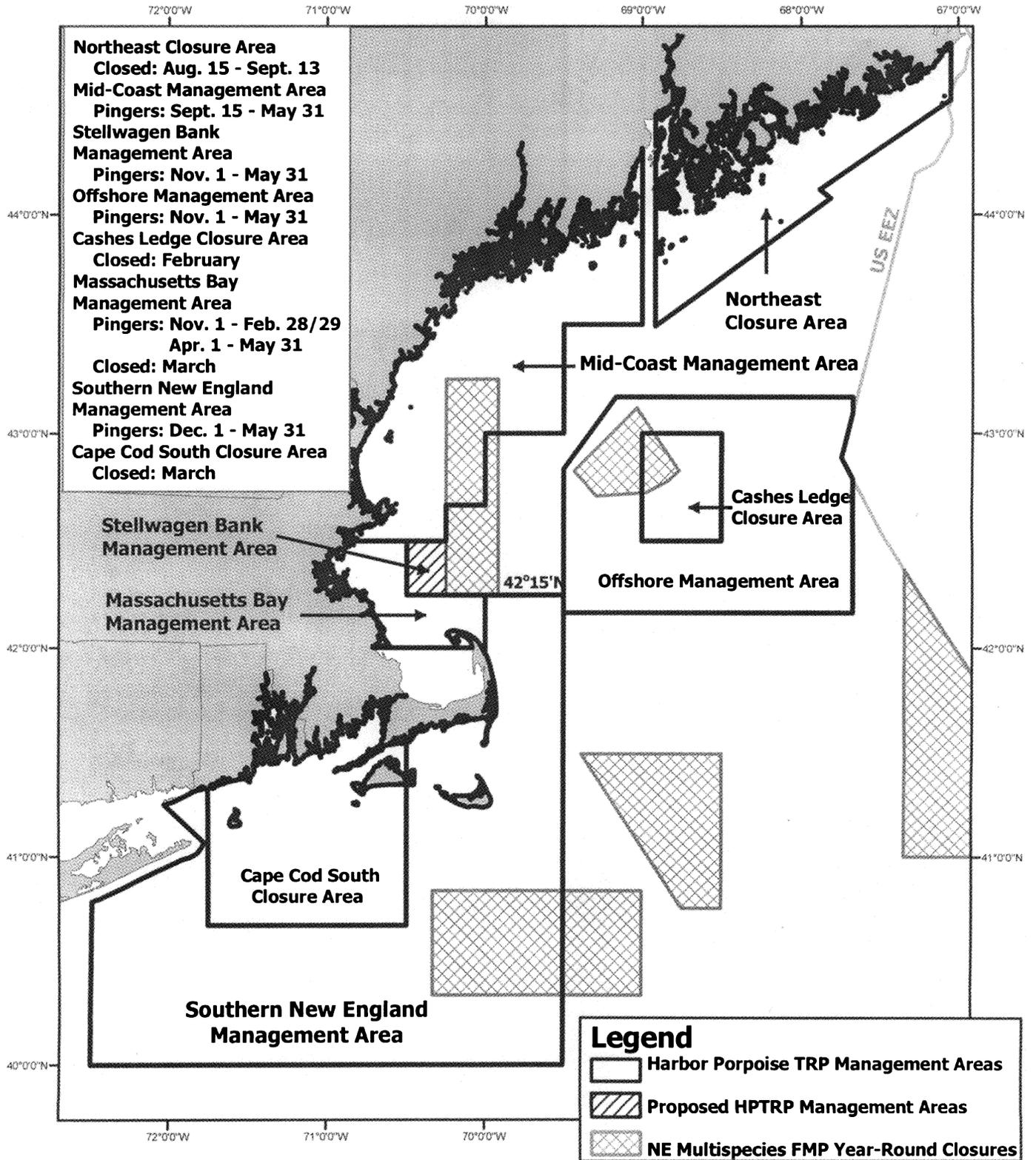


Figure 2: Proposed HPTRP New England harbor porpoise management scheme when both target bycatch rates are exceeded (i.e., consequence closure areas triggered)

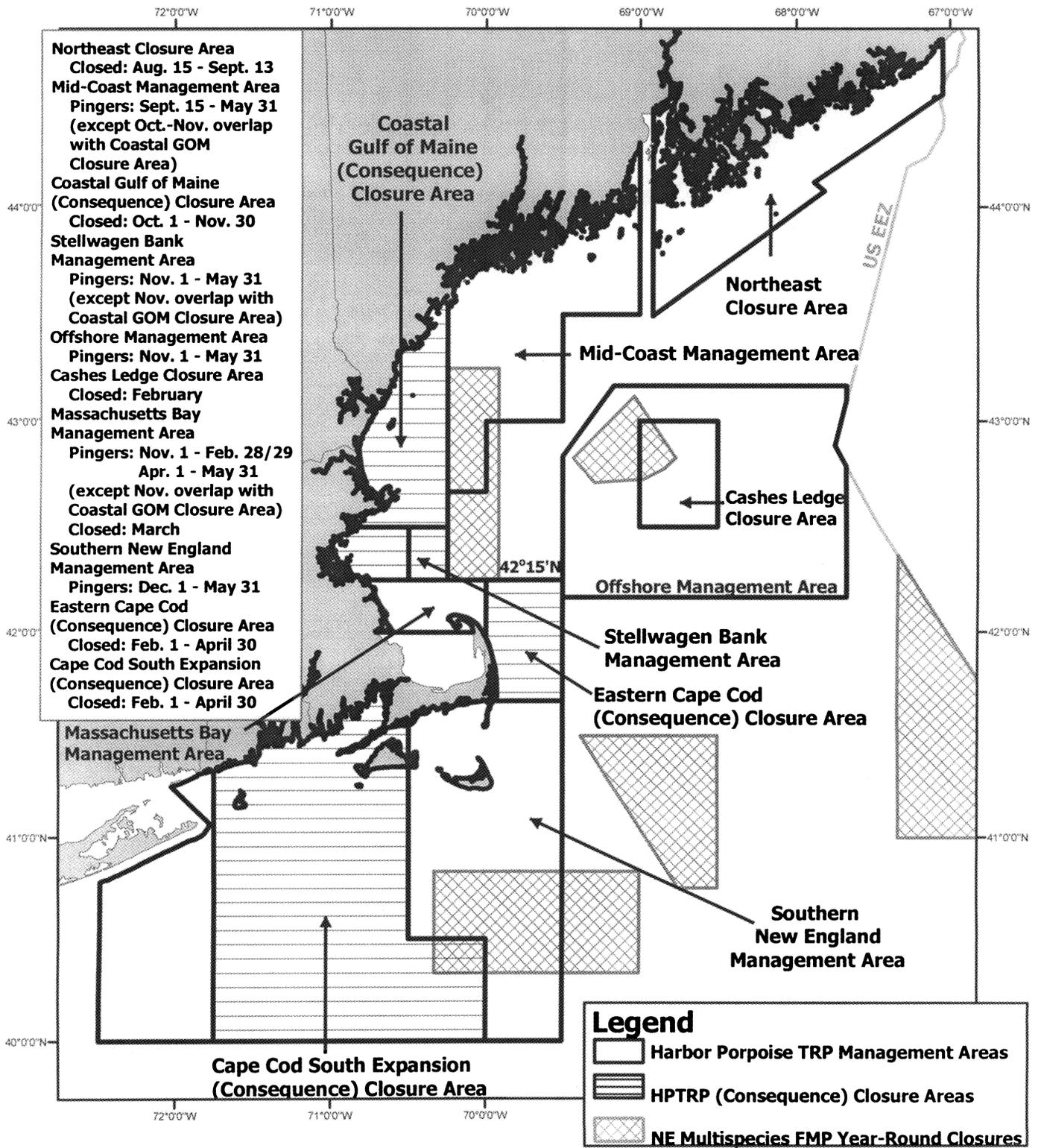
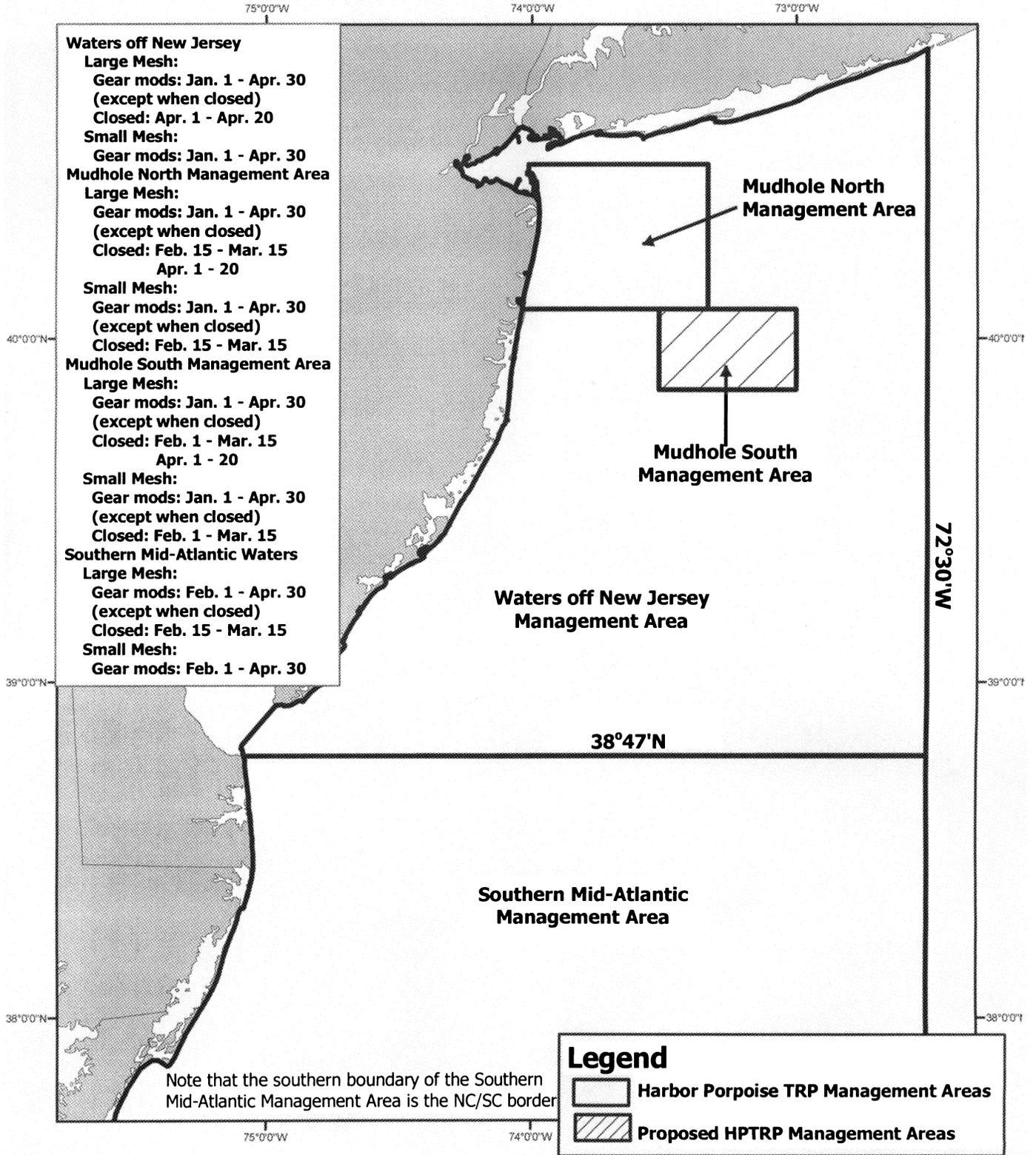


Figure 3: Proposed HPTRP Mid-Atlantic management scheme



DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 229, 600, and 635**

[Docket No. 080519678-8685-01]

RIN 0648-AW65

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 3

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: In order to provide additional opportunities for the public, all five Atlantic Regional Fishery Management Councils, the Atlantic and Gulf States Marine Fisheries Commissions, and other interested parties to comment on the proposed rule for draft Amendment 3 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), NMFS is extending the comment period for this action. On July 24, 2009, NMFS published the proposed rule for draft Amendment 3 to the 2006 Consolidated HMS FMP. In that proposed rule, the end of the comment period was announced as September 22, 2009, which would allow for a 60-day comment period on the proposed rule. NMFS is now extending the comment period until September 25, 2009 to accommodate two public hearings scheduled on September 22, 2009, and the New England Fishery Management Council meeting September 22-24, 2009. Comments received by NMFS on the proposed rule will help NMFS determine final management measures for small coastal sharks, shortfin mako sharks, and smooth dogfish as described in draft Amendment 3 to the Consolidated HMS FMP.

DATES: The deadline for comments on the proposed rule for draft Amendment 3 to the Consolidated HMS FMP has been extended from September 22, 2009, as published on July 24, 2009 (74 FR 36892), to 5 p.m. on September 25, 2009.

ADDRESSES: As published on July 24, 2009 (74 FR 36892), written comments on this action should be sent to Karyl Brewster-Geisz, Highly Migratory Species Management Division, by any of the following methods:

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Shark Amendment 3 Comments."
- Fax: (301) 713-1917.
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Instructions: All comments received are a part of the public record and will generally be posted to Portal <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "n/a" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft Amendment 3 to the Consolidated HMS FMP, including the Draft Environmental Impact Statement, the latest shark stock assessments, and other documents relevant to this rule are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms or by contacting LeAnn Southward Hogan at 301-713-2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or LeAnn

Southward Hogan at (301) 713-2347, or Jackie Wilson at (240) 338-3936.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

On July 24, 2009 (74 FR 36892), NMFS published the proposed rule for draft Amendment 3 to the 2006 Consolidated HMS FMP, which proposes management measures to rebuild blacknose sharks, end overfishing of blacknose sharks and shortfin mako sharks, and add smooth dogfish under federal management. In that proposed rule, the end of the comment period was announced as September 22, 2009, which would allow for a 60-day comment period on the proposed rule. Due to the timing of two public hearings on September 22, 2009, and the need for NMFS to consult with the New England Fishery Management Council during their September 2009 meeting, NMFS is extending the comment period to provide additional opportunity for the public, all five Atlantic Regional Fishery Management Councils, the Atlantic and Gulf States Marine Fisheries Commissions, and other interested parties to comment on the proposed rule for draft Amendment 3 to the 2006 Consolidated HMS FMP.

These comments will assist NMFS in determining the final management measures to conserve and manage shark resources and fisheries, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: August 3, 2009.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. E9-19095 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 74, No. 152

Monday, August 10, 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

Commodity Credit Corporation

Notice of Availability of the Draft Programmatic Environmental Impact Statement for the Biomass Crop Assistance Program

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

ACTION: Notice of Availability (NOA) and request for comments.

SUMMARY: This notice announces that the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), has completed a Draft Programmatic Environmental Impact Statement (PEIS) for the administration and implementation of the Biomass Crop Assistance Program (BCAP) enacted by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). FSA is requesting comments on the draft PEIS.

DATES: We will consider comments that we receive by September 24, 2009.

ADDRESSES: We invite you to submit comments on this Draft PEIS. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-Mail:* BCAPEIS@geo-marine.com.
- *Online:* Go to <http://public.geo-marine.com>. Follow the online instructions for submitting comments.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (757) 873-3703.
- *Mail:* BCAP PEIS, c/o Geo-marine Incorporated, 2713 Magruder Boulevard, Suite D, Hampton, VA 23666.
- *Hand Delivery or Courier:* Deliver comments to the above mail address.

Comments may be inspected in the Office of the Director, CEPD, FSA, USDA, 1400 Independence Ave., SW., Room 4709 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of the Draft PEIS is available through the FSA home page at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd> or at <http://public.geo-marine.com>.

FOR FURTHER INFORMATION CONTACT:

Matthew Ponish, National Environmental Compliance Manager, USDA, FSA, CEPD, Stop 0513, 1400 Independence Ave. SW., Washington, DC 20250-0513, (202) 720-6853, or e-mail: Matthew.Ponish@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

BCAP is authorized by Title IX of the 2008 Farm Bill (Pub. L. 110-246). The 2008 Farm Bill amends Title IX of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171); specifically, for BCAP, the 2008 Farm Bill adds section 9011 (7 U.S.C. 8111). BCAP is intended to support the establishment and production of certain crops for conversion to bio-energy in project areas (locations) and to assist with collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

As a new energy program, BCAP presents an opportunity to encourage landowners and operators to produce biomass for commercial energy production in ways that both are economically and environmentally sound. CCC plans to implement BCAP by approving the best-qualifying project proposals from project sponsors (producers or facilities) and then entering into contracts with individual producers in the approved project locations. BCAP is a CCC program administered by the FSA with the support of other Federal and local agencies.

Under the National Environmental Policy Act (NEPA), the EIS process provides a means for the public to provide input on program

implementation alternatives and on environmental concerns. CCC provided first notice of its intent (NOI) to prepare the proposed BCAP PEIS in the **Federal Register** on October 1, 2008 (73 FR 57047-57048). CCC provided an amended NOI to prepare the proposed BCAP PEIS in the **Federal Register** on May 13, 2009 (74 FR 22510-22511) and solicited public comment on the proposed EIS for BCAP. Six public scoping meetings were held in May and June 2009 to solicit comments for the development of alternatives and to identify environmental concerns.

FSA has considered comments gathered in the scoping process initiated with the October 1, 2008 NOI to develop the alternatives proposed for the administration and implementation of BCAP and to include in a Draft PEIS. The Draft PEIS assesses the potential environmental impacts associated with the following three alternatives:

- No Action Alternative—addresses the potential effects from not implementing BCAP.
- Action Alternative 1—addresses a targeted implementation of BCAP to specific areas or regions of the United States.
- Action Alternative 2—addresses a broad national implementation of BCAP.

The Draft PEIS also provides a means for the public to voice any suggestions on the program and any ideas for rulemaking. The Draft PEIS can be reviewed online at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd> or at <http://public.geo-marine.com>.

The Draft PEIS was completed as required by NEPA (42 U.S.C. 4321-4347), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and FSA's policy and procedures (7 CFR part 799).

Signed in Washington, DC on August 4, 2009.

Jonathan Coppess,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9-19064 Filed 8-7-09; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE**Natural Resources Conservation Service****Notice of Proposed Change to Section IV of the Virginia State Technical Guide**

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #356, Dike; #378, Pond; #402, Dam; #554, Draining Water Management; #587, Structure for Water Control; and #606, Subsurface Drain. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229-5014; Telephone number (804) 287-1691; Fax number (804) 287-1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: <http://www.va.nrcs.usda.gov/technical/draftstandards.html>.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: July 21, 2009.

John A. Bricker,
State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.
[FR Doc. E9-19014 Filed 8-7-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****Patent Reexaminations**

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2009.

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

- *E-mail:* Susan.Fawcett@uspto.gov. Include A0651-00XX Patent Reexaminations comment@ in the subject line of the message.
- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert A. Clarke, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7735; or by e-mail at Robert.Clarke@uspto.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents.

Chapter 30 of Title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art patents or printed publications. Once initiated, the reexamination proceedings under Chapter 30 are substantially *ex parte* and do not permit input from third parties. Chapter 31 of Title 35 U.S.C. provides for *inter partes* reexamination allowing third parties to participate throughout the reexamination proceeding. If a request for *ex parte* or *inter partes*

reexamination is denied, the requester may petition the Director to review the examiner's refusal of reexamination. The rules outlining *ex parte* and *inter partes* reexaminations are found at 37 CFR 1.510-1.570 and 1.902-1.997.

Information requirements related to patent reexaminations are currently covered under OMB Control Number 0651-0033, along with other requirements related to patent issue fees and reissue applications. The USPTO is proposing to move the following items that are under 0651-0033 into a new information collection for Patent Reexaminations: Request for *Ex Parte* Reexamination Transmittal Form; Request for *Inter Partes* Reexamination Transmittal Form; Petition to Review the Refusal to Grant *Ex Parte* Reexamination; Petition to Review the Refusal to Grant *Inter Partes* Reexamination; and Petition to Request Extension of Time in *Ex Parte* or *Inter Partes* Reexamination.

The USPTO is also proposing to include additional items related to patent reexaminations in this new information collection: Request for *Ex Parte* Reexamination; Request for *Inter Partes* Reexamination; Patent Owner's 37 CFR 1.530 Statement; Third Party Requester's 37 CFR 1.535 Reply; Amendment in *Ex Parte* or *Inter Partes* Reexamination; Third Party Requester's 37 CFR 1.947 Comments in *Inter Partes* Reexamination; Response to Final Rejection in *Ex Parte* Reexamination; Patent Owner's 37 CFR 1.951 Response in *Inter Partes* Reexamination; and Third Party Requester's 37 CFR 1.951 Comments in *Inter Partes* Reexamination. These additional items are existing information requirements that previously were not fully covered by an information collection and are now being included in order to more accurately reflect the burden on the public for submitting requests related to patent reexaminations.

The Requests for *Ex Parte* and *Inter Partes* Reexamination are distinct collections from the Request for *Ex Parte* Reexamination Transmittal Form and the Request for *Inter Partes* Reexamination Transmittal Form, respectively. Whereas the transmittal forms are used by a requester (patent owner or third party) as a checklist to ensure compliance with the requirements of the statutes and rules for *ex parte* and *inter partes* reexaminations, the newly added collections represent the substantive analysis undertaken by a requester of reexamination. Thus, the Requests for *Ex Parte* and *Inter Partes* Reexamination are not new requirements. The other items being included in this new

collection cover additional information that may be submitted by patent owners and third party requesters in relation to a reexamination proceeding. Likewise, these items are existing requirements that previously were not fully covered by an information collection.

The public uses this information collection to request reexamination proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651-00XX.

Form Number(s): PTO/SB/57 and PTO/SB/58.

Type of Review: New collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 5,124 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 18 minutes (0.30 hours) to 90 hours to gather the necessary information, prepare the appropriate

form or other documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 111,336 hours per year.

Estimated Total Annual Respondent Cost Burden: \$34,514,160 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of \$310 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately \$34,514,160 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Request for Ex Parte Reexamination Transmittal Form (PTO/SB/57)	18 minutes	845	254
Request for Ex Parte Reexamination	40 hours	845	33,800
Request for Inter Partes Reexamination Transmittal Form (PTO/SB/58)	18 minutes	380	114
Request for Inter Partes Reexamination	90 hours	380	34,200
Petition to Review Refusal to Grant Ex Parte Reexamination	15 hours	25	375
Petition to Review Refusal to Grant Inter Partes Reexamination	25 hours	9	225
Patent Owner's 37 CFR 1.530 Statement	7 hours	105	735
Third Party Requester's 37 CFR 1.535 Reply	7 hours	60	420
Amendment in Ex Parte or Inter Partes Reexamination	20 hours	1,165	23,300
Third Party Requester's 37 CFR 1.947 Comments in Inter Partes Reexamination.	25 hours	300	7,500
Response to Final Rejection in Ex Parte Reexamination	15 hours	320	4,800
Patent Owner's 37 CFR 1.951 Response in Inter Partes Reexamination	25 hours	120	3,000
Third Party Requester's 37 CFR 1.951 Comments in Inter Partes Reexamination.	25 hours	95	2,375
Petition to Request Extension of Time in Ex Parte or Inter Partes Reexamination.	30 minutes	475	238
Totals	5,124	111,336

Estimated Total Annual Non-hour Respondent Cost Burden: \$5,577,265 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour)

costs in the form of filing fees, postage costs, and recordkeeping costs. There are filing fees associated with requests for reexamination and for the petition to request an extension of time in a reexamination. The total fees for

this collection are calculated in the accompanying table. The USPTO estimates that the total fees associated with this collection will be approximately \$5,568,400 per year.

Item	Estimated annual responses	Fee Amount	Estimated annual filing costs
Request for Ex Parte Reexamination Transmittal Form (PTO/SB/57)	845	\$2,520.00	\$2,129,400.00
Request for Ex Parte Reexamination	845	0.00	0.00
Request for Inter Partes Reexamination Transmittal Form (PTO/SB/58)	380	8,800.00	3,344,000.00
Request for Inter Partes Reexamination	380	0.00	0.00
Petition to Review Refusal to Grant Ex Parte Reexamination	25	0.00	0.00
Petition to Review Refusal to Grant Inter Partes Reexamination	9	0.00	0.00
Patent Owner's 37 CFR 1.530 Statement	105	0.00	0.00
Third Party Requester's 37 CFR 1.535 Reply	60	0.00	0.00
Amendment in Ex Parte or Inter Partes Reexamination	1,165	0.00	0.00
Third Party Requester's 37 CFR 1.947 Comments in Inter Partes Reexamination	300	0.00	0.00
Response to Final Rejection in Ex Parte Reexamination	320	0.00	0.00
Patent Owner's 37 CFR 1.951 Response in Inter Partes Reexamination	120	0.00	0.00
Third Party Requester's 37 CFR 1.951 Comments in Inter Partes Reexamination	95	0.00	0.00
Petition to Request Extension of Time in Ex Parte or Inter Partes Reexamination	475	200.00	95,000.00
Totals	5,124	\$5,568,400.00

There may also be postage costs and recordkeeping costs associated with this collection. The USPTO expects that approximately 50 percent of the responses for this collection will be submitted by mail and 50 percent will be submitted electronically. The USPTO estimates that the postage cost for a mailed submission will be from 44 cents to \$4.95, depending on the size of the submission, and that approximately 2,558 mailed submissions will be received per year, for a total postage cost of approximately \$8,565 per year.

When submitting the information in this collection to the USPTO electronically, the applicant is strongly urged to retain a copy of the acknowledgment receipt as evidence that the submission was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that approximately 2,566 responses per year will be submitted electronically, for a total of approximately 3 hours per year for printing this receipt. Using the paraprofessional rate of \$100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be approximately \$300 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees, postage costs, and recordkeeping costs is approximately \$5,577,265 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 4, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.

[FR Doc. E9-19027 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas at Austin, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 09-038. *Applicant:* University of Texas at Austin, Austin, TX 78758. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 74 FR 32890, July 9, 2009.

Docket Number: 09-039. *Applicant:* National Institutes of Health, Hamilton, MT 59840. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 74 FR 32890, July 9, 2009.

Docket Number: 09-040. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 74 FR 32890, July 9, 2009.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 4, 2009.

Gregory Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9-19087 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

National Renewable Energy Laboratory, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Comments: None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as these are intended to be used, that were being manufactured in the United States at the time of its order.

Docket Number: 09-032. *Applicant:* National Renewable Energy Laboratory, Golden, CO 80401. *Instrument:* MicroTime 200 Single Molecule Fluorescence Lifetime Imaging System. *Manufacturer:* PicoQuant GmbH, Germany. *Intended Use:* See notice at 74 FR 33207, July 10, 2009. *Reasons:* This instrument will be used in biomass characterization. The instrument will be capable of doing Fluorescence Lifetime Imaging, measuring Fluorescence Resonance Energy Transfer and Fluorescence Correlation Spectroscopy for single fluorescent molecules. No domestic sources make devices with similar capabilities.

Docket Number: 09-034. *Applicant:* University of Georgia, Athens, GA 30605. *Instrument:* Gasification Unit. *Manufacturer:* Termoquip Energia Alternative LTDA, Brazil. *Intended Use:* See notice at 74 FR 32207, July 10, 2009. *Reasons:* This instrument will be used to turn biomass into syngas, which is composed of hydrogen and carbon monoxide that can be catalytically upgraded to liquid fuel, chemicals and energy. No domestic sources make devices with similar capabilities.

Dated: August 4, 2009.

Gregory Campbell,

*Acting Director, Subsidies Enforcement
Office, Import Administration.*

[FR Doc. E9-19093 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-819]

Magnesium Metal From the Russian Federation: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 6, 2009, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. The review covers two manufacturers/exporters, PSC VSMPO-AVISMA Corporation (AVISMA) and Solikamsk Magnesium Works (SMW). The period of review (POR) is April 1, 2007, through March 31, 2008.

Based on our analysis of the comments received we have made no changes in the margin for AVISMA. Therefore, the final results do not differ from the preliminary results. The final margin for AVISMA is listed below in the section entitled "Final Results of the Review."

DATES: *Effective Date:* August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-3477 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part*, 74 FR 15435 (April 6, 2009) (*Preliminary Results*).

We invited interested parties to comment on the *Preliminary Results*. At the request of certain parties, we held a

public hearing on June 10, 2009. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy".

The scope of the order excludes (1) magnesium that is in liquid or molten form and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.¹

¹ This second exclusion for magnesium-based reagent mixtures is based on the exclusion for

The merchandise subject to the order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Rescission of Review in Part

On June 20, 2008, SMW submitted a letter indicating that it made no sales to the United States during the POR. We did not receive comments on SMW's submission. We confirmed SMW's claim of no shipments by reviewing U.S. Customs and Border Protection (CBP) documentation. See Memorandum from International Trade Compliance Analyst to the File dated March 24, 2009. Because we find that SMW had no shipments of subject merchandise during the POR, we are rescinding the administrative review with respect to SMW pursuant to 19 CFR 351.213(d)(3).

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review of the order on magnesium metal from the Russian Federation are addressed in the "Issues and Decision Memorandum" from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary, dated August 4, 2009 (Decision Memo), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memo are identical in content.

Use of Adverse Facts Available

For the final results, we continue to find that, by ending its participation in the review and requesting removal of its

reagent mixtures in the 2000-2001 investigations of magnesium from China, Israel, and Russia. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001), *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

business-proprietary information from the record, AVISMA did not act to the best of its ability to comply with our requests for information. Thus, we continue to find that the use of adverse facts available is warranted for AVISMA under sections 776 (a)(2) and (b) of the Act. See *Preliminary Results*, 74 FR at 15436–37. As we explained in the *Preliminary Results*, the rate of 43.58 percent we selected as the adverse facts available rate for AVISMA is the highest transaction-specific rate on the record of the proceeding that we are able to corroborate in accordance with section 776(c) of the Act. *Id.*; see also Decision Memo.

Final Results of the Review

We determine that a margin of 43.58 percent exists for AVISMA for the period April 1, 2007, through March 31, 2008.

Assessment Rates

Because we are relying on total adverse facts available to establish the dumping margin for AVISMA, we will instruct CBP to apply a dumping margin of 43.58 percent to all entries of subject merchandise during the POR that were produced and/or exported by AVISMA. We intend to issue liquidation instructions to CBP 15 days after the publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for AVISMA will be 43.58 percent; (2) for previously reviewed or investigated companies other than AVISMA, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate established in the LTFV investigation, which is 21.01 percent. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005). These

deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

- Selection of an Adverse Facts-Available Rate

[FR Doc. E9–19098 Filed 8–7–09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ17

Marine Mammals; File No. 14497

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that The Mirage Casino-Hotel, 3400 Las Vegas Blvd. South, Las Vegas, Nevada 89109 [David Blasko, Responsible Party] has been issued a permit to import two bottlenose dolphins (*Tursiops truncatus*) for public display.

ADDRESSES: The permit and related documents are 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT:

Jennifer Skidmore or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 27, 2009, notice was published in the *Federal Register* (74 FR 19068) that a request for a public display permit to import two male bottlenose dolphins from Dolphin Quest in Hamilton, HM FX, Bermuda to The Mirage Casino-Hotel in Las Vegas, NV, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: August 4, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19085 Filed 8–7–09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ88

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene the SEDAR Red Snapper Update Workshop (SEDAR).

DATES: The meeting will convene at 1 p.m. on Monday, August 24, 2009 and conclude no later than 1 p.m. on Friday, August 28, 2009.

ADDRESSES: The meeting will be held at the NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamic Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the SEDAR Red Snapper Update Workshop (SEDAR) to conduct an update assessment of the SEDAR 7 red snapper benchmark stock assessment. An update assessment is a single workshop that utilizes the assessment models and input parameters from the previous full SEDAR benchmark assessment, with minor modifications if any, and updated data streams to update the results of the previous full assessment. The previous SEDAR 7 red snapper benchmark assessment was completed in 2004 with supplemental analyses in 2005. That assessment concluded that, as of 2003 (the final year of available catch data), the red snapper stock was overfished and was undergoing overfishing. In addition to updating the data streams previously used, the update assessment workshop will include a discussion on age distribution, growth and density dependent mortality of juvenile red snapper, and composition and changes of red snapper in shrimp trawl bycatch. The workshop will also include a review of the data inputs with respect to life history, indices of abundance, commercial and recreational fisheries statistics, and fishery independent data.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348-1630.

Although other non-emergency issues not on the agendas may come before the SEDAR for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SEDAR will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's

intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: August 5, 2009.

William D. Chappell,

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

[FR Doc. E9-19043 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-948]

Certain Steel Grating from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-3964 and (202) 482-0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigation of certain steel grating from the People's Republic of China. *See Certain Steel Grating From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 30278 (June 25, 2009). Currently, the preliminary determination is due no later than August 22, 2009.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which

the administering authority initiated the investigation if, among other reasons, the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, the petitioner made a timely request on July 22, 2009, requesting a postponement until 130 days from the initiation date. See 19 CFR 351.205(e) and the petitioner's July 22, 2009, letter requesting postponement of the preliminary determination. Therefore, pursuant to the discretion afforded the Department under 703(c)(1)(A) of the Act and because the Department does not find any compelling reason to deny the request, we are fully extending the due date for the preliminary determination. Therefore, the deadline for the completion of the preliminary determination is now October 26, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: August 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-19086 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-849]

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is currently conducting the 2007/2008 administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate ("CTL Plate") from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2007, through October 31, 2008. We have preliminarily determined that Hunan Valin Xiangtan Iron & Steel Co. Ltd. ("Valin Xiangtan") did not make sales to the United States of the subject merchandise at prices below normal value. Furthermore, we are preliminarily rescinding the review with respect to Anshan Iron & Steel Group (AISCO/Anshan International/Sincerely Asia Ltd.) ("Anshan"), Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp., Shanghai Baosteel Group Corporation and Baoshan Iron and Steel

Co., Ltd., Shanghai Pudong Steel & Iron Co.) (“Baoshan”), and Baosteel Group. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise from the POR, for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results 45 days after the publication of this notice. See “Preliminary Results of Review” section, below. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Demitrios Kalogeropoulos and Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2623 and (202) 482-4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from two domestic interested parties, Nucor Corporation (“Nucor”) and ArcelorMittal USA, Inc. (“ArcelorMittal”), in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on CTL Plate from the PRC for four companies: Anshan, Baoshan, Baosteel Group, and Valin Xiangtan (collectively, “Respondents”). On December 24, 2008, the Department published a notice of initiation of an antidumping duty administrative review (“AR”) on CTL Plate from the PRC, in which it initiated a review of these Respondents. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008) (“Initiation Notice”).

On January 9, 2009, Valin Xiangtan reported that it had no exports or sales of subject merchandise to the United States during the POR. On January 12, 2009, Baoshan and Baosteel Group certified that they had no sales of subject merchandise during the POR. On February 2, 2009, Anshan certified that it did not have any exports, sales, or entries of subject merchandise during the POR. On January 22, 2009, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (“APO”) to all interested parties having an APO. On

March 18, 2009, ArcelorMittal withdrew its review request for Anshan, Baoshan, and Baosteel Group. On April 9, 2009, the Department rescinded the November 1, 2006, through October 31, 2007, (“2006–2007 POR”) new shipper review (“NSR CTL Plate”) of Valin Xiangtan pursuant to 351.214(j)(1) of the Department’s regulations, stating that we would review Valin Xiangtan’s entry in the current AR, because while Valin Xiangtan’s sale was covered by the new shipper review, the entry fell within the POR of the instant AR. See *Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review*, 74 FR 15930 (April 8, 2009) (“NSR Rescission”). On April 24, 2009, the Department provided all parties with the opportunity to transfer certain information from the rescinded 2006–2007 NSR CTL Plate to the instant AR. On May 6, 2009, Valin Xiangtan, Nucor, and IPSCO Steel Inc., transferred certain documents from the NSR CTL Plate to the AR. On May 7, 2009, the Department issued a Sections A and D supplemental questionnaire to Valin Xiangtan. On May 15, 2009, Nucor and Valin Xiangtan submitted new factual information. On May 21, 2009, we requested comments on surrogate country selection. On May 22, 2009, Nucor requested that the Department review Valin Xiangtan’s entry using information contemporaneous with the current AR. On May 26, 2009, Valin Xiangtan provided rebuttal comments to Nucor’s May 15, 2009 new factual information submission. On June 4, 2009, Valin Xiangtan submitted responses to the Department’s Sections A and D supplemental questionnaire regarding its sales during the 2006–2007 POR. On July 1, 2009, the Department issued a separate rate supplemental questionnaire to Valin Xiangtan. On July 13, 2009, Valin Xiangtan submitted its response to the separate rate supplemental questionnaire.

Partial Rescission of 2007/2008 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. ArcelorMittal’s request was submitted within the 90-day period, and thus, is timely. Because ArcelorMittal’s withdrawal of requests for review is timely and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with

respect to Anshan, Baoshan, and Baosteel Group.

Collapsing of Affiliated Producers

After reviewing the record, we have determined not to collapse Valin Xiangtan with any of its affiliates. We have determined that record evidence does not support a finding that any of these affiliates are producers of subject merchandise.¹ Further, we have determined that two of Valin Xiangtan’s affiliates which do produce steel do not own a rolling mill.² Additionally, we find that VX’s affiliates produce steel products, such as wire rod, with production processes that are dissimilar to Valin Xiangtan’s production of the subject merchandise. Thus, it would require substantial retooling to build a rolling mill capable of producing subject merchandise. Accordingly, the collapsing criteria under 19 CFR 351.401(f)(1) are not satisfied. In determining whether there is a significant potential for manipulation, as contemplated by 19 CFR 351.401(f)(2), the Department considers the totality of the circumstances of the situation and may place more reliance on some factors than others. In the instant case, because Valin Xiangtan’s affiliates do not produce subject merchandise and do not have the capability to produce subject merchandise without a substantial retooling, the totality of the circumstances here shows that there is not a significant potential for the manipulation of price or production. Therefore, for the preliminary results, we have not collapsed Valin Xiangtan with its affiliates.

Period of Review

The POR is November 1, 2007, through October 31, 2008. Valin had only one entry during this POR, and the sale associated with that entry was made during the period November 1, 2006, through October 31, 2007. Accordingly, after rescinding the NSR covering the 2006–2007 period,³ we requested that interested parties transfer all information relevant to that sale from the record of the 2006–2007 NSR to the record of this 2007–2008 AR. Accordingly, when we issued supplemental questionnaires in this AR, we requested information with respect to the 2006–2007 period, to reflect the data already on the record with respect to the sale under review in the

¹ See Valin Xiangtan’s supplemental submission dated June 9, 2009, at Exhibits 2.1 and 2.2. See also Valin Xiangtan’s October 17, 2008, supplemental response at 3-9.

² See *id.* at 3 and 8.

³ See *NSR Rescission*.

administrative review. Nucor, in its May 22, 2009 submission, argued that the data transferred from the 2006–2007 NSR CTL Plate was based on older versions of the Department’s questionnaire, in response to a NSR questionnaire, as opposed to an AR questionnaire, and based on a different POR. With respect to Section A of the Department’s questionnaire, Nucor was concerned that since Valin Xiangtan does not already have separate rate status, the Department should not use the prior information to determine Valin Xiangtan’s separate rate eligibility. In addition, for Section C of the Department’s questionnaire, Nucor argued that since Valin Xiangtan had no further shipments to the United States during the current POR, it only need update its answers where the AR questionnaire differs from the NSR questionnaire. With respect to Section D, Nucor argued that the Department has few exceptions in its practice where a respondent may report factors of production (“FOP”) data from a prior period, and avers that the Department has historically required that respondents report market–economy inputs and by–product offsets for the current POR.

With respect to Nucor’s argument that Valin Xiangtan does not currently have a separate rate and the information from the 2006–2007 POR is insufficient for the Department to make a separate rate determination, the Department issued a supplemental questionnaire specific to Valin Xiangtan’s separate rate eligibility during the current POR.⁴ With respect to Section C information, because Valin Xiangtan certified that it had no subsequent shipments during the current POR, and since we find there were no material differences between the NSR and AR questionnaire, we determined that it was not necessary for Valin Xiangtan to submit revised Section C information for the current POR.

With respect to Nucor’s argument that the Department requires that respondents report current FOP data, including market–economy inputs, and by–product offsets, we note that the Department has in previous cases allowed a respondent to report prior period cost data, under similar circumstances. See *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007) (“*Hot-Rolled Carbon Steel Flat Products from Romania*”), and accompanying Issues

and Decision Memorandum at Comment 2. See also *Stainless Steel Wire Rods from India: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind Antidumping Duty Administrative Review in Part*, 72 FR 52079, 52081 (September 12, 2007) unchanged in *Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review and Notice of Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 68123 (December 4, 2007) (“*Wire Rods from India*”).

In *Hot-Rolled Carbon Steel Flat Products from Romania*, the respondent had sales during one POR that did not enter the United States until the POR of the next segment, and the Department found it appropriate to use cost data from the POR during which the sale occurred. Similarly, in *Wire Rods from India*, the Department used prior POR cost data because the only entry of subject merchandise during the POR occurred early in the POR and the merchandise was sold and shipped during the prior POR. We find that the case cited by Nucor, *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China* (“*Diamond Sawblades*”), 70 FR 77121 (December 29, 2005), is factually distinguishable from the instant case, *Wire Rods from India*, and *Hot-Rolled Carbon Steel Flat Products from Romania*. In *Diamond Sawblades*, the respondent did not have period of investigation (“POI”) production of all types of merchandise for which it had sales and the Department used pre–POI FOP data valued with POI surrogate values (“SVs”). Here, Valin Xiangtan did not have any sales of subject merchandise during the current AR. In the instant case, we find that because Valin Xiangtan’s sale occurred during the 2006–2007 POR, but the entry occurred at the beginning of the current POR, and Valin Xiangtan had no subsequent sales to the United States, consistent with *Hot-Rolled Carbon Steel Flat Products from Romania* and *Wire Rods from India*, we are using FOP data from the 2006–2007 POR, valued with SVs from the 2006–2007 POR.

Scope of the Order

The products covered by the order include hot–rolled carbon steel universal mill plates (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding

150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in the order are flat–rolled products of non–rectangular cross–section where such cross–section is achieved subsequent to the rolling process (i.e., products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Excluded from the order is grade X–70 plate. Also excluded from the order is certain carbon cut–to–length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM, and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Non–Market–Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (“NME”) country.⁵ In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (“the Act”), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the 2004/2005*

⁵ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009).

⁴ See Valin Xiangtan’s July 13, 2009, supplemental questionnaire response.

Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006). No party to this proceeding has contested such treatment. Accordingly, we calculated normal value (“NV”) in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer’s FOPs, valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. For a detailed discussion of the SVs used in this proceeding, see the “Factor Valuations” section below and the Department’s memorandum to the file entitled, “New Shipper Review of Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Factor Valuations,” dated concurrently with this notice (“Factor Valuation Memorandum”), dated August 3, 2009.

Because we are valuing FOPs from the prior period (11/1/06–10/31/07) (see “Period of Review” section above), we asked interested parties to submit surrogate country comments based on the list of the five countries determined to be economically comparable to the PRC during the 2006–2007 POR. See the Department’s Letter to Interested Parties entitled “2007–2008 Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Surrogate Country Selection,” dated May 21, 2009. While Valin Xiangtan submitted comments on February 6, 2008 (transferred to the record of the current AR), offering evidence of significant CTL steel production in Indonesia, Thailand, and India, no new comments on the selection of a surrogate country were submitted by an interested party in response to the Department’s May 21, 2009, request for comments. As we determined for the 2006–2007 POR, we find that India is at a level of economic development comparable to that of the PRC; is a significant producer of comparable merchandise (i.e., CTL Steel Plate); and has publicly available and

reliable data.⁶ Accordingly, we are continuing to select India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV for these preliminary results because it meets the Department’s criteria for surrogate country selection.⁷

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an antidumping administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results.⁸

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”). However, if the

⁶ See the Department’s Memorandum to the File dated August 3, 2009, attaching the Department’s memorandum from the 2006–2007 POR entitled, “New Shipper Review of the Antidumping Duty Order of Cut-To-Length Steel Plate from the People’s Republic of China: Selection of a Surrogate Country,” dated February 11, 2008 (“Surrogate Country Memorandum”).

⁷ See Surrogate Country Memorandum.

⁸ In accordance with 19 CFR 351.301(c)(1), for the final determination of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by Valin Xiangtan supports a preliminary finding of absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with Valin Xiangtan’s business⁹ and export licenses¹⁰; (2) applicable legislative enactments decentralizing control of the company¹¹; and (3) formal measures by the government decentralizing control of the company¹². However, notwithstanding our preliminary finding that there is an absence of restrictive stipulations associated with Valin Xiangtan’s export license, the Department is opening the record for additional factual information regarding the implementation of the export license mechanism. Parties will have 10 days from the publication of this notice to provide such information. Rebuttal information will be due 5 days later.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes

⁹ See Valin Xiangtan’s supplemental submission dated July 13, 2009 at Exhibit 1.

¹⁰ See Valin Xiangtan’s supplemental submission dated June 9, 2009 at page 1 and Exhibit 1.

¹¹ See, e.g., Company Law of the People’s Republic of China, at Valin Xiangtan’s supplemental submission dated April 28, 2008 at Exhibit A-23.

¹² See Id.

independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning them separate rates. We determine for Valin Xiangtan that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Valin Xiangtan sets its own export prices independent of the government and without the approval of a government authority¹³; (2) Valin Xiangtan retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses¹⁴; (3) Valin Xiangtan has the authority to negotiate and sign contracts and other agreements¹⁵; and (4) Valin Xiangtan has autonomy from the government regarding the selection of management.¹⁶ See, e.g., Valin Xiangtan's July 13, 2009, supplemental response.

The evidence placed on the record of this review by Valin Xiangtan demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Valin Xiangtan a separate rate.

Fair Value Comparisons

To determine whether Valin Xiangtan's sales of the subject merchandise to the United States were made at prices below normal value, we compared its U.S. sales prices to normal values, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

For Valin Xiangtan, we based U.S. price on export price ("EP") in accordance with section 772(a) of the

Act, because the first sale to an unaffiliated purchaser was made prior to importation, and reliance upon constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

Normal Value

We compared NV to individual EP transactions in accordance with section 777A(d)(2) of the Act. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by the respondent for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also *Shakeproof Assembly Components Div of Ill v. United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

With regard to both the Indian import-based surrogate values and the market economy input values, the Department has disregarded prices that the Department has reason to believe or suspect may be subsidized. The Department has reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and,

therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.¹⁷ The Department is also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; see also *Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 n.6 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) ("Coated Free Sheet"). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) ("PRC PET Film"). Therefore, the Department has not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, the Department disregarded prices from NME countries. Finally, we also excluded from the average value imports that were labeled as originating from an "unspecified" country, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See *id.*

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Valin Xiangtan for the 2006–2007 POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian SVs, except where noted below. In selecting the SVs, we considered the quality, specificity, and

¹⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in the final results); *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

¹³ See Valin Xiangtan's supplemental submission dated April 28, 2008, at Exhibits A-24, and A-25.

¹⁴ See Valin Xiangtan's Section A response at 15.

¹⁵ See Valin Xiangtan's supplemental submission dated April 28, 2008, at Exhibits A-24, and A-25.

¹⁶ See Valin Xiangtan's Section A response at 13. See also Valin Xiangtan's supplemental submission dated April 28, 2008, at 1 and Exhibit A-15.

contemporaneity of the data.¹⁸ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, where appropriate we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). In those instances where we could not obtain publicly available information contemporaneous with the 2006–2007 POR with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (“WPI”), as published in the *International Financial Statistics* of the International Monetary Fund. For a detailed description of all SVs used for Valin Xiangtan, see the Factor Valuation Memorandum.

Except where discussed below, we valued raw material inputs using November 2006 through October 2007, weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and compiled by the World Trade Atlas (“WTA”), available at <http://www.gtis.com/wta.htm>. The Indian WTA import data is reported in rupees and dollars and is contemporaneous with the 2006–2007 POR.¹⁹ Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. See <http://www.ia.ita.doc.gov/exchange/index.html>.

Consistent with the Department’s valuation of gas inputs in *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008) (“*Pure Magnesium*”), we valued Valin Xiangtan’s gas inputs using WTA import data of natural gas from Thailand. Additionally, we valued ferric mill/slag using Indonesian import data from WTA. For more details, see Factor Valuation Memorandum.

¹⁸ See, e.g., *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

¹⁹ See Factor Valuation Memorandum at Attachments 1 and 3.

Valin Xiangtan reported that certain of its reported raw material inputs were sourced from an ME country and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.²⁰ Valin Xiangtan’s reported information demonstrates that it has both significant and insignificant quantities of certain raw materials purchased from ME suppliers. Where we found ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,²¹ we used the actual purchases of these inputs to value the inputs. Accordingly, we valued Valin Xiangtan’s inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period.²² Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight averaged the ME input’s purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.²³ Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, see the Department’s Memorandum to the File entitled, “2007–2008 Administrative Review of Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Valin Xiangtan Preliminary Analysis Memorandum,” dated August 3, 2009.

Where we could not obtain publicly available information contemporaneous with the 2006–2007 POR with which to value factors, where applicable we adjusted the SVs for inflation using the

²⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

²¹ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) (“*Antidumping Methodologies: Market Economy Inputs*”).

²² See Valin Xiangtan’s May 28, 2008, supplemental D submission at Exhibit D-8.

²³ See *Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61718.

WPI for India. See Factor Valuation Memorandum.

We used Indian transport information to value the inland truck, rail, and waterway freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from the following website: www.infobanc.com/logistics/logtruck.htm. The logistics section of this source contains inland truck freight rates from four major points of origin to 25 destinations in India. The Department obtained inland truck freight rates updated through September 2008 from each point of origin to each destination and averaged the data accordingly. Since this value is not contemporaneous with the 2006–2007 POR, we deflated the rate using the WPI. See Factor Valuation Memorandum. The Department determined the best available information for valuing rail freight to be from the Indian Ministry of Railways (<http://www.indianrailways.gov.in>). To value waterway freight, we used pricing information from a study on inland water transportation in India placed on the record by Valin Xiangtan. For data that were not contemporaneous with the 2006–2007 POR, we adjusted the rates for inflation using WPI, where applicable.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. See Factor Valuation Memorandum.

The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the “inside industrial areas” usage category and 193 for the “outside industrial areas” usage category. Because the value was not contemporaneous with the 2006–2007 POR, we adjusted the rate for inflation. See Factor Valuation Memorandum.

For direct and indirect labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration’s home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, available at <http://www.trade.gov/ia/>.

Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. For further details on the labor calculation, see Factor Valuation Memorandum.

Interested parties submitted financial statements for the 2007–2008 fiscal year covering the period of April 1, 2007, through March 31, 2008, from Essar Steel Limited (“Essar”), Tata Steel Limited’s (“Tata”), Steel Authority of India Limited (“SAIL”), and Ispat Industries Limited (“Ispat”). For the preliminary results, we find Essar’s 2007–2008 fiscal year financial statements to be the best available information to calculate surrogate financial ratios because they are complete, legible, publicly-available, contemporaneous with the 2006–2007 POR, from a producer of identical merchandise, and at a similar level of integration as Valin Xiangtan.

It is the Department’s practice to disregard financial statements where we have reason to suspect that the company has received actionable subsidies and where there is other usable data on the record.²⁴ All four companies identified above received subsidies and there are no other financial statements on the record of this review. We determine that Essar’s financial statements are the best available information on the record for the reasons discussed below. *See, e.g., PRC PET Film* accompanying Issues and Decision Memorandum at Comment 3. Specifically, we have determined that Essar’s 2007–2008 fiscal year financial statements are contemporaneous with the 2006–2007 POR because they cover seven months of the 2006–2007 POR. Additionally, we have determined that Essar is at the same level of integration as Valin Xiangtan.

In contrast, Tata and SAIL are more integrated than Valin Xiangtan because they are Indian steel companies that mine their own inputs, such as coal and iron ore. According to pages 6 and 132 of Tata’s 2007–2008 fiscal year financial statements, Tata is 100 percent self-sufficient in its current requirement of iron ore for its Jamshedpur operations and 60 percent of its coal requirement from its own mines. With respect to SAIL, page 12 of SAIL’s 2007–2008

fiscal year financial statements indicate that SAIL leases its mining land and that it owns mines for dolomite, limestone, and iron-ore. We find the level of vertical integration to be an important distinction among the four steel companies because of the effect that mining operations have on surrogate financial ratios. *See, e.g., Electrolytic Manganese Dioxide From the People’s Republic of China: Final Determination of Sales at Less than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issue and Decision Memorandum at Comment 3.

Finally, although both Ispat and Essar are at the same level of integration as Valin Xiangtan and have similar production processes, we have determined to use Essar’s financial statements because Essar is a producer of identical rather than comparable merchandise. *See, e.g., Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum at Comment 8. Therefore, for factory overhead, selling, general, and administrative expenses, and profit, consistent with 19 CFR 351.408(c)(4), we used the public information from Essar’s 2007–2008 fiscal year financial statements. For a full discussion of the calculation of these ratios, *see* Factor Valuation Memorandum.

Valin Xiangtan has requested offsets for certain byproducts. When the Department considers the appropriateness of granting a by-product offset, the Department’s practice is to determine whether the by-product quantity is clearly produced from the quantity of FOPs reported and/or whether any income for the byproducts was realized by the company during the POR. *See, e.g., Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008), and accompanying Issues and Decision Memorandum at Comment 6. We find that Valin Xiangtan has appropriately reported its byproducts, and therefore, we have granted Valin Xiangtan’s offsets for the quantities of these byproducts valued using Indian WTA data. Valin Xiangtan has represented that certain inputs are self-produced in the production of subject merchandise, and requests that the Department not value these inputs in calculating normal value, because the Department is already valuing the raw materials to product these inputs. Consistent with Department practice, we find it

appropriate not to value these self-produced inputs when reintroduced into the production of subject merchandise, because we have valued the raw materials to produce these inputs. *See, e.g., Coated Free Sheet*, and accompanying Issues and Decision Memorandum at Comment 8. *See also Laizhou Auto Brake Equipment Co. v. United States*, 580 F. Supp. 2d 1381, (CIT, November 5, 2008) affirming Final Results of Redetermination Pursuant to Court Remand (at 4) (“We note that the Department does not value recycled scrap reintroduced into the same production process that produced the scrap, because the reintroduction of recycled scrap into the production process represents the re-use of purchased raw materials for which the Department has already accounted.”)

Valin Xiangtan has certain materials in its production process that it collects and reintroduces (recycles). Valin Xiangtan requested that the Department not value these recycled inputs, when these inputs are recycled from materials that the Department has already valued in its normal value calculation. Because Valin Xiangtan has demonstrated the quantities of these materials that were recycled, and has demonstrated that the Department is already valuing them as initial inputs in the production of subject merchandise, we are not valuing them again when these recycled inputs are reintroduced into the production process. *See, e.g., Coated Free Sheet* at Comment 8.

We recently stated in *Silicon Metal from the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 32885–02 (July 9, 2009) that the Department was changing its practice of granting byproduct offsets for NME cases. The Department will now grant byproduct offsets based on total production rather than using the “lower of” the quantity of byproduct produced or sold/consumed in each POR. As this change in Department practice occurred shortly before these preliminary results, we will give Valin Xiangtan the opportunity to revise its reported byproduct offset claim for the final results. Moreover, the Department notes that, while Valin Xiangtan has requested that we (1) grant byproduct offsets for 6.4 Steel Scrap, 6.14 Steel Scrap, and 6.15 Steel Scrap and (2) not value 6.3 Iron Powder and 6.13 Steel Scrap because these are reintroduced inputs for which the Department has already valued the raw materials, Valin Xiangtan did not report these fields in its most recently submitted FOP database. Therefore, we will provide

²⁴ *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (“Tires”), and accompanying Issues and Decision Memorandum at Comment 17A. *See also Pure Magnesium*, and accompanying Issues and Decision Memorandum at Comment 6.

Valin Xiangtan with the opportunity to resubmit its FOP database to correct its data with respect to these items after the preliminary results.

Currency Conversion

Where applicable, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists for the period November 1, 2007, through October 31, 2008:

CERTAIN CUT-TO-LENGTH CARBON STEEL PLATE FROM THE PRC

Exporter	Ad Valorem Margin
Hunan Valin Xiangtan Iron & Steel Co. Ltd.	0.00 percent

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(c).

In order to allow parties time to comment on the export license scheme discussed above and to submit publicly-available information to value FOPs, case briefs from interested parties may be submitted not later than 45 days after the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a

statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (i.e., less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the

publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Valin Xiangtan, the cash deposit rate will be that established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 128.59 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: August 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-19096 Filed 8-7-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-821]

Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of

the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand. The review covers two exporters/producers. The period of review is August 1, 2007, through July 31, 2008.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 10, 2009.

FOR FURTHER INFORMATION CONTACT:

Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3174 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department published in the **Federal Register** the antidumping duty order on PRCBs from Thailand. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 48204 (August 9, 2004). On September 30, 2008, we published a notice of initiation of an administrative review of seven companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795, 56796 (September 30, 2008).¹ On January 7, 2009, we rescinded the administrative review with respect to C.P. Packaging Co., Ltd., C.P. Poly-Industry Co., Ltd., Naraiapak Co., Ltd., Nari Packaging (Thailand) Ltd., and Poly Plast (Thailand) Co., Ltd. See *Polyethylene Retail Carrier Bags from Thailand: Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 682 (January 7, 2009). Since initiation of the review, we extended the due date for completion of these preliminary results. See *Polyethylene Retail Carrier Bags From Malaysia, Thailand, and the People's Republic of China: Extension of Time Limit for Preliminary Results of*

¹ We stated that the review covers the following companies: C.P. Packaging Co., Ltd., C.P. Poly-Industry Co., Ltd., Master Packaging Co., Ltd. (Master Packaging), Naraiapak Co., Ltd., Nari Packaging (Thailand) Ltd., Poly Plast (Thailand) Ltd., and Thai Plastic Bags Industries Co., Ltd. *Id.* The Department has determined previously that Thai Plastic Bags Industries Co., Ltd., APEC Film Ltd., and Winner's Pack Co., Ltd., comprise the Thai Plastic Bags Group (TPBG). See *Notice of Final Determination of Sales at Less than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122, 34123 (June 18, 2004).

Antidumping Duty Administrative Reviews, 74 FR 17633 (April 16, 2009), and *Polyethylene Retail Carrier Bags from Thailand: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32885 (July 2, 2009).

The period of review (POR) is August 1, 2007, through July 31, 2008. We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Duty Absorption

On October 30, 2008, the petitioners² requested that the Department

² The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

determine whether antidumping duties had been absorbed during the POR by the respondents. Section 751(a)(4) of the Act provides for the Department to determine, if requested, during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. With respect to TPBG, it did not sell subject merchandise in the United States through an affiliated importer. Therefore, it is not appropriate to make a duty-absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. See *Agro Dutch Industries Ltd. v. United States*, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

As discussed in the "Use of Adverse Facts Available" section of this notice below, Master Packaging did not respond to our antidumping questionnaire. Because Master Packaging is the sole respondent with possible sales to unaffiliated customers in the United States through an affiliated importer and because this review was initiated four years after the publication of the order, we have made a duty-absorption determination concerning Master Packaging in this segment of the proceeding in accordance with section 751(a)(4) of the Act.

In determining whether the antidumping duties have been absorbed by the respondent during the POR, we presume the duties will be absorbed for those sales that have been made at less than normal value. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See, e.g., *Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39735, 39737 (July 11, 2005).

On May 21, 2009, the Department gave Master Packaging an opportunity to submit evidence demonstrating that its U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. Master Packaging did not provide any such evidence. Because Master Packaging did not rebut the duty-absorption presumption with evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that

antidumping duties have been absorbed by Master Packaging on all U.S. sales.

Verification

As provided in section 782(i) of the Act, we have verified sales and cost information provided by TPBG using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report, dated July 9, 2009, which is on file in the Central Records Unit, room 1117 of the main Commerce building.

Use of Adverse Facts Available

Section 776(a) of the Act provides that, if necessary information is not available on the record or if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information by the deadlines established, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (3) significantly impedes the proceeding, or (4) provides such information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department, provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall provide that person, to the extent practicable, with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. The purpose of the adverse call, as explained in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), is "to ensure that the party does not obtain a more favorable result by failing to cooperate "to the best of its ability" than if it had cooperated fully." See SAA at 870. Further, as explained in the SAA, in employing adverse inferences the Department will consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*

On November 25, 2008, we sent a questionnaire to Master Packaging seeking information related to Master Packaging's corporate structure and its production and sales of PRCBs, information which is necessary for us to complete the administrative review. Although we have evidence that Master Packaging received the questionnaire, Master Packaging did not respond to the questionnaire.

Because Master Packaging has failed to provide the information we requested and thus has significantly impeded this proceeding, we must use facts available to establish its dumping margin. See section 776(a) of the Act. Furthermore, because Master Packaging could have provided correct and verifiable data about its corporate structure, production, and sales but did not do so, we determine that Master Packaging has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted with respect to Master Packaging. See section 776(b) of the Act and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

As adverse facts available (AFA), we have preliminarily assigned Master Packaging a dumping margin of 122.88 percent, the highest rate found in the less-than-fair-value investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122, 34125 (June 18, 2004) (*Final LTFV*). We applied this rate in the less-than-fair-value investigation as well as in each successive administrative review. See *Final LTFV*, 69 FR at 34123–34124, *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982,

1983 (January 17, 2007), *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007) (*2005–2006 Final Results*), and *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511, 2512 (January 15, 2009) (*2006–2007 Final Results*). In *2006–2007 Final Results*, we applied this rate to Master Packaging. *Id.*

When a respondent is not cooperative, such as Master Packaging in this case, the Department has the discretion to presume that the highest prior margin reflects the current margins. See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)). If this were not the case, the party would have produced current information showing the margin to be less. See *Rhone Poulenc*, 899 F.2d at 1190. Further, by using the highest prior antidumping duty margin, we offer the assurance that the exporter will not benefit from refusing to provide information. Further, when possible, we apply an antidumping duty rate that bears some relationship to past practices by this company, as it is part of the industry in question. See *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1346 (CIT 2005) (citing *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997)).

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. As clarified in the SAA, "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information. See *2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 1. As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information. See SAA at 869. Further, independent sources used to

corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See 19 CFR 351.308(d) and SAA at 870, 1994 U.S.C.C.A.N. at 4199.

With respect to the reliability aspect of corroboration, the Department found the rate of 122.88 percent to be reliable in the investigation. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 3552, 3553–3554 (January 26, 2004) (unchanged in *Final LTFV*). There, the Department stated that the rate was calculated from source documents included with the petition, namely, a price quotation for various sizes of PRCBs commonly produced in Thailand, import statistics, and affidavits from company officials, all from a different Thai producer of subject merchandise. Because the information is supported by source documents, we preliminarily determine that the information is still reliable. See Memorandum to the File entitled “Polyethylene Retail Carrier Bags from Thailand: Inclusion of Memorandum, dated January 16, 2004, to the record of this administrative review” dated August 3, 2009 (AFA Memorandum).

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. In the investigation, the Department determined that, because the price quote reflected commercial practices of the particular industry during the period of investigation, the information was relevant to mandatory respondents which refused to participate in the investigation. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 FR at 3553–3554 and AFA Memorandum. No party contested the application of that rate in the investigation. *Id.* Furthermore, the rate of 122.88 percent is the current rate for Master Packaging and has been applied to other producers/exporters since the less-than-fair-value investigation. Therefore, we find this rate continues to have relevance.

Export Price

For the price to the United States for TPBG, we used export price (EP) as defined in section 772(a) of the Act. We calculated EP based on the packed

delivery terms Free on Board, Cost, Insurance, and Freight, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions, as appropriate, for discounts and rebates. See section 772(d) of the Act. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. We made adjustments to U.S. sales information to reflect minor corrections and findings as the result of verification. For a detailed explanation of these adjustments, see Memorandum entitled “Polyethylene Retail Carrier Bags from Thailand Thai Plastic Bags Industries Group (TPBG), Preliminary Results Analysis Memorandum 8/1/07 – 7/31/08,” dated August 3, 2009 (Analysis Memo).

Comparison-Market Sales

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by TPBG in Thailand was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. TPBG’s quantity of sales in Thailand was greater than five percent of its quantity of sales to the U.S. market. See section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in Thailand in the usual commercial quantities and in the ordinary course of trade and at the same level of trade as the U.S. sales. We made adjustments to the home-market sales information to reflect minor corrections and findings at verification. For a detailed explanation of these adjustments, see Analysis Memo.

Sales Outside the Ordinary Course of Trade

The Department has determined preliminarily that certain home-market sales are outside the ordinary course of trade as defined by section 771(15) of the Act. Specifically, we have determined that the conditions and practices surrounding these sales are not normal in the trade under consideration. For a detailed discussion of the facts and circumstances concerning these sales, see Analysis Memo. Accordingly, pursuant to section 773(a)(1)(B)(i), we have excluded these sales from our calculation of normal value.

Cost of Production

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of TPBG in the most recently completed administrative review of this company. See *2005–2006 Final Results*, 72 FR at 64581. Therefore, we have reasonable grounds to believe or suspect that TPBG’s sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of TPBG’s sales in the comparison market in this review.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information TPBG provided in its questionnaire responses.

We have determined preliminarily that TPBG’s allocation of its costs results in products with few or minor physical differences having significantly different costs of manufacturing assigned to them. While TPBG asserts that its focus is on export sales, it is unreasonable to attribute the starts and stoppages resulting from this focus, and associated inefficiencies, mainly to the home-market products. By TPBG’s own admission, the cost differences are not due to production activities or requirements of the domestic and U.S. products. Accordingly, in accordance with our practice, for these preliminary results of review we have revised TPBG’s reported direct labor, variable overhead, and fixed overhead to eliminate cost differences attributable to factors other than physical characteristics. See *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1. See also *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329 (May 6, 1999) at Comment 22, and *Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil*, 60 FR 31960 (June 19, 1995), at Comment 2. For a detailed

explanation of these adjustments, see Analysis Memo.

TPBG provided information in its questionnaire responses showing that it purchased resin inputs from an affiliated party. We consider resin to be a major input and therefore have applied the major-input rule to value such purchases. Accordingly, pursuant to section 773(f)(3) of the Act and 19 CFR 351.407(b), we adjusted TPBG's resin costs.

After calculating the COP in accordance with section 773(b)(1) of the Act, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported comparison-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of TPBG's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of TPBG's sales of a given product during the POR were made at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Model-Matching Methodology

In making our comparisons of U.S. sales with sales of the foreign like product in the home market, we used the following methodology. If an identical comparison-market model with identical physical characteristics as listed below was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the COP test of the identical product during a contemporaneous month. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on physical characteristics reported by

the respondent in the following order of importance: (1) quality, (2) bag type, (3) length, (4) width, (5) gusset, (6) thickness, (7) percentage of high-density polyethylene resin, (8) percentage of low-density polyethylene resin, (9) percentage of low linear-density polyethylene resin, (10) percentage of color concentrate, (11) percentage of ink coverage, (12) number of ink colors, and (13) number of sides printed.

Normal Value

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices. See section 773(f)(2) of the Act and 19 CFR 351.403(c). Where affiliated-party sales were reported, we excluded from our analysis sales to affiliated customers for consumption in the comparison market that we determined not to be at arm's-length prices. To test whether these sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice). We included those sales to affiliated parties that were made at arm's-length prices in our calculations of normal value.

Comparison-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, adjusted as described in the "Cost of Production" section above, and for differences in circumstances of sale in accordance with section

773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from and adding U.S. direct selling expenses to normal value. We also made adjustments, if applicable, for comparison-market indirect selling expenses to offset U.S. commissions in EP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value at the same level of trade as the EP sales. See the "Level of Trade" section below.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no contemporaneous comparable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, adjusted as described in the "Cost of Production" section above, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by TPBG in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences and level-of-trade differences. For comparisons to EP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from and adding U.S. direct selling expenses to constructed value. We also made adjustments, when applicable, for comparison-market indirect selling expenses to offset U.S. commissions in EP comparisons. We calculated constructed value at the same level of trade as the EP. For a detailed explanation of the calculations, as well as adjustments to reflect minor verification findings, see Analysis Memo.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. The normal-value level of trade is that of the starting-price sales in the comparison market. When normal value is based on constructed value, the level of trade is

that of the sales from which we derived SG&A and profit.

To determine whether comparison-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. This analysis revealed that there were not any significant differences in selling functions between different channels of distribution or customer type in either its comparison or U.S. markets. Therefore, we determined that TPBG made all comparison-market sales at one level of trade. Moreover, we determined that all comparison-market sales by TPBG were made at the same level of trade as its EP sales. For a more detailed discussion, see Analysis Memo.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margins on PRCBs from Thailand exist for the period August 1, 2007, through July 31, 2008:

Producer/Exporter	Percent Margin
TPBG	22.02
Master Packaging	122.88

Comments

We will disclose the calculations used in our analysis to interested parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues

raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated for TPBG an exporter/importer (or customer)-specific assessment value for merchandise subject to this review by dividing the total dumping margin (calculated as the difference between normal value and EP) for each importer or customer by the total number of units the exporter sold to that importer or customer. We will instruct CBP to assess the resulting per-unit amount against each unit of merchandise in each of that importer's/customer's entries during the POR.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification applies to entries of subject merchandise during the POR produced by TPBG for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

For Master Packaging, because we are relying on total AFA to establish a dumping margin, we will instruct CBP

to apply 122.88 percent to all entries of subject merchandise during the POR that were produced and/or exported by Master Packaging.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 2.80 percent, the all-others rate for this proceeding. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-19100 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-588-602]

Carbon Steel Butt-Weld Pipe Fittings from Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 24, 2009, in response to a request from Benex Corporation (Benex), the Department of Commerce (the Department) published a notice of initiation of the administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Japan for the period February 1, 2008, through January 31, 2009. Because the sole request for review has been withdrawn, we are rescinding this review.

EFFECTIVE DATE: August 10, 2009.

FOR FURTHER INFORMATION: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410.

SUPPLEMENTARY INFORMATION:**Background**

On March 24, 2009, in response to a request from Benex, a Japanese producer of the subject merchandise, the Department published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Japan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009). On June 29, 2009, Benex withdrew its request for an administrative review. See letter from Benex dated June 29, 2009.

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review “if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.” Although we did not receive Benex’s withdrawal letter within the 90-day time limit, we

determine that it is reasonable to accept this letter of withdrawal because we have not expended significant resources in the conduct of this review and because we received no other requests for the review of Benex. Accordingly, the Department is rescinding this review pursuant to 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 3, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-19097 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****Withdrawal of Application for Duty-Free Entry of Scientific Instruments**

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; as amended by Pub. L. 106-

36; 80 Stat. 897; 15 CFR part 301), the Department of Commerce determines whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2104, Statutory Import Programs Staff, U.S. Department of Commerce 14th and Constitution Ave., NW., Room 2104 Washington, DC 20230.

Docket Number: 09-041. Applicant: State University of New York College at Geneseo, Erwin Hall 218, 1 College Circle, Geneseo, NY 14454. Instrument: 4.5 Model Astrodome. Manufacturer: Astro Dome, Australia. Intended Use: The instrument will be used to house a telescope and CCD. Application accepted by Commissioner of Customs and Border Protection: June 26, 2008.

The Department of Commerce received the Rice University application from Customs and Border Protection on July 13, 2009. The application was reviewed and the Department determined that the application did not have sufficient information for the Department to determine whether an equivalent instrument was being produced in the United States. In accordance with section 301.5(a)(2), the Department contacted the University to afford them an opportunity to supplement the application by providing further information regarding the purpose of the instrument and whether an equivalent instrument was being produced in the United States.

The State University of New York College at Geneseo then informed the Department that they had discovered that cost and design features were the determining factors in selecting the instrument. The University decided to withdraw the application for the Model Astrodome since they had been made aware that neither of these factors could be considered a pertinent specification in the comparison of instruments, in accordance with section 301.2(s).

Therefore, the Department of Commerce had discontinued the processing of this application, in accordance with section 301.5(g) of the regulations. See 15 CFR 301.5(g).

Dated: August 4, 2009.

Gregory Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9-19088 Filed 8-7-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal Nos. 09-31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09-31 with attached transmittal and policy justification.

Dated: July 17, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-31

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser: Kuwait**
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$314 million</u> |
| TOTAL | \$314 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: upgrade the Desert Warrior Fire Control System with Gunner's Integrated TOW System (GITS II) hardware that includes installation of the Improved Thermal Sight System 2nd Generation Forward-Looking Infrared Radar, spare and repair parts, support equipment, publications and technical documentation, test equipment, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.**
- (iv) **Military Department: Army (ULH)**
- (v) **Prior Related Cases, if any: none**
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None**
- (viii) **Date Report Delivered to Congress:**

JUL 08 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Kuwait – Upgrade Desert Warrior Fire Control System with GITS II**

The Government of Kuwait has requested a possible sale to upgrade the Desert Warrior Fire Control System with Gunner's Integrated TOW System (GITS II) hardware that includes installation of the Improved Thermal Sight System 2nd Generation Forward-Looking Infrared Radar, spare and repair parts, support equipment, publications and technical documentation, test equipment, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$314 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait will use the upgraded Desert Warrior Infantry Fighting Vehicle for protecting its borders. The upgrade will provide Kuwait's infantry with an advanced target acquisition and destruction capability, and will also improve the vehicles' operational readiness. The proposed sale will provide for the defense of vital installations, and its ground forces. Kuwait will have no difficulty absorbing this upgrade into its armed forces.

The proposed sale of this upgrade will not alter the basic military balance in the region.

The principal contractor will be Raytheon Company Network Centric Systems in McKinney, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five (5) contractor representatives to Kuwait for a period of five (5) years to accomplish the requested upgrade.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–26 with attached transmittal and policy justification.

Dated: July 17, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001–06–M

Transmittal No. 09-26

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Kuwait
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | \$ <u>95 million</u> |
| TOTAL | \$ 95 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include contractor engineering technical services, contractor maintenance support, avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Navy (GGG)
- (v) **Prior Related Cases, if any:** numerous cases dating back to 1995
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** JUL 6 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Technical/Logistics Support for F/A-18 Aircraft

The Government of Kuwait has requested a possible sale of continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include contractor engineering technical services, contractor maintenance support, avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$95 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs this logistics support, contractor maintenance, and technical services to maintain the operational capabilities of its aircraft.

The contractor maintenance and training technical services will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in St. Louis, Missouri; and General Dynamics in Fairfax, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E9-18958 Filed 8-7-09; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09-36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09-36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 28, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-36**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Australia
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$300 million</u> |
| TOTAL | \$300 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** continue participation in the USAF/Boeing Globemaster III Sustainment Partnership (GSP) which consists of support for Australia's fleet of four Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.
- (iv) **Military Department:** Air Force (QAL)
- (v) **Prior Related Cases, if any:** FMS case SEN-\$1.2B-19May06
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None
- (viii) **Date Report Delivered to Congress:** JUL 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia Participation in USAF C-17 Globemaster Sustainment Partnership

The Government of Australia has requested to continue participation in the USAF/Boeing Globemaster III Sustainment Partnership (GSP) which consists of support for Australia's fleet of four Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is \$300 million.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in peacekeeping and humanitarian operations in Iraq and in Afghanistan have had a significant impact on regional, political, and economic stability and have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden-sharing with our allies.

This program will ensure Australia can effectively maintain its current force projection capability that enhances interoperability with U.S. forces. Australia is a staunch supporter of the U.S. in Iraq and Afghanistan. Australia's troops are deployed in support of IRAQI FREEDOM and ENDURING FREEDOM, where U.S. assets currently provide this proposed capability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Boeing Integrated Defense Systems in St. Louis, MO. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten U.S. Government and contractor representatives to participate in program management and technical reviews for two-week intervals annually. Additionally, up to ten contractor representatives will be required to provide in-country services throughout the life of this case.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittals 09-27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 28, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

- (i) **Prospective Purchaser: Korea**
- (ii) **Total Estimated Value:**

Major Defense Equipment	\$.940 billion
Other	\$.060 billion
TOTAL	\$1.000 billion
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 8 MH-60S Multi-Mission Helicopters with 16 T700-GE-401C Turbo shaft engines and associated Airborne Mine Countermeasure (AMCM) Sensors, 8 AN/AQS-20A Towed Sonar Mine Countermeasure Systems, 8 AN/AES-1 Airborne Laser Mine Detection Systems, 8 AN/ASQ-235 Airborne Mine Neutralization Systems, 8 AN/ALQ-220 Organic Airborne and Surface Influence Sweep Systems, 8 AN/AWS-2 Rapid Airborne Mine Clearance Systems, test and support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.**
- (iv) **Military Department: Navy (SDO)**
- (v) **Prior Related Cases, if any: none**
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**
- (viii) **Date Report Delivered to Congress: JUL 17 2009**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea – MH-60S Multi-Mission Helicopters

The Republic of Korea has requested a possible sale 8 MH-60S Multi-Mission Helicopters with 16 T700-GE-401C Turbo shaft engines and associated Airborne Mine Countermeasure (AMCM) Sensors, 8 AN/AQS-20A Towed Sonar Mine Countermeasure Systems, 8 AN/AES-1 Airborne Laser Mine Detection Systems, 8 AN/ASQ-235 Airborne Mine Neutralization Systems, 8 AN/ALQ-220 Organic Airborne and Surface Influence Sweep Systems, 8 AN/AWS-2 Rapid Airborne Mine Clearance Systems, test and support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is \$1.0 billion.

The Republic of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The Republic of Korea needs these helicopters to support the Korean Navy's ability to provide mine warfare detection and mine neutralization operations to maintain critical sea-lines of communication and coastal access around the Korean peninsula.

The principal contractors will be Sikorsky Aircraft Corporation in Stratford, CT, Lockheed Martin Systems Integration in Owego, NY; Raytheon Integrated Defense Systems in Tucson, AZ; Raytheon Space and Airborne Systems in McKinney, TX; Northrop Grumman Corporation in Melbourne, FL; ITT Corporation in Panama City, FL, and Enterprise Ventures Corporation in Johnstown, PA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require temporary travel for U.S. Government or contractor representatives to the Republic of Korea for in-country training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-27**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The MH-60S Multi-mission helicopter is designed to perform vertical replenishment, combat search and rescue, special warfare support and airborne mine countermeasures (AMCM) missions. The hardware consists of twin front-drive turbo shaft T700-GE-401C engines which supply power to the main and tail rotors, and power the electrical and hydraulic systems through the main transmission. The AMCM systems include the AN/AQS-20A Towed Sonar Mine Countermeasure system, AN/AES-1 Airborne Laser Mine Detection Systems, AN/ASQ-235 Airborne Mine Neutralization Systems, AN/ALQ-220 Organic Airborne and Surface Influence Sweep Systems, and the AN/AWS-2 Rapid Airborne Mine Clearance Systems. The possible sale of the MH-60S Multi-mission helicopters and associated sensors will result in the transfer of sensitivity technology and information, as well as classified and unclassified defense equipment and technical data. Some of the publications, tactical equipment performance specifications, operational capabilities, and vulnerability to countermeasures are classified Secret. The classified information that will be provided consists only of that necessary for Korea to operate, maintain, and overhaul the MH-60 airframe, T700-GE-401C engines, some of the installed avionics, and data management system software. Certain tactical systems will be returned for repair due to technology sensitivity. Tactical software source code, algorithms, and design data will not be released. The following classified components to be delivered are the aircraft data management system, tactical systems, and aircraft software. The highest classification is the Avionics Operational Program, which is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9-18963 Filed 8-7-09; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal Nos. 09-14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09-14 with attached transmittal, and policy justification.

Dated: July 30, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-14**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Bahrain
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 51 million |
| Other | \$ <u>23 million</u> |
| TOTAL | \$ 74 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 25 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.
- (iv) **Military Department:** Air Force (YAE)
- (v) **Prior Related Cases, if any:** FMS case YBI-\$69M-22Dec99
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** JUL 27 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Bahrain – AIM-120C-7 AMRAAM Missiles**

The Government of Bahrain has requested a possible sale of 25 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government (USG) and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is \$74 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Bahrain's capability to meet current and future threats of enemy air-to-air weapons. Bahrain will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Corporation, Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require bi-annual trips to Bahrain involving six (6) U.S. Government and four (4) contractor representatives for program management reviews over a period of up to 5 years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-14**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination. Anti-tampering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9-18966 Filed 8-7-09; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary****[Transmittal Nos. 09-24]****36(b)(1) Arms Sales Notification****AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09-24 with attached transmittal and policy justification.

Dated: July 28, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-24**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Kuwait
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 1 million |
| Other | \$ <u>80 million</u> |
| TOTAL | \$ 81 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 4 M2 .50 cal HB Browning machine guns, 2 Swiftship Model 176DSV0702, 54X9.2X1.8 meter Nautilus Class Diver Support Vessels outfitted with a MLG 27mm gun system, support equipment, personnel training, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.
- (iv) **Military Department:** Navy (SAW, Amd #3)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none.
- (viii) **Date Report Delivered to Congress:** JUL 13 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait – Nautilus Class Diver Support Vessels

The Government of Kuwait has requested a possible sale of 4 M2 .50 cal HB Browning machine guns, 2 Swiftship Model 176DSV0702, 54X9.2X1.8 meter Nautilus Class Diver Support Vessels outfitted with a MLG 27mm gun system, support equipment, personnel training, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is \$81 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO ally which has been, and continues to be, an important force for political stability and economic progress in the Middle East. Additionally, the proposed sale will demonstrate the U.S. Government's commitment to our bilateral relationship.

Kuwait needs these vessels to strengthen its tactical range and operating capabilities with its defense network. The Diver Support Vessels will ensure enhanced fleet security and interoperability as well as improve Kuwait's capability to conduct operations. Kuwait will have no difficulty absorbing the diver support vessels into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Swiftships, LLC in Morgan City, Louisiana. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one contractor representative in Kuwait for a period of one year after the delivery of the craft to provide technical assistance in the performance of planned and corrective maintenance and repair.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E9-18964 Filed 8-7-09; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09-29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09-29 with attached transmittal and policy justification.

Dated: July 28, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M

Transmittal No. 09-29**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Kuwait
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | \$ <u>70 million</u> |
| TOTAL | \$ 70 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include Contractor Engineering Technical Services/Contractor Maintenance Services, Hush House Maintenance Support services, and Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Navy (GGH)
- (v) **Prior Related Cases, if any:** numerous cases dating back to 1995
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** JUL 13 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Technical/Logistics Support for F/A-18 Aircraft

The Government of Kuwait has requested a possible sale of continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include Contractor Engineering Technical Services/Contractor Maintenance Services, Hush House Maintenance Support services, and Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$70 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs this logistics support, contractor maintenance, and technical services to maintain the operational capabilities of its aircraft.

The contractor maintenance and training technical services will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in St. Louis, Missouri; DynCorp in Fort Worth, Texas; General Electric in Lynn, Massachusetts; Industrial Acoustics Company in Winchester, United Kingdom; and General Dynamics in Fairfax, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

DEPARTMENT OF DEFENSE**Office of the Secretary****Revised Non-Foreign Overseas Per Diem Rates**

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 265. This bulletin lists revisions in the per diem rates

prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 265 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* August 1, 2009

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign

areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 264. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001-06-M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		=	RATE (C)	
THE ONLY CHANGE IN CIVILIAN BULLETIN 265 IS AN UPDATE TO THE RATE FOR AMERICAN SAMOA.						
ALASKA						
ADAK	120		79		199	07/01/2003
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	181		97		278	04/01/2007
09/16 - 04/30	99		89		188	04/01/2007
BARROW	159		95		254	05/01/2002
BETHEL	139		87		226	01/01/2009
BETTLES	135		62		197	10/01/2004
CLEAR AB	90		82		172	10/01/2006
COLDFOOT	165		70		235	10/01/2006
COPPER CENTER						
05/01 - 09/30	125		84		209	01/01/2009
10/01 - 04/30	95		81		176	01/01/2009
CORDOVA						
05/01 - 09/30	95		78		173	06/01/2007
10/01 - 04/30	85		77		162	06/01/2007
CRAIG						
05/16 - 09/30	236		80		316	07/01/2008
10/01 - 05/15	151		71		222	07/01/2008
DELTA JUNCTION	135		80		215	07/01/2008
DENALI NATIONAL PARK						
06/01 - 08/31	135		80		215	01/01/2009
09/01 - 05/31	79		74		153	01/01/2009
DILLINGHAM						
04/15 - 10/15	185		83		268	01/01/2009
10/16 - 04/14	169		82		251	01/01/2009
DUTCH HARBOR-UNALASKA	121		86		207	01/01/2009
EARECKSON AIR STATION	90		77		167	06/01/2007
EIELSON AFB						
05/01 - 09/15	175		88		263	02/01/2009
09/16 - 04/30	75		79		154	02/01/2009
ELMENDORF AFB						
05/01 - 09/15	181		97		278	04/01/2007
09/16 - 04/30	99		89		188	04/01/2007
FAIRBANKS						
05/01 - 09/15	175		88		263	02/01/2009
09/16 - 04/30	75		79		154	02/01/2009
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	135		80		215	07/01/2008
FT. RICHARDSON						
05/01 - 09/15	181		97		278	04/01/2007
09/16 - 04/30	99		89		188	04/01/2007
FT. WAINWRIGHT						

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		=	RATE (C)	
	05/01 - 09/15	175	88	263		02/01/2009
	09/16 - 04/30	75	79	154		02/01/2009
GLENNALLEN						
	05/01 - 09/30	125	84	209		01/01/2009
	10/01 - 04/30	95	81	176		01/01/2009
HAINES		109	75	184		01/01/2009
HEALY						
	06/01 - 08/31	135	80	215		01/01/2009
	09/01 - 05/31	79	74	153		01/01/2009
HOMER						
	05/15 - 09/15	167	85	252		01/01/2009
	09/16 - 05/14	79	78	157		01/01/2009
JUNEAU						
	05/01 - 09/30	149	85	234		01/01/2009
	10/01 - 04/30	109	80	189		01/01/2009
KAKTOVIK		165	86	251		05/01/2002
KAVIK CAMP		150	69	219		05/01/2002
KENAI-SOLDOTNA						
	05/01 - 08/31	129	92	221		04/01/2006
	09/01 - 04/30	79	87	166		04/01/2006
KENNICOTT		259	94	353		01/01/2009
KETCHIKAN						
	05/01 - 09/30	140	83	223		01/01/2009
	10/01 - 04/30	98	78	176		01/01/2009
KING SALMON						
	05/01 - 10/01	225	91	316		05/01/2002
	10/02 - 04/30	125	81	206		05/01/2002
KLAWOCK						
	05/16 - 09/30	236	80	316		07/01/2008
	10/01 - 05/15	151	71	222		07/01/2008
KODIAK						
	05/01 - 09/30	136	85	221		01/01/2009
	10/01 - 04/30	99	82	181		01/01/2009
KOTZEBUE		179	93	272		07/01/2008
KULIS AGS						
	05/01 - 09/15	181	97	278		04/01/2007
	09/16 - 04/30	99	89	188		04/01/2007
MCCARTHY		259	94	353		01/01/2009
MCGRATH		165	69	234		10/01/2006
MURPHY DOME						
	05/01 - 09/15	175	88	263		02/01/2009
	09/16 - 04/30	75	79	154		02/01/2009
NOME		135	97	232		02/01/2009
NUIQSUT		180	53	233		05/01/2002
PETERSBURG		100	71	171		07/01/2008
PORT ALSWORTH		135	88	223		05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		=	RATE (C)	
SELDOVIA						
05/15 - 09/15	167		85		252	01/01/2009
09/16 - 05/14	79		78		157	01/01/2009
SEWARD						
05/01 - 09/30	174		85		259	01/01/2009
10/01 - 04/30	99		77		176	01/01/2009
SITKA-MT. EDGE CUMBE						
05/01 - 09/30	119		80		199	01/01/2009
10/01 - 04/30	99		77		176	01/01/2009
SKAGWAY						
05/01 - 09/30	140		83		223	01/01/2009
10/01 - 04/30	98		78		176	01/01/2009
SLANA						
05/01 - 09/30	139		55		194	02/01/2005
10/01 - 04/30	99		55		154	02/01/2005
SPRUCE CAPE						
05/01 - 09/30	136		85		221	01/01/2009
10/01 - 04/30	99		82		181	01/01/2009
ST. GEORGE	129		55		184	06/01/2004
TALKEETNA	100		89		189	07/01/2002
TANANA	135		97		232	02/01/2009
TOGIK	100		39		139	07/01/2002
TOK						
05/01 - 09/30	109		72		181	01/01/2009
10/01 - 04/30	99		71		170	01/01/2009
UMIAT	350		35		385	10/01/2006
VALDEZ						
05/01 - 09/30	159		88		247	01/01/2009
10/01 - 04/30	115		84		199	01/01/2009
WASILLA						
05/01 - 09/30	151		89		240	01/01/2009
10/01 - 04/30	96		83		179	01/01/2009
WRANGELL						
05/01 - 09/30	140		83		223	01/01/2009
10/01 - 04/30	98		78		176	01/01/2009
YAKUTAT	105		76		181	01/01/2009
[OTHER]	100		71		171	01/01/2009
AMERICAN SAMOA						
AMERICAN SAMOA	139		75		214	08/01/2009
GUAM						
GUAM (INCL ALL MIL INSTAL)	159		80		239	07/01/2009
HAWAII						
CAMP H M SMITH	177		106		283	05/01/2008
EASTPAC NAVAL COMP TELE AREA	177		106		283	05/01/2008
FT. DERUSSEY	177		106		283	05/01/2008
FT. SHAFTER	177		106		283	05/01/2008

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		=	RATE (C)	
HICKAM AFB	177		106		283	05/01/2008
HONOLULU	177		106		283	05/01/2008
ISLE OF HAWAII: HILO	115		104		219	05/01/2009
ISLE OF HAWAII: OTHER	180		108		288	05/01/2009
ISLE OF KAUAI	198		115		313	05/01/2009
ISLE OF MAUI	169		104		273	05/01/2009
ISLE OF OAHU	177		106		283	05/01/2008
KEKAHA PACIFIC MISSILE RANGE FAC	198		115		313	05/01/2009
KILAUEA MILITARY CAMP	115		104		219	05/01/2009
LANAI	229		124		353	05/01/2009
LUALUALEI NAVAL MAGAZINE	177		106		283	05/01/2008
MCB HAWAII	177		106		283	05/01/2008
MOLOKAI	159		98		257	05/01/2009
NAS BARBERS POINT	177		106		283	05/01/2008
PEARL HARBOR	177		106		283	05/01/2008
SCHOFIELD BARRACKS	177		106		283	05/01/2008
WHEELER ARMY AIRFIELD	177		106		283	05/01/2008
[OTHER]	115		104		219	05/01/2009
MIDWAY ISLANDS						
MIDWAY ISLANDS						
INCL ALL MILITARY						
	125		45		170	05/01/2009
NORTHERN MARIANA ISLANDS						
ROTA	129		91		220	05/01/2006
SAIPAN	121		98		219	06/01/2007
TINIAN	138		71		209	07/01/2008
[OTHER]	55		72		127	04/01/2000
PUERTO RICO						
AGUADILLA	75		64		139	11/01/2007
BAYAMON	195		82		277	10/01/2007
CAROLINA	195		82		277	10/01/2007
CEIBA						
05/01 - 11/30	155		57		212	08/01/2006
12/01 - 04/30	185		57		242	08/01/2006
FAJARDO [INCL ROOSEVELT RDS NAVS						
05/01 - 11/30	155		57		212	08/01/2006
12/01 - 04/30	185		57		242	08/01/2006
FT. BUCHANAN [INCL GSA SVC CTR,	195		82		277	10/01/2007
HUMACAO						
05/01 - 11/30	155		57		212	08/01/2006
12/01 - 04/30	185		57		242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195		82		277	10/01/2007
LUQUILLO						
05/01 - 11/30	155		57		212	08/01/2006
12/01 - 04/30	185		57		242	08/01/2006
MAYAGUEZ	109		77		186	11/01/2007

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT		M&IE RATE	MAXIMUM PER DIEM RATE		EFFECTIVE DATE
	(A)	+	(B)	=	(C)	
PONCE	139		83		222	11/01/2007
SABANA SECA [INCL ALL MILITARY]	195		82		277	10/01/2007
SAN JUAN & NAV RES STA	195		82		277	10/01/2007
[OTHER]	62		57		119	01/01/2000
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	05/01/2006
12/15 - 04/14	187		97		284	05/01/2006
ST. JOHN						
04/15 - 12/14	163		98		261	05/01/2006
12/15 - 04/14	220		104		324	05/01/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	05/01/2006
12/15 - 04/14	299		111		410	05/01/2006
WAKE ISLAND						
WAKE ISLAND	152		16		168	05/01/2009

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. E9-19026 Filed 8-7-09; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 9, 2009, 4 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, NV 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. *Phone:* (702) 657-9088; *Fax* (702) 295-5300 or *E-mail:* ntscab@nv.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Sub-Committee Reports.
 - A. Membership Committee.
 - B. Outreach Committee.
 - C. Transportation/Waste Committee.
 - D. Underground Test Area Committee.
2. Fiscal Year 2010 Work Plan Development.
3. Election of Officers.

Public Participation: The EM SSAB, Nevada Test Site, 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 Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to

conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: <http://www.ntscab.com/MeetingMinutes.htm>.

Issued at Washington, DC, on August 5, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9-19052 Filed 8-7-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under Section 9008(d) of the Food, Conservation, and Energy Act of 2008. The Federal Advisory Committee Act (Pub. L. 2-463, 86 Stat. 770)

requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

Dates and Times: September 15, 2009 at 8 a.m. to 12:30 p.m.; September 16, 2009 at 8 a.m. to 3 p.m.

ADDRESSES: Crowne Plaza, Old Town Alexandria, Washington Room, 901 North Fairfax, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT:

Laura Neal, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-7766; *E-mail:* laura.neal@ee.doe.gov or T.J. Heibel at (410) 997-7778 ext. 223; *E-mail:* theibel@bcs-hq.com.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities;
- Update on DOE Biomass R&D Activities;
- Presentation on DOT activities related to Biomass R&D;
- Presentation on Land Use Change Workshop;
- Presentation on Indirect Land Use Change (ILUC);
- Subcommittee Report-Outs discussing Committee's 2009 recommendations;
- Committee Discussion on 2010 Work Plan.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Laura Neal at 202-586-7766; *E-mail:* laura.neal@ee.doe.gov or T.J. Heibel at (410) 997-7778 ext. 223; *E-mail:* theibel@bcs-hq.com. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the

Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at <http://www.brdisolutions.com/publications/default.aspx#meetings>.

Issued at Washington, DC, on August 5, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9-19053 Filed 8-7-09; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA-R02-OAR-2009-0508; FRL-8942-8]

Adequacy Status of the Municipality of Guaynabo, PR submitted PM₁₀ Limited Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the Limited Maintenance Plan for PM₁₀ in the Municipality of Guaynabo, Puerto Rico is adequate for transportation conformity purposes.

DATES: This finding is effective August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Marina Cubias-Castro, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th floor, New York, NY 10007, castro.marina@epa.gov, 212-637-3713.

The finding and the response to comments are available at EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the Puerto Rico Environmental Quality Board on June 23, 2009 stating that the Municipality of Guaynabo submitted PM₁₀ Limited Maintenance Plan, is adequate.

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM₁₀ nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division,

entitled "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas"). The LMP Option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Since the Municipality of Guaynabo has been attaining the PM₁₀ NAAQS for at least 5 years, and has a low risk of future exceedances, the limited maintenance plan policy allows both Puerto Rico and EPA to redesignate this area, which is at a low risk of PM₁₀ violations, in an expedited manner. EPA's adequacy review of the limited maintenance plan for the Municipality of Guaynabo primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for PM₁₀. We have found the maintenance plan for the Municipality of Guaynabo adequate for conformity purposes under our limited maintenance plan policy.

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We've described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 preamble starting at 69 FR 40038 and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudice EPA's ultimate approval action for the SIP. Even if we find a limited maintenance plan adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401-7671 q.

Dated: July 28, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. E9-19068 Filed 8-7-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV-2007-3; FRL-8943-1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Tennessee Valley Authority—Paradise Fossil Fuel Plant; Drakesboro (Muhlenberg County), KY**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act (CAA) section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated July 13, 2009, partially granting and partially denying a petition to object to a State operating permit issued by the Kentucky Division for Air Quality (KDAQ) to Tennessee Valley Authority (TVA) for its Paradise Fossil Fuel Plant (Plant Paradise) located in Drakesboro, Muhlenberg County, Kentucky. This Order constitutes a final action on the petition submitted by Preston Forsythe, the Center for Biological Diversity, Kentucky Heartwood, Sierra Club, and Hilary Lambert (Petitioners) on December 27, 2007. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review of the Order in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307(b) of the Act.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The Order is also available electronically at the following address: http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/tvaparadise_decision2007.pdf.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562-9115 or hofmeister.art@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by State permitting authorities under title V of the CAA, 42 U.S.C. 7661-7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions

must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted a petition on December 27, 2007, requesting that EPA object to a State title V operating permit issued by KDAQ to TVA Plant Paradise. Petitioners alleged that the permit was not consistent with the CAA for the following reasons: (1) The permit fails to include the prevention of significant deterioration (PSD) analysis for the three main boilers (Units 1-3) for NO_x due to alleged modifications undertaken at Plant Paradise beginning in 1984 without TVA obtaining required PSD permits; (2) the permit does not require year-round operation of the selective catalytic reduction system consistent with 401 KAR 50:055; (3) continuous opacity monitoring systems (COMS) should be installed on Units 1-3 and that Method 9 is not sufficient to ensure compliance with the opacity requirements; (4) the permit fails to require a continuous emissions monitoring system (CEMS) for NO_x; (5) the particulate matter emissions monitoring from the coal washing and handling plant are not enforceable and are inadequate; (6) the permit fails to require reporting of all monitoring results from COMS or CEMS; (7) the permit fails to contain language allowing for the use of any credible evidence; (8) the permit fails to include a case-by-case maximum achievable control technology determination for Units 4-6 for the industrial boiler national emissions standard for hazardous air pollutants.

On July 13, 2009, the Administrator issued an Order partially granting and partially denying the petition. The Order explains EPA's rationale for granting the petition with respect to issues 1, 3, 4 and 5, and denying on the other issues.

Dated: July 29, 2009.

Beverly Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9-19071 Filed 8-7-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8942-7]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council; Meeting Postponement**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of meeting postponement.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will postpone public meetings by conference call on the 2nd Wednesday of each month, beginning with August 12, 2009 from 12 p.m. to 1 p.m., eastern standard time, until further notice. The Notice of Public Meetings for the National Environmental Education Advisory Council was originally published on July 8, 2009 at 74 FR 32595.

DATES: This notice is applicable for the following dates:

- August 12, 2009;
- September 9, 2009;
- October 14, 2009;
- November 11, 2009;
- December 9, 2009.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at potter.ginger@epa.gov or (202) 564-0453. General information concerning NEEAC can be found on the EPA Web site at: <http://www.epa.gov/enviroed>. For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in

receiving a draft meeting agenda may contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Dated: July 31, 2009.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E9-19067 Filed 8-7-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8939-1]

Notice of Revised Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) Based on Public Interest for *de minimis* Incidental Components of Projects Financed Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for *de minimis* incidental components of eligible water infrastructure projects funded by ARRA. This action revises the terms under which incidental components qualify for coverage under the public interest *de minimis* waiver signed and effective on May 22, 2009, and permits the use of non-domestic iron, steel, and manufactured goods when they occur in *de minimis* incidental components of such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

DATES: *Effective Date:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT:

Jordan Dorfman, Attorney-Advisor, Office of Wastewater Management, (202) 564-0614, or Philip Metzger, Attorney Advisor, Office of Ground Water and Drinking Water, (202) 564-3776, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of Public Law 111-5, Buy American requirements, based on the public interest authority of section 1605(b)(1), to allow the use of non-domestic iron,

steel, and manufactured goods when they occur in *de minimis* incidental components of eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds where such components cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project.

Among the General Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), Section 1605(a) requires that “all of the iron, steel, and manufactured goods used in” a public works project built with ARRA funds must be produced in the United States, unless the head of the respective Federal department or agency determines it necessary to waive this requirement based on findings set forth in Section 1605(b). In addition, expeditious construction of SRF projects is made a high priority by a provision in the ARRA Title VII appropriations heading for the SRFs, which states “[t]hat the Administrator shall reallocate funds * * * where projects are not under contract or construction within 12 months of” ARRA enactment (February 17, 2010). The finding relevant to this waiver is that “applying [ARRA’s Buy American requirement] would be inconsistent with the public interest” (1605(b)(1)).

EPA originally issued this waiver on May 22, 2009. This notice revises the terms under which that waiver may be applied, and, in accordance with the requirements of Section 1605(c) that all waivers granted must include a “detailed written justification”, adds new information and repeats relevant information that continues to justify this revised waiver.

In implementing ARRA section 1605, EPA must ensure that the section’s requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions of ARRA applicable to projects funded under the Clean Drinking Water State Revolving Funds (SRF), particularly considering the SRFs’ 12 month “contract or construction” requirement. Further, in the context of ARRA’s SRF “contract or construction” deadline, Congress’ overarching directive to

[t]he President and the heads of Federal departments and agencies [is that they] shall manage and expend the funds made available in this Act so as to achieve the purposes [of this Act], including commencing expenditures and activities as quickly as possible consistent with prudent management. [ARRA Section 3(b)]

Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel, and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation and control equipment, treatment process equipment, and relevant materials to build structures for such facilities as treatment plants, pumping stations, pipe networks, *etc.* In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every water infrastructure project also involves the use of literally thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project, such as nuts, bolts, other fasteners, tubing, gaskets, *etc.* For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental.

EPA undertook multiple inquiries to identify the approximate scope of these *de minimis* incidental components within water infrastructure projects. EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and a contractor performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings. The contractor asked the following questions:

- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (*drinking water vs. wastewater treatment plant vs. pipe*)?

The responses were consistent across the variety of settings and project types, and indicated that the percentage of

total costs for drinking water or wastewater infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials used in and incorporated into a project. In drafting this waiver, EPA has considered the *de minimis* proportion of project costs generally represented by each individual type of these incidental components within the hundreds or thousands of types of such components comprising those percentages, the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if EPA did not issue this waiver.

Subsequent to the issuance of the original public interest *de minimis* waiver on May 22, 2009, EPA has received many, similar waiver requests from numerous assistance recipients (located in a few States that have issued a substantial number of SRF assistance agreements funded by ARRA) on a variety of low-cost components whose national origin can be identified. Even as typically procured in bulk (several dozen for small projects), the total cost of these components is much less than 5 percent of the total materials cost of these projects. These types of components would properly be considered subject to the previous nationwide public interest *de minimis* waiver but for the requirement in that waiver that the national origin of these low-cost, miscellaneous components “not [be] readily or reasonably identifiable prior to procurement in the normal course of business.” It also appears that when EPA inquired of various parties to develop the percentage limit on the waiver, the percentages were identified with the inclusion of these types of components in mind.

Due to the diverse characteristics of the specific configurations of these individually low-cost components, the analysis and consideration of waiver requests for them—and particularly of ascertaining whether U.S.-made products exist or can be made to meet these diverse configurations—is already becoming a demanding and time-consuming task far out of proportion to the percentage of total project materials cost they comprise. As a rapidly increasing number of States begin to issue numerous assistance agreements, EPA recognizes the prospect of considering dozens of differently framed waivers in most if not all States for each of these types of components, in addition to those for major components

that are most appropriately the focus of the waiver process set forth in Section 1605. Because the established practices of specification and use of these low-cost components appear to be widely varied by Region and to some extent by State and individual recipient, it is unlikely to be practicable to formulate categorical waivers for such components, even if justified. If this pattern of waiver requests is allowed to expand to a national scale, the resources and capacities of the waiver program, for EPA and assistance recipients alike, will be so consumed by necessary analysis of the minute variations in circumstances among these low-cost items that this will become a serious obstacle to ensuring that all recipients will be able to sign construction contracts by February 17, 2010.

Assistance recipients who do not have their compliance with respect to section 1605 clarified may in many cases be unable to sign contracts by the February 17, 2010 date, causing these communities to lose their ARRA assistance and requiring EPA to reallocate to other States all ARRA funds not under contract by that date. This in turn will lead to further delay in placing the reallocated funds into other projects, which is inconsistent with the public interest and the intent and purpose of ARRA. It would be further inconsistent with ARRA to deprive of ARRA assistance these States and communities whose funds are reallocated due to a waiver process that would have become backlogged under the complexity of investigating waiver requests for incidental components costing a fraction of the 5 percent of the materials cost of a project.

Under these circumstances, EPA must place the highest priority on enabling States and their assistance recipients to meet this February 17, 2010 deadline set by Congress for the SRFs specifically. As the situations described above would be effectively addressed by a more comprehensive application of the *de minimis* waiver, EPA has found that it would be inconsistent with the public interest—and particularly with ARRA’s directives to ensure expeditious SRF construction consistent with prudent management, as cited above—to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. Accordingly, EPA is hereby issuing a national waiver from the requirements of ARRA Section 1605(a) for any components described above as incidental that comprise in total a *de minimis* amount of the project, that is,

for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver, must retain relevant documentation as to those items in their project files, and must summarize in reports to the State the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients should consider that all SRF-funded construction projects by definition require the expenditure of a certain amount of project funds on the literal “nuts and bolts”-type components whose origins cannot readily be identified prior to procurement. As described above, EPA has determined the 5 percent limit based on research and informed professional judgment as to the maximum total amount of incidental goods used in most water and wastewater projects. In a few, exceptional cases, assistance recipients using this waiver may have multiple types of low-cost components which, when combined and in conjunction with those literal “nuts and bolts”-type components, may total more than 5 percent. Assistance recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not, and will include the type and amount of such items covered in the reports to the State as required above. Components which the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of section 1605 by appropriate means other than coverage under this waiver.

Therefore, for the foregoing reasons, imposing ARRA’s Buy American requirements for the category of *de minimis* incidental components described herein is not in the public interest. This supplementary information constitutes the “detailed written justification” required by Section 1605(c) for waivers “based on a finding under subsection (b).”

Authority: Public Law 111–5, section 1605.

Dated: July 24, 2009.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E9–19069 Filed 8–7–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION**Notice of Agency Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Tuesday, August 4, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John E. Bowman (Acting Director, Office of Thrift Supervision), concurred in by Director John C. Dugan (Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 4, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9-19011 Filed 8-7-09; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009-N-10]

Federal Home Loan Bank Collateral for Advances and Interagency Guidance on Nontraditional Mortgage Products*Correction*

In Notice document E9-18545 beginning on page 38618 in the issue of August 4, 2009, make the following correction:

On page 38618, the **DATES:** section should read: "Comments must be received on or before October 5, 2009."

[FR Doc. Z9-18545 Filed 8-7-09; 8:45 am]

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of New System of Records**

AGENCY: General Services Administration.

ACTION: New Notice.

SUMMARY: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: Effective September 9, 2009.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The system will capture electronically scanned images of financial documents, and store, retrieve, and process these images. Hard copies of these documents, which contain employee and vendor information, are currently being used to support the ongoing financial and payroll operations of the GSA Financial and Payroll Services Division (BCE).

Dated: August 4, 2009.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-12**SYSTEM NAME:**

ImageNow.

SYSTEM LOCATION:

The system is maintained in Kansas City, MO, in the Financial Administrative Systems Division (BDT).

INDIVIDUALS COVERED BY THE SYSTEM:

All employees and vendors who require and receive financial and payroll services from GSA.

RECORDS IN THE SYSTEM:

System records include information that identify vendors and/or employees by their names or other unique identifier in conjunction with other data elements such as gender, birth date, age, marital status, spouse and dependents, home e-mail addresses, home addresses, home phone numbers, health records, Social Security Numbers, Employer Identification Numbers, payroll deductions, banking information, personal credit card information, and similar personally identifiable information.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. Part III, Subparts D and E, 26 U.S.C. Chapter 24 and 2501, and Executive Order 9397, and the Chief Financial Officers (CFO) Act of 1990 (Pub. L. 101-576) as amended (Chapter 9 of Title 31 of the U.S. Code (2009)).

PURPOSE:

The purpose of the system is to capture electronic images of financial documents, and store, retrieve, and process these images. It will maintain these images in order to support the day-to-day official operating needs of GSA's financial and payroll operations.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM.

System users will be limited to those U.S. government employees that require this information to perform their assigned official responsibilities. All access will be reviewed and approved by the employee's supervisor, system owner and the information system security officer. Information from this system also may be disclosed as a routine use:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.
- c. To conduct investigations, by authorized officials, that are investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) when the information is required for program evaluation purposes.
- e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.
- f. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- g. To authorized officials of the agency that provided the information for inclusion in ACNIS.
- h. To an expert, consultant, or contractor of GSA in the performance of

a Federal duty to which the information is relevant.

i. To the National Archives and Records Administration (NARA) for records management purposes.

j. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored electronically in client-server computer format.

RETRIEVABILITY:

Records are retrievable with indexing values or other unique identifiers such as name or Social Security Number.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with strengthened passwords, and the database is maintained behind a firewall that meets strict GSA OCIO security requirements.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Director, Financial and Payroll Services Division, OCFO, GSA (BCE), 1500 E. Bannister Road, Kansas City, Missouri 66085.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the program manager at the above address.

RECORD ACCESS PROCEDURE:

Individuals wishing to access their own records may do so by sending a request to the program manager listed above.

CONTESTING RECORD PROCEDURES:

GSA rules for access to records, and for contesting the contents and appealing initial determinations are provided in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

The source for the image data in the system originates from the individuals and vendors who submit the documents on their own behalf. In addition, documents may come from Federal Government Agencies that may include Privacy Act information.

[FR Doc. E9-19102 Filed 8-7-09; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; Comment Request; 24-hour Dietary Recall Method Comparison and the National Cancer Institute (NCI) Validation and Observational Feeding Studies

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 3, 2009 (74 FR 26702)

and allowed 60-days for public comment. One public comment was received on June 5 requesting a copy of the data collection plans. The plans were sent to the responder on June 10. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: 24-hour Dietary Recall Method Comparison and the National Cancer Institute (NCI) Validation and Observational Feeding Studies. Type of Information Collection Request: NEW. Need and Use of Information Collection: The objective of the two studies is to compare the performance of the newly developed computerized Automated Self-Administered 24-Hour Recall (ASA24) approach to collecting 24-hour recall (24HR) data with the current standard, the interviewer-administered Automated Multiple Pass Method (AMPM). The ultimate goal is to determine to what extent the new automated instrument can be used instead of the more expensive interviewer-administered instrument in the collection of dietary intake data. Frequency of Response: Twice. Affected Public: Individuals. Type of Respondents: For the 24-hour Dietary Recall Method Comparison study, approximately 1,200 adult members from three health maintenance organization plans (in Minnesota, California, and Michigan) between ages 20 and 70 years. For the NCI Observational Feeding Study, approximately 90 adult residents from the Washington, DC metropolitan area between ages 20 and 70 years. The annual reporting burden is estimated at 1052 hours (see table below). This amounts to an estimated 2105 burden hours over the 2-year data collection period with a total cost to the respondents \$37,210. There are no Capital costs, Operating costs, and/or Maintenance Costs to report.

Study Questionnaire	Number of respondents	Frequency of response	Average time response (Minutes)	Annual hour burden
24HR recall comparison study:				
Information and Consent	650	1	15/60	162.50
Screener	600	1	3/60	30.00
Dietary Recall 1	540	1	30/60	270.00
Dietary Recall 2	486	1	30/60	243.00
Demographics questionnaire	540	1	8/60	72.00

Study Questionnaire	Number of respondents	Frequency of response	Average time response (Minutes)	Annual hour burden
Preference survey	243	1	3/60	12.15
Subtotal				789.65
NCI validation and observational feeding study:				
Screener	100	1	3/60	5.00
Reminder Telephone Call	90	1	3/60	4.50
Eating 3 meals	90	1	135/60	202.50
Dietary Recall	80	1	30/60	40.00
Demographics questionnaire	80	1	8/60	10.67
Subtotal				262.67
Total				1,052.32

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information may have practical utility; (2) The accuracy of the estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at OIRA_submission@omb.eop.gov or by fax to 202-395-6974. To request more information on the proposed project or to obtain a copy of the data collection plans, contact Frances E. Thompson, PhD, Project Officer, National Cancer Institute, NIH, EPN 4095A, 6130 Executive Boulevard MSC 7335, Bethesda, Maryland 20892-7335, or call non-toll-free number 301-594-4410, or FAX your request to 301-435-3710, or e-mail your request, including your address, to thompsonf@mail.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 31, 2009.

Vivian Horovitch-Kelley,
NCI Project Clearance Liaison, National Institutes of Health.
[FR Doc. E9-19022 Filed 8-7-09; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0366]

Office of Critical Path Programs— Critical Path Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of Office of Critical Path Programs (OCPP). The goal of OCPP is to develop an administrative and scientific infrastructure to support the creation and execution of a series of projects under the FDA's Critical Path Initiative.

DATES: Important dates are as follows:

1. The application due date is September 7, 2009.
2. The anticipated start date is in September 2009.
3. The opening date is August 10, 2009.
4. The expiration date is September 8, 2009.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Nancy Staniscic, Office of Critical Path Programs (HF-18), rm. 14B45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1660.

Gladys M. Bohler, Grants Management Specialist, Office of

Acquisitions and Grants Services (HFA-500), Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301-827-7168.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at <http://www.fda.gov/oc/initiatives/criticalpath/>.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Description
Number: RFA FD-09-019
Catalog of Federal Domestic Assistance
Number: 93.103

A. Background

The Critical Path Initiative, launched by FDA in 2004, has the objective of helping modernize the development, evaluation, manufacture, and use of FDA-regulated products. Through nationwide collaboration with other Federal, academic, scientific, and industry organizations, the initiative seeks to develop new tools to facilitate innovation in FDA-regulated product development. Examples of tools include novel biomarkers, laboratory assays, genetic tests, and state-of-the-art information technologies, etc. In this initiative, FDA plays the role of a facilitator in the creation of partnerships and collaborations to support specific scientific projects.

B. Research Objectives

FDA's Office of the Commissioner is announcing its intent to accept and consider a single source application for the award of a Cooperative Agreement to the Critical Path Institute (C-Path).

FDA anticipates providing up to \$1.5 million (direct and indirect costs combined) during fiscal year (FY) 2009 to support research and related efforts of

identified projects that are part of the Critical Path Initiative.

This Cooperative Agreement ensures substantial FDA involvement in this program, and will include, but will not be limited to, co-development of study priorities, protocols, decisionmaking, reports, and publications at specified program milestones related to performance. FDA will support research covered by this document under the authority of section 301 of the Public Health Service Act (42 U.S.C. 341). Administrative regulations found in 45 CFR parts 74 and/or 92 are applicable.

C. Eligibility Information

The following organization/institution is eligible to apply: Critical Path Institute.

Competition is limited because of FDA's ongoing collaboration with the University of Utah and the Critical Path Institute, in support of FDA's Critical Path Initiative, and the combined ability of these parties to leverage existing databases, specimen repositories, clinical, and other technical expertise in support of this program.

II. Award Information/Funds Available

A. Award Amount

It is anticipated that FDA will fund this Cooperative Agreement up to \$1.5 million (direct and indirect costs) in FY 09 based on the quality of the application received and the availability of Federal funds.

B. Length of Support

Funding beyond the first year (up to 5 years) will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year and (2) the availability of Federal fiscal year funds.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at <http://www.fda.gov/oc/initiatives/criticalpath/>. Persons interested in applying for a grant may obtain an application at <http://grants.nih.gov/grants/forms.htm>.

For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at http://www07.grants.gov/applicants/organization_registration.jsp. Step 3, in detail, can be found at <https://>

commons.era.nih.gov/commons/registration/registrationInstructions.jsp. After you have followed these steps, submit paper applications to: Gladys M. Bohler (see **FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT**).

Dated: August 4, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-19010 Filed 8-7-09; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: September 21, 2009.

Open: 10 a.m. to 1:15 p.m.

Agenda: To review the Clinical Center budget plans and updates on selected organizational initiatives.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4-2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agenda: To review and evaluate to discuss personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4-2551, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield, Clinical Research Center, National Institutes of Health, Building 10, Room 6-2551, Bethesda, MD 20892, (301) 496-2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance

onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: August 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-19080 Filed 8-7-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 24, 2009.

Open: 10 a.m. to 12 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd.,

Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nlm.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19081 Filed 8–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 22–23, 2009.

Open: October 22, 2009, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 22, 2009, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 23, 2009, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38/Room 2W06, Bethesda, MD 20894, 301–496–6921, Sheldon_Kotzin@nlm.nih.gov.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo ID, and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. E9–19012 Filed 8–7–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2006–0037]

Expansion of Global Entry Pilot Program

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: General notice.

SUMMARY: U.S. Customs and Border Protection (CBP) is currently conducting an international trusted traveler pilot program, referred to as Global Entry, at seven airports. This document announces the expansion of the pilot to include thirteen additional airports.

DATES: The exact starting date for each airport location will be announced on the Web site at <http://www.globalentry.gov>.

ADDRESSES: You may submit comments, identified by “USCBP–2006–0037,” by one of the following methods:

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

- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (USCBP–2006–0037) for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

Applications for the Global Entry pilot are available through the Global On-Line Enrollment System (GOES) at <http://www.globalentry.gov>.

Applications must be completed and submitted electronically.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, (202) 344–2564, or Daniel Tanciar, Office of Field Operations, (202) 344–2818 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

CBP is currently conducting a pilot program called Global Entry, which began on June 6, 2008. This pilot was announced in a notice published in the **Federal Register** (73 FR 19861) on April 11, 2008.

The Global Entry pilot program allows for the expedited clearance of pre-approved, low-risk travelers into the United States. The initial **Federal Register** notice published on April 11, 2008 contained a detailed description of the program, the eligibility criteria and the application and selection process, and the initial airport locations: John F. Kennedy International Airport, Jamaica, New York, Terminal 4 (JFK); the George Bush Intercontinental Airport, Houston, Texas (IAH); and the Washington Dulles International Airport, Sterling, Virginia (IAD). CBP chose these initial airports due to the large numbers of travelers that arrive at those locations from outside the United States.

On August 13, 2008, in a notice published in the **Federal Register** (73 FR 47204), CBP announced that the pilot was being expanded to include all terminals at JFK and four additional airports: Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Initially, only U.S. citizens, U.S. nationals, and U.S. Lawful Permanent Residents (LPRs) were eligible to participate in the Global Entry pilot. However, as explained in the April 11, 2008 **Federal Register** notice, CBP has been working with other countries to recognize comparable programs operated by these countries and, as these arrangements are finalized, CBP will expand its eligibility criteria. The April 11 notice stated that such expansions of the pilot would be announced by publication in the **Federal Register**. On April 23, 2009, CBP published a notice in the **Federal Register** (74 FR 18586) that expanded eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, provided they otherwise satisfy the requirements for participation in the Global Entry pilot program. Pursuant to the reciprocal arrangement with the Government of the Netherlands, these applicants are eligible for participation in the Global Entry pilot upon successful completion of a thorough risk assessment by both

CBP and the Government of the Netherlands. Pursuant to the reciprocal arrangement, U.S. citizens who participate in the Global Entry pilot will have the option to apply for participation in Privium. For a more detailed discussion about the expansion of applicant eligibility to include citizens of the Netherlands, please refer to the April 23, 2009 **Federal Register** notice.

Operations

The Global Entry pilot project offers pilot participants expedited entry into the United States at any of the designated airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport. Global Entry uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant.

After arriving at the FIS area, participants proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry will provide visual identification that the individual can be referred to the kiosk. Global Entry participants need not wait in the regular passport control primary inspection lines.

After arriving at the kiosk, participants activate the system by inserting into the document reader either a machine-readable passport or a machine-readable U.S. permanent resident card. On-screen instructions guide participants to provide fingerprints electronically. These fingerprints are compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a member of the program. Participants are also prompted to look at the camera for a digital photograph.

When the procedures at the kiosk have been successfully completed, which also involves responding to several customs declaration questions by use of a touch-screen, participants are issued a transaction receipt. This receipt must be provided along with the passport or LPR card to the CBP Officer at the exit control area who will examine and inspect these documents. CBP Officers stationed in booths next to the kiosk lanes also oversee activities at the kiosk.

Declarations

When using the Global Entry kiosks, Global Entry participants are required to use the kiosk to declare all articles being brought into the U.S. pursuant to 19 CFR 148.11.

If a Global Entry participant declares any of the following, the kiosk redirects

that user to the head of the line at the nearest, open passport control, primary inspection station:

(a) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(b) More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(c) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Global Entry participants may also be subject to further examination and inspection as determined by CBP Officers at any time during the arrival process.

For a more detailed description of the Global Entry pilot program, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861.

Expansion to Additional Airports

This notice announces that the pilot will be expanded to include thirteen additional airports. As with the choice of initial airports, CBP is expanding the Global Entry pilot to include those airports that service the largest numbers of travelers arriving from outside the United States.

New Airports and Dates of Operation

CBP will expand the Global Entry pilot to the following airports: Newark Liberty International Airport, Newark, New Jersey (EWR); San Francisco International Airport, San Francisco, California (SFO); Orlando International Airport, Orlando, Florida (ORD); Detroit Metropolitan Wayne County Airport, Romulus, Michigan (DET); Dallas Fort Worth International Airport, Dallas, Texas (DFW); Honolulu International Airport, Honolulu, Hawaii (HNL); Boston—Logan International Airport, Boston, Massachusetts (BOS); Las Vegas—McCarran International Airport, Las Vegas, Nevada (LAS); Sanford—Orlando International Airport, Sanford, Florida (SSB); Seattle—Tacoma International Airport—SEATAC, Seattle, Washington (STT); Philadelphia International Airport, Philadelphia, Pennsylvania (PHL); San Juan—Luis Munos Marin International Airport, San Juan, Puerto Rico (SAJ) and Ft. Lauderdale Hollywood International Airport, Fort Lauderdale, Florida (FLL). The exact dates of the expansion of the Global Entry pilot to the individual airports will be announced at <http://www.globalentry.gov>.

All other aspects of the program as described in the previous notices are still in effect.

Dated: August 4, 2009.

Thomas S. Winkowski,
Assistant Commissioner, Office of Field Operations.

[FR Doc. E9-19038 Filed 8-7-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5288-N-06]

Notice of Proposed Information Collection for Public Comment; Public Housing Mortgage Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 9, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410-5000; telephone 202-402-8048, (this is not a toll-free number) or e-mail Ms. Deitzer at Lillian.L.Deitzer@hud.gov for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202-708-0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed

collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Mortgage Program.

OMB Control Number: 2577-NEW.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) must provide information to HUD for approval to allow PHAs to grant a mortgage in public housing real estate or a security interest in some tangible form of personal property owned by the PHA for the purposes of securing loans or other financing for modernization or development of low-income housing.

Agency form numbers, if applicable: N/A.

Members of affected public: Business or other for-profit, State, Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of annual respondents is 90 and the total annual reporting burden is 3,760 hours.

Status of the proposed information collection: This is a request for a new collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 30, 2009.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. E9-19078 Filed 8-7-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: August 26, 2009, at 10 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska 99501, (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska* Civil Action No. A91-081 CV. The meeting agenda will include a review of the draft fiscal year 2010 budget and updates to the draft work plan.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E9-19077 Filed 8-7-09; 8:45 am]

BILLING CODE 4310-RG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000-09-L14200000-BJ0000; 09-08807; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775-861-6541.

SUPPLEMENTARY INFORMATION:

1. The Plats of Survey of the following described lands will be officially filed at

the Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice:

The plat, in five (5) sheets, representing the dependent resurvey of a portion of the north boundary of Township 12 North, Range 27 East; the west boundary of Township 13 North, Range 28 East; a portion of the subdivisional lines of Township 13 North, Range 27 East; and portions of certain mineral surveys in Townships 13 North, Ranges 27 and 28 East, and the survey of a portion of the subdivisional lines, and the subdivision of certain sections, Township 13 North, Range 27 East, Mount Diablo Meridian, Nevada, under Group No. 855, was accepted July 14, 2009.

This survey was executed to meet certain administrative needs of the Walker River Paiute Tribe and the Bureau of Indian Affairs.

The plat, representing the survey of the east boundary of Township 1 North, Range 38 East, Mount Diablo Meridian, Nevada, under Group No. 861, was accepted July 22, 2009. The plat, in two (2) sheets, representing the dependent resurvey of the Mount Diablo Base Line through portions of Ranges 38 and 39 East, and a portion of Mineral Survey No. 3331, and the survey of the north and east boundaries and a portion of the subdivisional lines of Township 1 North, Range 38½ East, Mount Diablo Meridian, Nevada, under Group No. 861, was accepted July 22, 2009.

The plat, representing the dependent resurvey of the Mount Diablo Base Line through a portion of Range 39 East and the survey of a portion of the subdivisional lines of Township 1 North, Range 39 East, Mount Diablo Meridian, Nevada, under Group No. 861, was accepted July 22, 2009.

These surveys were executed to meet certain administrative needs of Rulco, LLC, and the Bureau of Land Management.

2. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirement of applicable laws, and other segregations of record, these lands are open to application, petition and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plats of Survey described in paragraph 1, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in order of filing.

3. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office

and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: July 28, 2009.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E9-19062 Filed 8-7-09; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-623]

In the Matter of Certain R-134a Coolant (Otherwise Known as 1,1,1,2-Tetrafluoroethane); Notice of Commission Determination To Reverse the Remand Determination of the Presiding Administrative Law Judge and To Terminate the Investigation in Its Entirety With a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Corrected Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the conclusion reached in the Remand Determination ("RID") issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation that the only remaining asserted claim of U.S. Patent No. 5,559,276 ("the '276 patent") is not obvious. The Commission finds that the claim would have been obvious to one of ordinary skill in the art and is therefore invalid. The Commission affirms the RID's conclusion that the asserted claim was not anticipated.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. (collectively, "Ineos"). The complaint alleged violations of section 337 of the Tariff Act of 1930 (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 R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added allegations of infringement with regard to United States Patent Nos. 5,382,722 and the '276 patent, but only claim 1 of the '276 patent remains at issue in this investigation. The complaint named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc. The four respondents are collectively referred to as "Sinochem."

On December 1, 2008, the ALJ issued his final ID, finding that Sinochem had violated section 337. He concluded that respondents' accused process infringed claim 1 of the '276 patent and that the domestic industry requirement had been met. He also found that claim 1 was not invalid and that it was not unenforceable. The Commission determined to review the ALJ's final ID with regard to the effective filing date of the asserted claim, anticipation, and obviousness. By order dated January 30, 2009, the Commission supplemented the ALJ's reasoning regarding the effective filing date, and remanded the investigation to the ALJ to conduct further proceedings related to anticipation and obviousness. To accommodate the remand, the Commission extended the target date to June 1, 2009 and instructed the ALJ to issue the RID by April 1, 2009.

The ALJ issued the RID on April 1, 2009. The RID concluded that Sinochem's arguments concerning anticipation and obviousness were waived under the ALJ's ground rules and, alternatively, that the arguments were without merit. Sinochem filed a petition for review of the RID. The Commission investigative attorney

("IA") and Ineos opposed Sinochem's petition.

On June 1, 2009, the Commission determined to review the RID in its entirety and requested briefing on certain questions. The Commission determined to extend the target date to August 3, 2009, to accommodate its review.

Having examined the record of this investigation, including the ALJ's RID and the submissions of the parties, the Commission has determined to reverse the conclusion of nonobviousness of claim 1 of the '276 patent in the RID. In so finding, the Commission has determined to rely on certain party admissions and other evidence as to the state of the prior art. The Commission majority has determined to take no position on the RID's conclusions relating to obviousness arguments based on prior art references identified in the Commission's remand instructions, including the RID's conclusions on whether arguments as to those references have been waived. The Commission has also determined not to rely on the RID's conclusions as to anticipation and waiver of anticipation arguments. The Commission has further determined to deny Sinochem's motion to strike portions of Ineos's response to its written submission and for leave to file a reply to that submission. The Commission has determined also to deny Sinochem's motion to conform pleadings to evidence taken. These findings terminate the Commission's investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Rule 210.45 of the Commission's Rules of Practice and Procedure (19 CFR Part 210.45).

By order of the Commission.
Issued: August 4, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-19015 Filed 8-7-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-676]

In the Matter of Certain Lighting Control Devices Including Dimmer Switches and Parts Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation Based on a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) granting the joint motion of complainant Lutron Electronics Co., Inc. ("Lutron") and respondent Universal Smart Electric Corp. ("Universal") to terminate the investigation based on a consent order.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 11, 2009, based on a complaint filed by Lutron of Coopersburg, Pennsylvania. 74 FR 21820 (May 11, 2009). The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 lighting control devices including dimmer switches and parts thereof by reason of infringement of United States Patent Nos. 5,637,930 and 5,248,919 as well as U.S. Trademark

Registration No. 3,061,804. The complaint named Universal of Irvine, California as the sole respondent.

On July 8, 2009, Universal and Lutron jointly filed a motion pursuant to Commission rule 210.21(c) (19 CFR 210.21(c)) for termination of the investigation based on a consent order. The Commission investigative attorney supported the motion.

On July 14, 2009, the ALJ issued the subject ID granting the joint motion to terminate. The ALJ found that the consent order stipulation submitted with the joint motion complied with the requirements of Commission rule 210.21 (19 CFR 210.21). The ALJ also concluded that there is no evidence that termination of this investigation would be contrary to the public interest. No petitions for review of this ID were filed.

Having examined the record of this investigation, the Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: August 4, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-19021 Filed 8-7-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary)]

Certain Magnesia Carbon Bricks From China and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701-TA-468 (Preliminary) and antidumping duty investigation Nos. 731-TA-1166-1167 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of

an industry in the United States is materially retarded, by reason of imports from China and Mexico of certain magnesia carbon bricks ("MCB"), provided for in subheadings 6902.10.10, 6902.10.50, 6815.91.00 and 6815.99.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China, and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by September 14, 2009. The Commission's views are due at Commerce within five business days thereafter, or by September 21, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on July 29, 2009, by Resco Products, Inc., (Pittsburgh, PA).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 countervailing duty and antidumping 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 these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 19, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-205-3200) not later than August 14, 2009, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 24, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 30, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9-19061 Filed 8-7-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-09-023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 18, 2009 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-458 and 731-TA-1154 (Final) (Certain Kitchen Appliance Shelving and Racks from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 31, 2009.)

5. Outstanding action jackets: None.
In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting,

may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: August 3, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9-19178 Filed 8-6-09; 11:15 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1122-0001]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Certification of Compliance With the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP (Services* Training* Officers* Prosecutors) Violence Against Women Formula Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. 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**, 74 FR 26889 on June 4, 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 September 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP Formula Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP

Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000 and VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-19075 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FX-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a Stipulation and Order in *United States v. Paul Revere Transportation, LLC*, Civil No. 06-cv-12297-GAO was lodged on August 4, 2009, with the United States District Court for the District of Massachusetts.

The Stipulation and Order resolves claims for civil penalties and injunctive relief against Paul Revere Transportation, LLC under the Clean Air Act and regulations promulgated thereunder. The complaint sought injunctive relief and civil penalties against Paul Revere Transportation, LLC pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, for violations of the federally enforceable Massachusetts idling regulation, found at 310 CMR 7.11(b). The violations occurred at the Paul Revere facility located in Roxbury, Massachusetts. A jury trial was held on this matter June 1, 2009, through June 8, 2009, and the jury returned a verdict in favor of the United States, finding

234 separate violations of the Clean Air Act and 310 CMR 7.11(b).

Pursuant to the Stipulation and Order, Paul Revere Transportation, LLC will pay a civil penalty of \$650,000 to resolve these violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Stipulation and Order. 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. Paul Revere Transportation, LLC*; Civil Action No. 06-CA-12297-GAO, D.J. Ref. No. 90-5-2-1-08849.

The proposed Stipulation and Order may be examined at the Office of the United States Attorney, District of Massachusetts, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, and at the United States Environmental Protection Agency, New England Region I, One Congress Street, Suite 1100, Boston, Massachusetts 02114-2023. During the public comment period, the proposed Stipulation and Order may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Stipulation and Order may 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 \$2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-19019 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: ATF Distribution Center Survey.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Diane Woods, Materiel Management Branch, 99 New York Avenue, NE., Washington, DC 20226.

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 agencies 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:* ATF Distribution Center Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1370.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Business or other for-profit. Other: Individual or households. The information provided on the form is used to evaluate the ATF Distribution Center and the services it provides the users of ATF forms and publications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 21,000 respondents will complete a 1 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 200 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19039 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0017]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Annual Firearms Manufacturing and Exportation Report under 18 U.S.C. Chapter 44, Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Erica Reid, Firearms and Explosives Services Division, 99 New York Avenue, NE., Washington, DC 20226.

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 agencies 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:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government,

State, Local, or Tribal Government. ATF collects this data for the purpose of witness qualifications, congressional investigations, court decision and disclosure and furnishing information to other Federal agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19048 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0066]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Barbara Osborne, Acting Chief, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

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 agencies 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:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 15 minutes per line entry and that 26 entries will be made per year per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19040 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0072]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Employee Possessor Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Christopher R. Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

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 agencies 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:* Employee Possessor Questionnaire

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.28. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. Each employee possessor in the explosives business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. The form will be submitted to ATF to determine whether the person who provided the information is qualified to be an employee possessor in an explosive business.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,334 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19041 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0022]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Federal Explosives License/Permit (FEL) Renewal Application.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Christopher R. Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Explosives License/Permit (FEL) Renewal Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. The form is used for the renewal of an explosive license or permit. The renewal application is used by ATF to determine that the applicant remains eligible to retain the license or permit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 825 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19044 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms

and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Steven Albro, Chief, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 25401.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individual or household. Other: None. The information is used by ATF to determine the lawful transportation of an NFA firearm and/or to pursue the criminal investigation into an unregistered NFA firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 800 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19047 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of information collection under review: Application and Permit for Permanent Exportation of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Steven Albro, Chief, National Firearms Act Branch, 244 Needy Road, Martinsburg, West Virginia 25401.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Permanent Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 9 (5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearm from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 70 respondents will complete a 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11

annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-19046 Filed 8-7-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 5, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, 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: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

OMB Control Number: 1205-0028.

Agency Form Number: ETA-538 and ETA-539.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 3,675.

Total Estimated Annual Costs Burden (does not include hour costs): \$0.

Description: These data are necessary for the determination of the beginning, continuance, or termination of an Extended Benefit (EB) period in any State, which determine the EB trigger rate. Also, data on initial and continued claims are used to help determine economic indicators. For additional information, see related notice published at Volume 74 FR 24039 on May 22, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Statement of Expenditures and Financial Adjustment of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers.

OMB Control Number: 1205-0162.

Agency Form Number: ETA-191.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 1,272.

Total Estimated Annual Costs Burden (does not include hour costs): \$0.

Description: Federal and military agencies must reimburse the Federal Employees Compensation Account for the amount expended for benefits to former Federal (civilian) employees and

ex-servicemembers. The report informs ETA of the amount to bill such agencies. For additional information, see related notice published at Volume 74 FR 14579 on March 31, 2009.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Unemployment Insurance Title XII Advances and Voluntary Repayment Process.

OMB Control Number: 1205-0199.

Agency Form Number: N/A.

Affected Public: State Governments.

Total Estimated Number of Respondents: 27.

Total Estimated Annual Burden Hours: 243.

Total Estimated Annual Costs Burden (does not include hour costs): \$0.

Description: This information collection's purpose is to maintain a process for State governors for requesting advances and repaying advances through their correspondence with the Secretary of Labor. The report informs ETA of the amount to bill such agencies. For additional information, see related notice published at Volume 74 FR 24041 on May 22, 2009.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Plan for Evaluation of the Trade Adjustment Assistance Program.

OMB Control Number: 1205-0460.

Agency Form Number: N/A.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 1,357.

Total Estimated Annual Burden Hours: 940.

Total Estimated Annual Costs Burden (does not include hour costs): \$0.

Description: This data collection is for an evaluation of the Trade Adjustment Assistance (TAA) Program. The evaluation is comprised of an impact analysis using a comparison group methodology. A process is also included to determine what programmatic and administrative features may affect performance. Data collection includes: Baseline and follow-up surveys of TAA participants and comparison group members, site visits to States and local areas, and an Internet/phone survey of local TAA coordinators. *bor.* The report informs ETA of the amount to bill such agencies. For additional information,

see related notice published at Volume 74 FR 14159 on March 30, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-19082 Filed 8-7-09; 8:45 am]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0019]

Addenda to the Memorandum of Understanding: To Formalize the Working Relationship Between the Department of Energy and the Department of Labor (August 28, 1992)

AGENCY: The Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Addenda to Memorandum of Understanding between the Department of Labor and the Department of Energy: the transfer of two existing buildings and two other parcels of land located at the East Tennessee Technology Park in Oak Ridge, Tennessee; transfer of employee safety and health authority from the Department of Energy (DOE) to the Tennessee Occupational Safety and Health Administration (TOSHA).

SUMMARY: This document is a notice of addenda to the 1992 interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy. That MOU states that DOE has exclusive authority over the occupational safety and health of contractor employees at DOE Government-Owned and Contractor-Operated facilities (GOCOs). In addition, the MOU between the departments dated July 25, 2000, on safety and health enforcement at privatized facilities and operations, provides that OSHA has regulatory authority over occupational safety and health at certain privatized facilities and operations on land formerly under the control of DOE. This action is taken in accordance with the July 25, 2000 MOU, which establishes specific interagency procedures for the transfer of occupational safety and health coverage for such privatized facilities and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA pursuant to section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 667. The MOUs may be found on the internet via the OSHA Web page <http://www.osha.gov> under the "D" for

Department of Energy Transition Activities.

DATES: *Effective Date:* The effective date of the Addenda to the Memorandum of Understanding is August 10, 2009.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3655, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2110. Access electronic copies of this notice at OSHA's Web site: <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor entered into a MOU on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, the MOU recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, [42 U.S.C. 2201(f)], relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the OSH Act of 1970, 29 U.S.C. 653(b)(1), exempts from OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the OSH Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000 that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The 2000 MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for or on behalf of DOE and where there is no

likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

In a letter dated April 9, 2009, DOE requested that OSHA or, as appropriate, TOSHA accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park at two existing buildings known as K-1652, a fire station owned and operated by the City of Oak Ridge, Tennessee, and K-1515, the water treatment plant owned and operated by the city, as well as two other parcels of land known as ED-5 East and ED-7, transferred to the Community Reuse Organization of East Tennessee (CROET), pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000.

OSHA's Regional Office in Atlanta, Georgia, working with the OSHA Nashville Area Office, and the TOSHA, determined that TOSHA is willing to accept authority over the occupational safety and health of employees at the two existing buildings and the two other parcels of land at the East Tennessee Technology Park in Oak Ridge, Tennessee that were transferred by deed to the City of Oak Ridge and CROET, respectively. In a letter from OSHA to DOE dated May 13, 2009, OSHA stated that TOSHA is satisfied with DOE assurances that (1) there is no likelihood that any employee at these facilities will be exposed to radiation levels that will be 25 millirems per year (mrem/yr) or more, and (2) transfer of authority to TOSHA is free from regulatory gaps, and does not diminish the safety and health protection of the employees. According to this letter, TOSHA therefore accepted and maintains health and safety regulatory authority over employees at buildings K-165 (fire station) and K-1515 (water treatment plant), as well as parcels ED-5 East and ED-7.

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. This **Federal Register** notice provides public notice and serves as an addendum to the 1992 OSHA/DOE MOU. This action is taken pursuant to section 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)) and Secretary of Labor's Order No. 5-2007 (72 FR 31159).

Signed at Washington, DC, on August 4, 2009.

Jordan Barab,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. E9-19070 Filed 8-7-09; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0021]

Benzene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Benzene (29 CFR 1910.1028).

DATES: Comments must be submitted (postmarked, sent, or received) by October 9, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2009-0021, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA-2009-0021). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>.

For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen or Jamaa Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Jamaa Hill, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in Benzene Standard protect workers from the adverse health effects that may result

from occupational exposure to benzene. The major information collection requirements in the Standard include conducting worker exposure monitoring, notifying workers of the benzene exposure, implementing a written compliance program, implementing medical surveillance for workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance records, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the worker who is the subject of the records, the worker's representative, and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collections of information requirements contained in the Standard on Benzene (29 CFR 1910.1028). As a result of re-estimating the number of medical examinations from 10,800 examinations to 11,233 examinations there was an increase in burden hours from 125,209 hours to 126,180 hours and an increase in costs from \$8,132,978 to \$8,133,499.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in request to OMB to extend the approval of the information collection requirements contained in the Benzene standard (29 CFR 1910.1028).

Type of Review: Extension of currently approved collection.

Title: Benzene Standard (29 CFR 1910.1028).

OMB Number: 1218-0129.

Affected Public: Business or other for-profits.

Total Responses: 267,376.

Frequency: On occasion.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for employers

to maintain records to 4 hours for workers to receive referral medical exams.

Total Burden Hours: 126,180.

Estimated Cost (Operation and Maintenance): \$8,133,499.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at <http://www.regulations.gov>, which is the Federal e-Rulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and OSHA docket number for the ICR (Docket No. OSHA-2009-0021). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available through the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web Site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 4th day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9-19072 Filed 8-7-09; 8:45 am]

BILLING CODE 4510-26-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0348; Docket No. 50-443]

FPL Energy Seabrook, LLC, et al.*; Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Facility Operating License No. NPF-86, issued to FPL Energy Seabrook, LLC (the licensee), for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the legal name of the Licensee and Co-owner from "FPL Energy Seabrook, LLC" to "NextEra Energy Seabrook, LLC."

The proposed action is in accordance with the licensee's application dated April 16, 2009.

The Need for the Proposed Action

The proposed action is necessary to reflect the legal change of name of the Licensee and Co-Owner on April 16, 2009.

Environmental Impacts of the Proposed Action

The NRC has concluded in its safety evaluation of the proposed action that

* FPL Energy Seabrook, LLC (FPLE Seabrook) is authorized to act as agent for the Hudson Light & Power Department, Massachusetts Municipal Wholesale Electric Company, and Taunton Municipal Light and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

since this action is for a name change only that (1) there is a reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, NUREG-0895, dated December 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on July 16, 2009, the staff consulted with the New Hampshire and Massachusetts State officials, Messrs. M. Nawoj and J. Giarrusso, respectively,

regarding the environmental impact of the proposed action. Neither State official had any comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 16, 2009. 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. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 or 301-415-4737, or send an e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 31st day of July 2009.

For the Nuclear Regulatory Commission.

Dennis Egan,

Senior Project Manager, Plant Licensing Branch 1-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9-19056 Filed 8-7-09; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009-57; Order No. 271]

International Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service recently filed with the Commission notice of changes in rates for Inbound International Expedited Services 2. This document establishes a docket for consideration of the filing, provides public notice of the filing, and invites public comment.

DATES: Comments are due August 12, 2009.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, at 202-789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background
- III. Notice of Filing
- IV. Supplemental Information
- V. Ordering Paragraphs

I. Introduction

On July 28, 2009, the Postal Service filed a notice announcing changes in rates not of general applicability for Inbound International Expedited Services 2 effective January 1, 2010.¹ The Postal Service attached a redacted copy of the 2010 rates and a certified statement establishing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively. *Id.* at 2. The Postal Service also submitted a listing of countries in each pricing tier and incorporated by reference the description of Inbound International Expedited Services 2 contained in its supporting documentation filed in Docket Nos. MC2009-10 and CP2009-12. The Postal Service submitted the rates, related financial information, and certified statement required by 39 CFR 3015.5(c)(2) under seal.

II. Background

The Notice states that in Docket No. MC2009-10, the Governors established prices and classifications not of general applicability for Inbound Express Mail International (EMS). In Order No. 162, the Commission added Inbound International Expedited Services 2 to the Competitive Product List as a new product under Express Mail, Inbound International Expedited Services.² The rates took effect on January 1, 2009.

In accordance with the provisions of the EMS Cooperative of the Universal Postal Union (UPU), rates for the delivery of inbound Express Mail International must be communicated to the UPU by August 31 of the year before which they are to take effect. As a member of the EMS Cooperative, the Postal Service may not change its rates for the coming year after August 31. In Order No. 162, the Commission raised concerns with filing these rates with the

¹ Notice of the United States Postal Service of Filing of Changes in Rates Not of General Applicability, July 28, 2009 (Notice).

² See PRC Order No. 162, Docket Nos. MC2009-10, CP2009-12, Order Adding Inbound International Expedited Services 2 To Competitive Product List, December 31, 2008.

Commission after August 31, even though they do not take effect until January 1 of the following year. The Commission indicated that if a product is found to violate the Postal Accountability and Enhancement Act (PAEA), *e.g.*, does not satisfy section 3633(a)(2), the Postal Service may be without a suitable remedy until the rate change is permitted for the following year. *Id.* at 9. The Commission, therefore, appreciates the Postal Service's filing the 2010 rates well in advance of the August 31, 2009 UPU deadline.

In its Notice, the Postal Service indicates that the rates to take effect in 2010 are divided into two tiers. Tier one applies to postal operators with a performance-level agreement, such as EMS Pay-for-performance Plan participants and Kahala Posts Group. Tier two applies to all other postal operators that transmit EMS to the United States. Notice at 2–3. The Postal Service provided a listing of countries in each tier, noting that this list may be subject to change on January 1, 2010. *Id.*; Attachment 3.

The Postal Service states that the China Post Group, whose inbound EMS rates were established by a bilateral agreement approved by the Commission in Docket Nos. CP2008–6 and CP2008–7, is expected to join Tier 1 grouping. *Id.* at 3. The parties have agreed to have the bilateral agreement expire at the end of the one-year term. *Id.* at 3.

The Postal Service maintains that the rates, related financial information, and certain portions of the certified statement required by 39 CFR 3015.5(c)(2), should remain under seal. *Id.* at 4.

III. Notice of Filing

The Commission establishes Docket No. CP2009–57 for consideration of matters related to the issues identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than August 12, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington as Public Representative in this proceeding.

IV. Supplemental Information

Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service to provide the following supplemental information by no later than August 10, 2009:

1. Please provide the 2010 EMS Pay for Performance Plan that will apply to EMS Cooperative members.

2. Please provide the Postal Service's EMS Cooperative Report Cards, including performance measurements, for calendar year 2008 and the first three quarters of 2009, if available.

3. In Excel file WP_Inbound_EMS_2009.07.28, worksheet 02_Narrative, cell C107, the Postal Service makes an assumption about arrival scan performance. Please explain this assumption further, its rationale, and how its application comports with the provisions of the 2010 EMS Pay for Performance Plan and the Postal Service's performance.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–57 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than August 12, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

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

Issued: August 4, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–19083 Filed 8–7–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 13, 2009 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the

scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 13, 2009 will be:

Institution and settlement of injunctive actions;
institution and settlement of administrative proceedings;
adjudicatory matters; and
other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 6, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–19234 Filed 8–6–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60416; File No. SR–BX–2009–045]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Group, LLC

July 31, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on July 31, 2009, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing an amendment to the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently submitted a proposed rule change⁴ with the Commission which added the Non-Penny Pilot Class Pricing Structure as Section 8 of the BOX Fee Schedule.⁵ Executions on BOX in these Non-Penny Pilot Classes resulting from orders sent via the InterMarket Linkage System ("Linkage Orders") are currently subject to "standard" billing on BOX.

In conjunction with the above referenced rule change the Exchange is now proposing to apply the Non-Penny Pilot Class Pricing Structure to all Linkage Orders in Non-Penny Pilot Classes sent to and executed on BOX. If approved, this proposal will conform Linkage Fees with the fees charged to BOX Participants for transactions in the in [sic] same Non-Penny Pilot Classes.

For example, an inbound Linkage Order, whether a P or P/A Order, routed to BOX from an away market executes against an order resting on the BOX Book. The inbound Linkage Order is the remover of liquidity. The inbound

Linkage Order will receive a \$0.30 credit according to the Non-Penny Pilot Class pricing structure. The inbound Linkage Order will ultimately receive a \$0.10 credit in total (the \$0.30 Non-Penny Pilot Class Pricing Structure credit less the standard \$0.20 inbound Linkage Order transaction fee). Prior to this proposal the inbound Linkage Order would be charged \$0.20 in total.

Alternatively, a Public Customer order is entered into the BOX Trading Host and is routed to an away market as an outbound Linkage Order. The Public Customer's Linkage Order is the remover of liquidity from the BOX Book. The Public Customer will ultimately receive a \$0.30 total credit according to the Non-Penny Pilot Class pricing structure as the standard transaction fee for the routing of Linkage Orders by BOX to away markets is free. Prior to this proposal the Public Customer's routed order neither received a credit nor was charged a fee.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov.

Please include File Number SR-BX-2009-045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2009-045 and should be submitted on or before August 31, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In

⁸In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴ See SR-BX-2009-044.

⁵ The Non-Penny Pilot Class Pricing Structure applies to all classes listed for trading on BOX that are not included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules ("Non-Penny Pilot Classes").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The proposal seeks to conform the Exchange's fees charged for linkage transactions in Non-Penny Pilot Classes with the fees charged for transactions to BOX Participants in the same Non-Penny Pilot Classes. The Commission notes that the proposal would reduce net costs for both inbound and outbound Linkage Orders. The Exchange requests that the effective date of the proposed rule change be August 3, 2009. The Commission believes that accelerating approval of this proposal would allow the Exchange to implement this new Linkage Fee in conjunction with the implementation of other related transactions fees on August 3, 2009 and would allow the fees/credits applicable to Linkage Orders to conform to such other fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-BX-2009-045) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-19016 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60418; File No. SR-NYSEAmex-2009-50]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Duplicate in the NYSE Amex Equities Price List the Section of the NYSE Amex Options Price List Setting Forth Regulatory Fees Applicable to Member Organizations

August 3, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")², and Rule 19b-4 thereunder,³ notice is hereby given that on July 27, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(2).⁴ 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 duplicate in the NYSE Amex Equities Price List the section of the NYSE Amex Options Price List setting forth regulatory fees applicable to member organizations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Member organizations of NYSE Amex are subject to the same regulatory fees regardless of whether they hold licenses to trade equities or options.⁵ Currently, the schedule of regulatory fees applicable to NYSE Amex member organizations is included only in the NYSE Amex Options Price List. Member organizations that hold only licenses to trade equity securities may not be familiar with the NYSE Amex Options Price List and may therefore not know where to find the schedule of regulatory fees. Additionally, the fact that the schedule of regulatory fees is not included in the NYSE Amex Equities Price List may cause confusion and lead to the erroneous impression that these regulatory fees do not apply to member organizations that hold only equity trading licenses. Consequently, NYSE Amex proposes to duplicate in its entirety in the NYSE Amex Equities Price List the regulatory fee section included in the NYSE Amex Options Price List. In doing so, NYSE Amex is not proposing to amend in any way the regulatory fees that member organizations currently pay. Going forward, NYSE Amex will make parallel changes to the two price lists whenever it amends any fees included in the schedule of regulatory fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6⁶ of the Securities Exchange Act of 1934 (the "Act")⁷ in general and Section 6(b)(4) of the Act⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ Registration fees are currently being waived through September 30, 2009 for NYSE member organizations that automatically became member organizations of NYSE Amex by operation of NYSE Amex Equities Rule 2 at the time of relocation of all NYSE Amex equities trading to the NYSE trading facilities and systems located at 11 Wall Street, New York, NY.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78a *et seq.*

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(2).

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2009-50 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-2009-50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEAmex-2009-50 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19017 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60424; File No. SR-FINRA-2009-049]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt the Selection Specifications and Study Outline for the Limited Representative—Investment Banking (“Series 79”) Examination Program

August 4, 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 28, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders

the proposal effective upon receipt of this filing by 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

FINRA is proposing to adopt the selection specifications and content outline for the Limited Representative—Investment Banking (“Series 79”) Examination program.⁴

The Series 79 examination program is proposed in connection with NASD Rule 1032(i), a new limited representative registration category for persons whose activities are limited to investment banking and principals who supervise such activities.⁵ FINRA is not proposing any textual changes to its By-Laws, Schedules to the By-Laws or rules.

A description of the Series 79 examination is included in the attached content outline.⁶ Additional information on the examination is included in the Series 79 selection specifications, which FINRA has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b-2 under the Act.⁷

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

⁴ Based upon instruction from the Commission staff, FINRA is submitting SR-FINRA-2009-049 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, and is not filing the question bank for Commission review. See Letter from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, dated July 24, 2009. The question bank is available for Commission review.

⁵ FINRA will announce the effective date of NASD Rules 1022(a)(1)(B) and 1032(i) in the same *Regulatory Notice* that will announce the implementation date of the proposed rule change, and those two dates will be the same.

⁶ The Commission notes that the content outline is attached to the proposed rule change though not to this notice.

⁷ 17 CFR 240.24b-2.

¹¹ 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).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 13, 2009, the Commission approved NASD Rule 1032(i), which establishes a new limited representative category—Limited Representative—Investment Banking—for persons whose activities are limited to investment banking and principals who supervise such persons.⁸ More specifically, the registration category encompasses those associated persons whose activities involve: (1) Advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (2) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

Pursuant to Section 15A(g)(3)(B) of the Act,⁹ FINRA is authorized to prescribe standards of training, experience, and competence for persons associated with FINRA members. The Series 79 examination program has been developed to ensure that persons associated with FINRA members seeking to register as investment banking representatives have attained specified levels of competence and knowledge.

Within the six-month period following the implementation of Rule 1032(i), individuals who are registered as a General Securities Representative and function in a member's investment banking business line as described in Rule 1032(i), or act as principals supervising such persons, may opt in to the Limited Representative—Investment Banking registration category. After the six-month opt-in period, individuals who perform the job functions set out in Rule 1032(i) will be required to pass the Series 79 exam in lieu of the General Securities Representative ("Series 7") exam (or equivalent exams), unless

subject to an exception in the Rule. Any person whose activities go beyond those specified in Rule 1032(i) will be required to separately qualify and register in the appropriate category or categories of registration attendant to such activities. The registration category does not cover individuals whose investment banking work is limited to public (municipal) finance or direct participation programs as defined in NASD Rule 1022(e)(2). Moreover, individuals who are currently registered as a Limited Representative—Private Securities Offerings may continue to function in such capacity, so long as their investment banking activities remain limited to effecting private securities offerings as defined in NASD Rule 1032(h)(1)(A). Similarly, individuals who in the future wish to engage in investment banking activities limited to effecting such private securities offerings may opt to register as a Limited Representative—Private Securities Offerings and pass the corresponding Series 82 exam in lieu of the Series 79 exam.

The qualification exam consists of 175 multiple-choice questions.¹⁰ Candidates will be allowed 300 minutes to complete the exam. Candidates will be given an informational breakdown of their performance on each section, along with their overall score and pass/fail status at the completion of the exam session.

A content outline has been prepared to assist member firms in preparing candidates for the Investment Banking Professional Qualification Examination and is available at <http://www.finra.org/brokerqualifications/registeredrep>. The content outline describes the following four topical sections comprising the examination: (1) Collection, Analysis and Evaluation of Data (75 questions); (2) Underwriting/New Financing Transactions, Types of Offerings and Registration of Securities (43 questions); (3) Mergers and Acquisitions, Tender Offers and Financial Restructuring Transactions (34 questions); and (4) General Securities Industry Regulations (23 questions).

The selection specifications for the Series 79 examination, which FINRA has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to

Rule 24b-2 under the Act,¹¹ describe additional confidential information regarding the examination.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be issued within 60 days of the date of effectiveness of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed Series 79 examination program is consistent with Section 15A(b)(6),¹² 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 and Section 15A(g)(3) of the Act,¹³ which authorize [sic] FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes the proposed rule change would provide for a more targeted assessment of the competency of investment banking personnel to perform their unique job functions and, as a result, provide investors better protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

⁸ See Securities Exchange Act Release No. 59757 (April 13, 2009), 74 FR 18268 (April 21, 2009) (Order Approving File No. SR-FINRA-2009-006).

⁹ 15 U.S.C. 78o-3(g)(3)(B).

¹⁰ To ensure that new exam questions meet acceptable testing standards prior to use, each examination includes 10 additional, unidentified "pre-test" questions that do not contribute towards the candidate's score. Therefore, the exam actually consists of 185 questions, 175 of which are scored. The 10 pre-test questions are randomly distributed throughout the examination.

¹¹ 17 CFR 240.24b-2.

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78o-3(g)(3).

19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

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-FINRA-2009-049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-049. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-049 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-19034 Filed 8-7-09; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60427; File No. SR-BX-2009-043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Extend Fee Holiday for Registration of Associated Persons

August 4, 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 23, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to extend a fee holiday for registration and processing fees associated with registration of associated persons of Exchange members. The Exchange proposes to make the proposed rule change retroactive to July 1, 2009, subject to Commission approval. The text of the proposed rule change is available at

<http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the resumption of trading of cash equities by the Exchange in January 2009, the Exchange adopted a new set of Equity Rules, which include rules to govern fees charged to members for registration of associated persons with the Exchange. New Equity Rule 7003(b) set fees at levels identical to those established by the Exchange prior to its acquisition by The NASDAQ OMX Group, Inc. Specifically, the fees are \$60 for each initial Form U4 filed for the registration of a representative or principal and \$40 for each transfer or relicensing of a representative of [sic] principal. However, in recognition of the fact that the relaunch of equities trading by the Exchange might cause additional firms to become members of the Exchange and might cause additional representatives or principals of pre-existing members to register, the Exchange waived these fees for the period from January 1, 2009 to July 1, 2009.³ The Exchange is proposing to extend this fee waiver period for an additional three months, until October 1, 2009, to provide further opportunity for free registration of associated persons of firms that are new to equity trading through the Exchange. Registration events occurring after October 1, 2009 would be subject to the fees. Because the previously effective fee holiday lapsed on July 1, 2009, the

³ The Exchange had also established an annual fee of \$50 for each registered representative or principal. The annual fee, which was historically collected in December of a year to cover the succeeding year, was suspended for the period from January 1, 2009 until such time as the Exchange submits a proposed rule change to reinstate it.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). 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 Commission notes that FINRA satisfied the five-day pre-filing notice requirement.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange requests Commission approval to make the change retroactive to July 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ in particular, in that it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rule change provides for a temporary suspension of initial, transfer, and relicensing fees applicable to all associated persons registering during the period of the fee holiday.

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BX-2009-043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BX-2009-043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. 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-BX-2009-043 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19035 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60419; File No. SR-NYSE-2009-79]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Until August 10, 2009 the Operation of Interim NYSE Rule 128, Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions

August 3, 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 31, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change 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 proposes to [sic] extend until August 10, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

⁶ 17 CFR 200.30-3(a)(12).

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until August 10, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,⁴ the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.⁵ On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008⁶ in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,⁷ the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule

⁴ See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09).

⁵ See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR-NASDAQ-2007-001).

⁶ See Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR-NYSE-2008-63).

⁷ See Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99).

128. On January 9, 2009,⁸ the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009⁹ to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).¹⁰ The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009¹¹ to finalize review of NYSE Arca's proposed amended CEE rule.¹² On July 15, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009¹³ to finalize review of NYSE Arca's proposed amended CEE rule.¹⁴

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the

⁸ See Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR-NYSE-2009-02).

⁹ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹⁰ See Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36) (See NYSE Arca Rule 7.10).

¹¹ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹² See Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR-NYSEArca-2009-57).

¹³ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹⁴ See Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR-NYSE-2009-70).

operation of interim Rule 128 until August 10, 2009. Prior to August 10, 2009, the Exchange intends to formally file a 19b-4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")¹⁵ for this proposed rule change is the requirement under Section 6(b)(5)¹⁶ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As articulated more fully in the "Purpose" Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

¹⁵ 15 U.S.C. 78f(a).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay²¹ is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-79 on the subject line.

prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2009-79 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19033 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60420; File No. SR-CBOE-2009-052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to the Hybrid Matching Algorithms

August 3, 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 17, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, to adopt a modified participation entitlement priority overlay. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of each rule currently provides a "menu" of matching algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different matching algorithms on a class-by-class basis. The menu includes, among other choices, price-time and pro-rata priority matching algorithms with additional priority overlays.³ The priority overlays currently include: Public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers, and a market turner priority for participants that are first to improve CBOE's disseminated quote. These overlays are optional.

The purpose of this rule filing is to adopt an additional priority overlay for the price-time and pro-rata matching algorithms, which the Exchange will refer to as the "modified participation entitlement." The modified participation entitlement will operate in the same manner as the existing participation entitlement with a few exceptions described below.⁴ In

³ The menu also includes a matching algorithm called the Ultimate Matching Algorithm ("UMA"). CBOE is not proposing any changes to the UMA matching algorithm at this time.

⁴ Under the existing participation entitlement, the Exchange may determine to grant Market-Makers participation entitlements pursuant to the provisions of Rules 8.87, *Participation Entitlement of DPMS and e-DPMS*, 8.13, *Preferred Market-Maker Program*, or 8.15B, *Participation Entitlement of LLMs*. More than one such participation entitlements may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to their participation entitlement, the Market-Maker's order and/or quote must be at the best price on the Exchange. (ii) The Market-Maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price. If pro-rata priority is in effect, and Market-Maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the Market-Maker shall not receive any further allocation of that order. (iii) In establishing the counterparties to a particular trade, the participation entitlement must first be counted

particular, if the modified participation entitlement is in effect for an option class, then the following would apply:

- If at the time of execution there are no public customer orders resting at the execution price, then the Market-Maker participation entitlement would be applied. This outcome is no change from how the existing participation entitlement works today.

- If at the time of execution there is a public customer order that was entered first in time sequence among all other resting trading interest at the execution price, then the Market-Maker participation entitlement would be applied after public customer orders are satisfied. This outcome is no change from how the existing participation entitlement works today.

- In all other cases involving the allocation of an incoming electronic order, *i.e.*, if at the time of execution there is one or more public customer orders resting at the execution price but none was entered first in time sequence, then the Market-Maker participation entitlement and public customer priority overlays would not be applied to the allocation. This outcome is a change from how the existing participation entitlement works today.⁵

- The modified participation entitlement would not be used for any electronic auctions; instead, the existing participation entitlement parameters would be applied.⁶ Thus, the outcome would be no change from how the

against that Market-Maker's highest priority bids or offers. (iv) The participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. See Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

⁵ For example, assume the matching algorithm for an options class is established so that public customer orders have first priority, the modified participation entitlement has second priority, and any remaining balance is allocated using the pro-rata matching algorithm. If at the time of execution there is one or more public customer orders at the execution price but none is first in time sequence (say because a Market-Maker quote was the first trading interest posted at the execution price), then the Market-Maker participation entitlement and public customer priority overlays would not be applied and the incoming order would be allocated solely on a pro-rata basis.

⁶ CBOE has various electronic auctions that are described under Rules 6.13A, *Simple Auction Liaison* ("SAL"), 6.14, *Hybrid Agency Liaison (HAL)*, 6.53C(d), *Process for Complex Order RFR Auction* ("COA"), 6.74A, *Automated Improvement Mechanism* ("AIM"), and 6.74B, *Solicitation Auction Mechanism* ("AIM SAM"). Each of these auctions generally allocates executions pursuant to the matching algorithm in effect for the options class with certain exceptions noted in the respective rules. For example, no participation entitlement is applied to orders executed through HAL or AIM.

existing participation entitlement works today for electronic auctions.

Lastly, it should be noted that, like the existing priority overlays, the modified participation entitlement is optional. As with the existing procedures, the Exchange will continue to determine whether one or more of the priority overlays shall apply to an option class and if more than one is selected, the sequence in which they shall apply (consistent with applicable rules). All determinations would be set forth in a regulatory circular.

2. Statutory Basis

This change will allow the Exchange another method to reward aggressive pricing in options trading on the Hybrid System. Accordingly, CBOE believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CBOE-2009-052 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-CBOE-2009-052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2009-052 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19018 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 9, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Small Business Size Determination.

SBA Form Number: 355.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Responses: 600.

Annual Burden Hours: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9-19013 Filed 8-7-09; 8:45 am]

BILLING CODE P

⁹ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA-2009-0142]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before October 9, 2009.

ADDRESSES: Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave, SE., W46-474, Washington, DC 20590. Docket No. NHTSA-2009-0142.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, PhD, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI-132), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., W46-495, Washington, DC 20590. Dr. Roberts' phone number is 202-366-5594 and his e-mail address is Scott.Roberts@dot.gov.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Evaluation Surveys for Distracted and Unsafe Driving Interventions

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: December 31, 2012.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) proposes to conduct a series of telephone surveys that will examine the effectiveness of high visibility enforcement demonstration programs to increase public awareness of the dangers of distracted and unsafe driving behaviors associated with mobile electronic devices like cell phones. Participation by respondents would be voluntary. Survey topics would include awareness of program activities, awareness of enforcement activities, attitudes towards distracted driving, understanding of relevant traffic laws, and the frequency of various unsafe driving behaviors.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous; the survey would not collect any personal information that would allow anyone to identify respondents. Participant names would not be collected during the interview and the telephone number used to reach the respondent would be separated from the data record prior to its entry into the analytical database.

Description of the Need for the Information and Proposed Use of the Information—The National Highway

Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct information collections to assess the effectiveness of interventions designed to assess the public's awareness of the dangers of distracted driving and of using mobile electronic devices including cell phones. An essential part of this evaluation effort is to compare baseline and post-intervention measures of attitudes, intervention awareness, and (relevant) self-reported behavior to determine if the interventions were associated with changes on those indices. The proposed study, to be administered in the first quarter of 2010, and in each of the next three quarters thereafter, will collect data on topics included in NHTSA's annual studies on the effectiveness of Click It or Ticket safety belt campaigns (and some additional topics), including: whether the driving public saw or heard paid media advertising about the high visibility enforcement campaign, whether they saw or heard increased law enforcement about the high visibility enforcement campaign, frequency of engaging in electronic mobile communication devices while driving, understanding of cell phone laws, attitudes about driving risk, and whether they had personally experienced increased law enforcement.

The findings from this proposed collection of information will assist NHTSA in addressing the problem of distracted driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of distracted driving, and to provide informational support to States, localities, and law enforcement agencies that will aid them in their efforts to reduce distracted driving crashes.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, the Contractor would conduct pre-intervention and post-intervention surveys four times over the course of a year in demonstration sites and comparison sites. A total of 18 telephone pretest interviews averaging 10 minutes in length would be administered to test the computer programming of the questionnaire, and

to determine if any last adjustments to the questionnaire are needed. Following any revisions carried out as a result of the pretest, the Contractor would conduct telephone interviews averaging approximately 10 minutes in length with 9,600 randomly selected member of the general public residing in the State(s) in which the demonstration program is taking place, age 16 and older, in telephone households and in cell phone only households. Interviews would be conducted with persons at residential phone numbers selected through random digit dialing. Federal law prohibits the use of auto dialing to call cell phones. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information—NHTSA estimates that the pretest interviews would require an average of 10 minutes apiece, or a total of 3 hours for the 18 respondents. Each respondent in the final survey sample would require an average of 10 minutes to complete the telephone interview or a total of 1,600 hours for the 9,600 respondents. Thus, the number of estimated reporting burden hours a year on the general public would be 1,603 for the proposed survey. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or recordkeeping cost from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. E9-19029 Filed 8-7-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and

approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 6, 2009. A comment dated June 5, 2009 was received, suggesting that the Maritime Administration (MARAD) amend its forms MA-29, MA-29A and MA-29B (Vessel Transfer Forms) to reference the applicability of the Toxic Substance Control Act (TSCA), and 40 CFR 761.97, thereby reflecting the statutory and regulatory constraints regarding the export of United States documented vessels for scrapping or refit outside the United States.

MARAD was given the mandate to (a) approve the transfer (the term transfer includes the sale, lease, charter, or agreement to sell, lease or charter to a person not a citizen of the United States) (46 U.S.C. 5610) of a United States documented vessel to a person who is not a citizen of the United States, and (b) approve the placement of a United States documented vessel under foreign registry and/or the operation of a United States documented vessel under the authority of a foreign country by a person who is not a citizen of the United States. Federal agencies generally may perform only those duties authorized by statute.

MARAD's forms collect the information we require to make a decision regarding the mandated transfer approvals. To collect additional information on the Vessel Transfer Forms would exceed our mandated authority.

In order to deal with the issue of vessels being transferred for scrapping outside the United States, we have instituted a procedure of providing written notification to the Environmental Protection Agency (EPA) of all foreign vessel transfer approvals at the time they are issued by the MARAD (Letter dated April 2, 2008, from Maritime Administrator to the Administrator of the EPA.). This will provide information to the EPA on where and when any demolition will take place. In addition, when an application for transfer includes a vessel leaving the U.S. registry for subsequent foreign disposal, the owner and/or buyer of the vessel are advised that the vessel may be subject to the TSCA and EPA implementing regulations.

DATES: Comments for this notice must be submitted on or before September 9, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Davis, Maritime Administration, 1200 New Jersey Avenue, SE.,

Washington, DC 20590. Telephone: 202-366-0688; or E-Mail: jerome.davis@dot.gov. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S.-Citizen Owned Documented Vessels.

OMB Control Number: 2133-0006.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Forms: MA-29, MA-29A, MA-29B (Note: MA-29A is used only in cases of a National emergency).

Abstract: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or the transfer of foreign flag vessels by their owners as required by various contractual requirements. The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Annual Estimated Burden Hours: 120 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: July 30, 2009.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9-19059 Filed 8-7-09; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2009-0001-19]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 9, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-0560." Alternatively, comments may be transmitted via facsimile to (202) 493-6216 or (202) 493-6497, or via e-mail to Mr. Brogan at robert.brogan@dot.gov, or to Ms. Jackson at nakia.jackson@dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35,

Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and

clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Use of Locomotive Horns at Highway-Rail Grade Crossings

OMB Control Number: 2130-0560

Abstract: The collection of information is used by FRA to increase safety at highway-rail grade crossings nationwide by requiring that locomotive horns be sounded when train approach and pass through these crossings, or by ensuring that a safety level at least equivalent to that provided by blowing horns exists for rail corridors in which horns are silenced. Communities that qualify for this exception may create "quiet zones" within which locomotive horns would not be routinely sounded. FRA reviews applications by public authorities intending to establish new or, in some cases, continue pre-rule quiet zones to ensure that the necessary level of safety is achieved.

Form Number(s): N/A.

Affected Public: Public Authorities/Railroads.

Respondent Universe: 340 Public Authorities.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
222.11—Penalties—Falsified Records/Reports	727 Railroads/340 Public Authorities	5 records/reports	2 hours	10
222.15—Waiver Petitions	727 Railroads/340 Public Authorities	5 petitions	4 hours	20
222.17—Applications to Become a Recognized State Agency	68 State Agencies	7 applications	8 hours	56
222.39—Establishment of Quiet Zone—Public Authority Application to FRA	340 Public Authorities	105 applications	80 hours	8,400
—Application Diagnostic Team Reviews	340 Public Authorities	53 diagnostic team reviews	32 hours	1,696
—Completed Grade Crossing Inventory Forms	340 Public Authorities	302 updated forms	1 hour	302
—Copies of Public Authority Quiet Zone Applications	340 Public Authorities	302 updated forms	10 minutes	105
—Comments on Public Authority Quiet Zone Applications	715 Railroads/State Agencies	630 copies	2.5 hours	125
222.41—Notice of Quiet Zone Establishment and Notification to Parties	247 Communities/PAs	247 notices + 1,482 notification	40 hours + 10 min.	10,127
—Certification by Public Authority CEO	262 Communities	262 certifications	5 minutes	22
—Required Grade Crossing Inventory Forms	200 Communities	2,364 forms	60 minutes	2,364
—Notice of Quiet Zone Continuation and Notification to Parties	200 Communities	200 notices + 1,200 notification	40 hours + 10 min.	8,200
—Certification by Public Authority CEO	200 Communities	200 certifications	5 minutes	17
—Required Grade Crossing Inventory Forms	200 Communities/PAs	200 certifications	1 hour	416
—Filing of Detailed Plans by Public Authority	200 Communities/PAs	200 certifications	40 hours	4,000
—Statewide Implementation Plan to Continue Horn Ban—Notice of Intent to Create New Quiet Zone	25 State Agencies	416 forms	120 hours	360
—Comments on Public Authorities Notice of Intent	200 Public Authorities	100 plans	20 hours + 10 minutes	2,100
	200 RRs/State Agencies	3 impl. Plans	4 hours	280
		100 notices + 600 notifications		
		70 comments		

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
222.42—Intermediate Quiet Zones/Partial Quiet Zones —Notice of Quiet Zone Continuation —Required Grade Crossing Inventory Forms —Certification by Public Authority CEO —Notice of Intent to Establish New/Partial Quiet Zone —Comments on Public Authorities Notice of Intent —Conversion of Intermediate Partial Quiet Zone into 24-hour Quiet Zone—Notices + Notifications —Public Comments on Notice of Intent	10 Communities/PAs 10 Communities/PAs 10 Communities/PAs 10 Communities/PAs 20 RRs/State Agencies 10 Public Authorities 20 RRs/State Agencies	10 notices + 60 notifications 100 forms 10 certifications 5 notices + 30 notifications 5 comments 5 notices + 30 notifications 5 comments	40 hours + 10 min. 1 hour 5 minutes 40 hours + 10 min. 4 hours 40 hours + 10 min. 4 hours	410 100 1 205 20 205 20
222.43—Notices and Other Required Information to Create or Continue a Quiet Zone —Notice of Intent to Create New/Partial Quiet Zone or Implement New Supplementary Safety Measures or Auxiliary Safety Measures w/in Pre-Rule Quiet Zone —Required Grade Crossing Inventory Forms —Comments on Public Authorities Notice of Intent —Notice of Quiet Zone Establishment —Required Grade Crossing Inventory Forms —Certification by Public Authority CEO	216 Communities/PAs 216 Communities 715 RRs/State Agencies 316 Public Authorities 316 Public Authorities 216 Public Authorities	216 notices + 648 notifications 376 updated forms 108 comments 72 notices + 432 notifications 950 updated forms 216 certifications	40 hours + 10 min. 1 hour 4 hours 40 hours + 10 min. 1 hour 5 minutes	8,748 376 432 2,952 950 18
222.47—Periodic Updates —Written Affirmations That All Supplementary Safety Measures (SSMs)/Auxiliary Safety Measures (ASMs) Meet Requirements —Required Grade Crossing Inventory Forms	200 Public Authorities 200 Public Authorities	100 affirmations + 600 copies 500 updated forms	30 min. + 2 min. 60 minutes	70 500
222.51—Review of Quiet Zone Status —Written Commitment to Lower Risk Where Quiet Zone Risk Index Exceeds Nationwide Significant Risk Threshold —Review at FRA's Initiative—Opportunity to Comment	9 Public Authorities 3 Public Authorities	2 commitments 20 comments	5 hours 30 minutes	10 10
222.55—New Supplementary Safety Measures or Alternative Safety Measures—Administrator Approval —Opportunity for Public Comment —Request for Approval After Completed Demonstration	265 Interested Parties 265 Interested Parties 265 Interested Parties	1 approval letter 5 comments 1 approval letter	30 minutes 30 minutes 30 minutes	1 3 1
222.57—Review of the Associate Administrator's Actions—Petition for Review of Decision —Petition for Reconsideration of Denial of QZ Application —Follow-up Documents to Associate Administrator —Requests for Informal Hearing	265 Interested Parties 200 Public Authorities 200 Public Authorities 200 Public Authorities	1 petition + 5 copies 1 petition + 6 copies 1 document 1 letter	60 min. + 2 min. 5 hrs. + 2 min. 2 hours 30 minutes	1 5 2 1
222.59—Use of Wayside Horns —Installation w/in QZ and Written Notice to Railroads —Installation at Grade Crossing Outside Quiet Zone	200 Public Authorities 200 Public Authorities	10 notices + 60 copies 10 notices + 60 notice copies	2.5 hours + 10 minutes 2.5 hours + 10 minutes	35 35
Appendix B to Part 222—Alternative Safety Measures —Non-Engineering ASMs—Programmed Enforcement—Monitoring and Sampling Records —Photo Enforcement—Monitoring & Sampling Records	200 Public Authorities 200 Public Authorities	10 records 10 records	500 hours 9 hours	5,000 90
229.129—Locomotive Horn—Testing Requirements —Written Reports/Records of Testing —Re-Testing of Locomotive Horns—Reports/Records	687 railroads 687 railroads	7,743 reports/records 650 report/records	60 minutes 60 minutes	7,743 650

Total Responses: 21,476.
Estimated Total Annual Burden: 67,194 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 4, 2009.

Martin Eble,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–19060 Filed 8–7–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 55]

Railroad Safety Advisory Committee; Notice of Meeting

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

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the fortieth meeting of the RSAC, a Federal advisory committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator and discussion of the FRA High-Speed Rail Safety Strategy. Status reports will be provided by the Locomotive Standards, Passenger Safety, Track Safety Standards, and Medical Standards Working Groups. Status updates will be provided on the following tasks arising out of the Rail Safety Improvement Act (RSIA): Positive Train Control, Passenger Hours of Service, Railroad Bridge Safety Management, and Conductor Certification. The Committee may also be asked to accept a task regarding another RSIA-mandated rulemaking addressing Critical Incident Programs. This agenda is subject to change, including the possible addition of further proposed tasks under the RSIA.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. on Thursday, September 10, 2009, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the Washington Marriott Hotel, located at 1221 22nd Street, NW., Washington, DC 20037. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT:

Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of RSAC. RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at: <http://rsac.fra.dot.gov>. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Issued in Washington, DC on August 5, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19084 Filed 8–7–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

TIME AND DATE: September 3, 2009, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person

may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: August 4, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–19236 Filed 8–6–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0075]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MON BIJOU.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0075 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 9, 2009.

ADDRESSES: Comments should refer to docket number MARAD-2009-0075. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MON BIJOU is:

Intended Use: "Rentals/skipped charters up to six passengers."

Geographic Region: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Dated: July 30, 2009.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.
[FR Doc. E9-19058 Filed 8-7-09; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2009 0076]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ATLANTIS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-built requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2009-0076 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 9, 2009.

ADDRESSES: Comments should refer to docket number MARAD-2009-0076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ATLANTIS is:

Intended Use: "East coast-wise Yacht Chartering for up to 8 passengers."

Geographic Region: "Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida".

Privacy Act

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

Dated: July 30, 2009.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.
[FR Doc. E9-19050 Filed 8-7-09; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance—Dayton Wright Brothers Airport; Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 5.597 acres of airport property for non-aeronautical use. The land consists of portions of 2 original airport acquired parcels. These parcels were acquired under grants 5-39-0030-01, 5-39-0030-02, 5-39-0030-03, 5-39-

0030-05, and 3-39-0030-01. There are no impacts to the airport by allowing the City of Dayton to sell the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the sale of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 9, 2009.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Irene R. Porter, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO-607, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734-229-2915)/FAX Number (734-229-2950). Documents reflecting this FAA action may be reviewed at this same location or at Dayton Wright Brothers Airport, Dayton, Ohio.

SUPPLEMENTARY INFORMATION:

Parcel 126 LA

Situated in the State of Ohio, in the County of Montgomery, in the Township of Miami, in section 10, Town 2, Range 5 M.R.S. and being a part of a tract of land currently owned by The City of Dayton as currently described in the reference instrument M.F. #74-023 D06.

Being a parcel of land lying on the right and left sides of the centerline of proposed Austin Pike (C.R. 166) of Project MOT-75-0.75, made by the Ohio Department of Transportation in Book 207, Page 12A, B, & C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

Beginning for reference at the proposed centerline monument located at the intersection of the Miamisburg-Springboro Pike (C.R. 166)/Austin Pike, station 178+80.09 and S.R. 741, station

39+56.49, said point having the following project adjusted coordinates: North 586268.7404; East 1481449.0814; Thence along the proposed centerline Austin Pike (C.R. 166), South 88 degrees 30 minutes 19 seconds East 60.12 feet to a point located at station 179+40.21, said point being the intersection of the proposed centerline and the existing Limited Access Right-of-Way of S.R. 741;

thence leaving the proposed centerline and along the existing Limited Access Right-of-Way, South 05 degrees 06 minutes 52 seconds West 15.29 feet to a point located 15.26 feet right of station 179+39.24, said point also being 60.00 feet right of S.R. 741, station 39+45.00, and being the intersection of the existing Limited Access Right-of-Way and the grantor's northwestern property corner and the existing Right-of-Way of Austin Pike (C.R. 166) and the true point of beginning of the following described parcel:

thence leaving the existing Limited Access Right-of-Way and along the existing Right-of-Way and the grantor's northern property line, North 84 degrees 12 minutes 44 seconds East 397.73 feet, passing the proposed centerline at 120.36 feet, to a point located 35.16 feet left of station 183+33.78;

thence continuing along the existing Right-of-Way and the grantor's northern property line, North 01 degrees 01 minutes 54 seconds East 24.16 feet to a point located 59.32 feet left of station 183+33.56, said point being the intersection of the existing Right-of-Way and the grantor's northern property line and the existing centerline of Right-of-Way;

thence leaving the existing Right-of-Way and along the existing centerline of Right-of-Way and the grantor's northern property line, South 88 degrees 58 minutes 06 seconds East 366.45 feet to a point located 62.28 feet left of station 187+00.00, said point being the intersection of the existing centerline of Right-of-Way and the grantor's northern property line and the proposed Limited Access Right-of-Way;

thence leaving the existing centerline of Right-of-Way and the grantor's northern property line and along the proposed Limited Access Right-of-Way, South 01 degrees 29 minutes 41 seconds West 24.16 feet to a point located 38.12 feet left of station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the existing Right-of-Way;

thence continuing along the proposed Limited Access Right-of-Way, South 01 degrees 29 minutes 41 seconds West

130.54 feet, passing the proposed centerline at 38.12 feet, to an iron pin to be set 92.42 feet right of station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the proposed Right-of-Way;

thence, North 88 degrees 30 minutes 19 seconds West 150.00 feet to an iron pin to be set 92.42 feet right of station 185+50.00;

thence, South 84 degrees 42 minutes 42 seconds West 402.82 feet, passing and iron pin to be set at 196.74 feet, to an iron pin to be set 140.00 feet right of station 181+50.00;

thence, North 88 degrees 30 minutes 19 seconds West 150.00 feet, passing and iron pin to be set at 137.70 feet, to an iron pin to be set 140.00 feet right of station 180+00.00, said point also being 128.51 feet right of S.R. 741, station 38+24.34;

the following calls are described referencing the existing S.R. 741 centerline;

thence, South 74 degrees 08 minutes 39 seconds West 73.36 feet, passing an iron pin to be set at 68.01 feet, to an iron pin to be set 60.00 feet right of station 37+98.08, said point being the intersection of the proposed Limited Access Right-of-Way and the existing Limited Access Right-of-Way of S.R. 741;

thence along the existing Limited Access Right-of-Way, North 05 degrees 06 minutes 48 seconds East 146.92 feet to the point of beginning.

The above described area is located within Montgomery County Auditor's Permanent Parcel Number K45 02602 0015. The parcel contains 2.693 acres, more or less.

Parcel 126 SHV

Situated in the State of Ohio, in the County of Montgomery, in the Township of Miami, in section 10, Town 2, Range 5 M.R.S. and being a part of a tract of land currently owned by The City of Dayton as currently described in the reference instrument M.F. #74-023 D06.

Being a parcel of land lying on the right and left sides of the centerline of proposed Austin Pike (C.R. 166) of Project MOT-75-0.75, made by the Ohio Department of Transportation in Book 207, Page 12A, B, & C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

Beginning for reference at the proposed centerline monument located at the intersection of the Miamisburg-

Springboro Pike (C.R. 166)/Austin Pike, station 178+80.09 and S.R. 741, station 39+56.49, said point having the following project adjusted coordinates: North 586268.7404; East 1481449.0814; Thence along the proposed centerline of Austin Pike (C.R. 166), South 88 degrees 30 minutes 19 seconds East 819.91 feet to a point located at station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the true point of beginning of the following described parcel:

thence leaving the proposed centerline and along the proposed Limited Access Right-of-Way, North 01 degrees 29 minutes 41 seconds East 38.12 feet to a point located 38.12 feet left of station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the existing Right-of-Way;

thence continuing along the proposed Limited Access Right-of-Way, North 01 degrees 29 minutes 41 seconds East 24.16 feet to a point located 62.28 feet left of station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the existing centerline of Right-of-Way of Austin Pike (C.R. 166) and the grantor's northern property line;

thence leaving the proposed Limited Access Right-of-Way and along the existing centerline of Right-of-Way and the grantor's northern property line, South 88 degrees 58 minutes 06 seconds East 767.05 feet to a point located 4.95 feet left of station 194+71.78;

thence continuing along the existing centerline of Right-of-Way and the grantor's northern property line, North 89 degrees 16 minutes 51 seconds East 313.42 feet to a point located 2.85 feet left of station 197+85.00, said point being the intersection of the existing centerline of Right-of-Way and the grantor's northern property line and the proposed Right-of-Way;

thence leaving the existing centerline of Right-of-Way and the grantor's northern property line and along the proposed Right-of-Way, South 00 degrees 43 minutes 10 seconds East 24.13 feet, passing the proposed centerline at 2.85 feet, to an iron pin to be set 21.28 feet right of station 197+85.00, said point being the intersection of the proposed and the existing Right-of-Way;

thence, South 55 degrees 11 minutes 45 seconds West 72.45 feet to an iron pin to be set 61.88 feet right of station 197+25.00;

thence, South 84 degrees 57 minutes 40 seconds West 485.32 feet to an iron pin to be set 71.13 feet right of station 192+30.00;

thence, South 76 degrees 48 minutes 01 seconds West 200.25 feet to an iron pin to be set 97.80 feet right of station 190+39.86;

thence, North 88 degrees 30 minutes 19 seconds West 346.89 feet to an iron pin to be set 92.42 feet right of station 187+00.00, said point being the intersection of the proposed Limited Access Right-of-Way and the proposed Right-of-Way;

thence along the proposed Limited Access Right-of-Way, North 01 degrees 29 minutes 41 seconds East 92.42 feet to the point of beginning.

The above described area is located within Montgomery County Auditor's Permanent Parcel Number K45 02602 0015. The parcel contains 2.831 acres, more or less.

Parcel 126 CH

Situated in the State of Ohio, in the County of Montgomery, in the Township of Miami, in section 10, Town 2, Range 5 M.R.S. and being a part of a tract of land currently owned by The City of Dayton as currently described in the reference instrument M.F. #74-023 D06.

Being a parcel of land lying on the right side of the centerline of existing S.R. 741 of Project MOT-75-0.75, made by the Ohio Department of Transportation in Book 207, Pages 12A, B, & C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

Beginning for reference at the proposed centerline monument located at the intersection of the Miamisburg-Springboro Pike (C.R. 166), station 178+80.09 and S.R. 741, station 39+56.49, said point having the following project adjusted coordinates: North 586268.7404; East 1481449.0814; thence along the existing centerline of S.R. 741, South 05 degrees 06 minutes 48 seconds West 1,765.83 feet to a point located at station 21+90.66;

thence leaving the existing centerline, South 84 degrees 53 minutes 12 seconds East 73.00 feet to a point 73.00 feet right of station 21+90.66, said point being on the grantor's western property line and the existing Right-of-Way of S.R. 741 and the western line of an existing channel easement owned by the State of Ohio, conveyed by M.F.# 78-638 E02, in the Montgomery County Recorder's Office;

thence leaving the existing Right-of-Way and crossing the existing channel easement owned by the State of Ohio, South 84 degrees 53 minutes 12 seconds East 6.37 feet to an iron pin to be set 79.37 feet right of station 21+90.66, said

point being the intersection of the eastern line of an existing channel easement owned by the State of Ohio and the proposed channel easement and the true point of beginning of the following described parcel:

thence along the proposed channel easement, South 28 degrees 17 minutes 30 seconds East 14.52 feet to an iron pin to be set 87.36 feet right of station 21+78.54;

thence continuing along the proposed channel easement, South 05 degrees 08 minutes 51 seconds West 110.34 feet to an iron pin to be set 87.65 feet right of station 20+68.51;

thence continuing along the proposed channel easement, South 24 degrees 59 minutes 51 seconds West 23.56 feet to an iron pin to be set 79.72 feet right of station 20+46.33, said point being the intersection of the proposed channel easement and the eastern line of an existing channel easement owned by the State of Ohio;

thence continuing along the proposed channel easement and along the eastern line of an existing channel easement owned by the State of Ohio, North 05 degrees 08 minutes 51 seconds East 144.61 feet to the point of beginning.

The above described area is located within Montgomery County Auditor's Permanent Parcel Number K45 02602 0010. The parcel contains 0.023 acres, more or less.

Parcel 126 CH-1

Situated in the State of Ohio, in the County of Montgomery, in the Township of Miami, in section 10, Town 2, Range 5 M.R.S. and being a part of a tract of land currently owned by The City of Dayton as currently described in the reference instrument M.F. #74-023 D06.

Being a parcel of land lying on the right side of the centerline of existing S.R. 741 of Project MOT-75-0.75, made by the Ohio Department of Transportation in Book 207, Pages 12A, B, & C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

Beginning for reference at the proposed centerline monument located at the intersection of the Miamisburg-Springboro Pike (C.R. 166), station 178+80.09 and S.R. 741, station 39+56.49, said point having the following project adjusted coordinates: North 586268.7404; East 1481449.0814; thence along the existing centerline of S.R. 741, South 05 degrees 06 minutes 48 seconds West 706.49 feet to a point located at station 32+50.00;

thence leaving the existing centerline, South 84 degrees 53 minutes 12 seconds East 65.00 feet to a point 65.00 feet right of station 32+50.00, said point being on the grantor's western property line and the existing Right-of-Way of and the proposed Limited Access Right-of-Way of S.R. 741 and the western line of an existing channel easement owned by the State of Ohio, conveyed by M.F.# 78-638 E02, in the Montgomery County Recorder's Office;

thence leaving the existing Right-of-Way and the proposed Limited Access Right-of-Way and crossing the existing channel easement owned by the State of Ohio, South 84 degrees 53 minutes 12 seconds East 15.00 feet to a point located 80.00 feet right of station 32+50.00, said point being on the eastern line of an existing channel easement owned by the State of Ohio and the true point of beginning of the following described parcel:

thence along the existing channel easement owned by the State of Ohio, North 34 degrees 33 minutes 31 seconds East 30.51 feet to an iron pin to be set 95.00 feet right of station 32+76.57, said point being the intersection of the existing channel easement owned by the State of Ohio and the proposed channel easement;

thence leaving the existing channel easement owned by the State of Ohio and along the proposed channel easement, South 05 degrees 06 minutes 48 seconds West 136.57 feet to an iron pin to be set 95.00 feet right of station 31+40.00;

thence continuing along the proposed channel easement, North 84 degrees 53 minutes 12 seconds West 15.07 feet to an iron pin to be set 79.93 feet right of station 31+40.00, said point being the intersection of the proposed channel easement and the eastern line of an existing channel easement owned by the State of Ohio;

thence along the eastern line of an existing channel easement owned by the State of Ohio, North 05 degrees 08 minutes 51 seconds East 110.00 feet to the point of beginning.

The above described area is located within Montgomery County Auditor's Permanent Parcel Numbers K45 02602 0010 and K45 02602 0015. The parcel contains 0.042 acres, more or less, of which 0.038 acres is contained within K45 02602 0010, and 0.004 acres is contained within K45 02602 0015.

Parcel 126 CH-2

Situated in the State of Ohio, in the County of Montgomery, in the Township of Miami, in section 10, Town 2, Range 5 M.R.S. and being a part

of a tract of land currently owned by The City of Dayton as currently described in the reference instrument M.F. #74-023 D06.

Being a parcel of land lying on the right side of the centerline of existing S.R. 741 of Project MOT-75-0.75, made by the Ohio Department of Transportation in Book 207, Page 12A, B, & C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

Beginning for reference at the proposed centerline monument located at the intersection of the Miamisburg-Springboro Pike (C.R. 166), station 178+80.09 and S.R. 741, station 39+56.49, said point having the following project adjusted coordinates: North 586268.7404; East 1481449.0814; thence along the existing centerline of S.R. 741, South 05 degrees 06 minutes 48 seconds West 158.41 feet to a point located at station 37+98.08;

thence leaving the existing centerline, South 84 degrees 53 minutes 12 seconds East 60.00 feet to an iron pin to be set 60.00 feet right of station 37+98.08, said point being the intersection of the grantor's western property line and the existing Limited Access Right-of-Way of S.R. 741 and proposed Limited Access Right-of-Way of Miamisburg-Springboro Pike (C.R. 166) and the western line of an existing channel easement owned by the State of Ohio, conveyed by M.F.# 78-638 E02, in the Montgomery County Recorder's Office;

thence along the proposed Limited Access Right-of-Way, North 74 degrees 08 minutes 39 seconds East 5.35 feet to an iron pin to be set 65.00 feet right of station 38+00.00, said point being the intersection of the eastern line of an existing channel easement owned by the State of Ohio and the proposed Limited Access Right-of-Way and the true point of beginning of the following described parcel:

thence along proposed Limited Access Right-of-Way, North 74 degrees 08 minutes 39 seconds East 68.01 feet to an iron pin to be set 128.51 feet right of station 38+24.34;

thence continuing along proposed Limited Access Right-of-Way, South 88 degrees 30 minutes 19 seconds East 12.30 feet to an iron pin to be set 140.79 feet right of station 38+25.12, said point being the intersection of the proposed Limited Access Right-of-Way and the proposed channel easement;

thence leaving the proposed Limited Access Right-of-Way and along the proposed channel easement, South 05 degrees 06 minutes 48 seconds West

467.44 feet to an iron pin to be set 140.79 feet right of station 33+57.68; thence continuing along the proposed channel easement, South 34 degrees 33 minutes 31 seconds West 52.46 feet to an iron pin to be set 115.00 feet right of station 33+12.00, said point being the intersection of the proposed channel easement and the western line of an existing channel easement owned by the State of Ohio;

thence along the existing channel easement owned by the State of Ohio, North 44 degrees 42 minutes 27 seconds West 58.90 feet to point located 70.00 feet right of station 33+50.00; thence continuing along the existing channel easement owned by the State of Ohio, North 04 degrees 28 minutes 36 seconds East 450.03 feet to the point of beginning.

The above described area is located within Montgomery County Auditor's Permanent Parcel Number K45 02602 0015. The parcel contains 0.810 acres, more or less.

Issued in Romulus, Michigan on July 17, 2009.

Matthew J. Thys,

*Manager, Detroit Airports District Office,
FAA, Great Lakes Region.*

[FR Doc. E9-19030 Filed 8-7-09; 8:45 am]

BILLING CODE 4910-13-P

TENNESSEE VALLEY AUTHORITY

Supplemental Environmental Impact Statement for a Single Nuclear Unit at the Bellefonte Site

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent.

SUMMARY: This notice of intent (NOI) is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500-1508) and Tennessee Valley Authority's (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA will prepare a Supplemental Environmental Impact Statement (SEIS) to update information in the 1974 Final Environmental Statement for Bellefonte Nuclear Plant Units 1 and 2 (1974 FES) and other pertinent environmental reviews, in order to address the potential environmental impacts associated with its proposal to operate a single nuclear generation unit at the Bellefonte Nuclear Plant (BLN) site located in Jackson County, Alabama. Currently, there are two partially constructed units at the BLN site. TVA may choose to complete and operate either one of these partially constructed units or construct and

operate one new technology unit. Operation of one nuclear unit capable of producing approximately 1,100 megawatts (MW) of power would help address the need for additional base load generation in the TVA power service area; meet TVA's goal to have at least 50 percent of its generation portfolio comprised of low or zero carbon-emitting sources by the year 2020; and make beneficial use of existing assets at the BLN site.

DATES: Comments on the draft SEIS will be invited from the public. It is anticipated that the draft SEIS will be available in fall 2009. A notice of availability of a draft SEIS will be published in the **Federal Register**, as well as announced in the local news media.

ADDRESSES: Information about the SEIS may be obtained by contacting Ruth M. Horton, Senior NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 11D, Knoxville, Tennessee 37902; by e-mailing to blnp@tva.gov; or by visiting the project Web site at <http://www.tva.gov/blnp>.

FOR FURTHER INFORMATION CONTACT: For information about nuclear plant construction and operation, contact Andrea Sterdis, Nuclear Generation Development and Construction, Tennessee Valley Authority, 1101 Market Street, Mail Stop LP 5A, Chattanooga, Tennessee 37402 (e-mail: alsterdis@tva.gov).

SUPPLEMENTARY INFORMATION:

TVA Power System

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. TVA operates the nation's largest public power system, producing 4 percent of all electricity in the nation. TVA provides electricity to most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It serves about 9 million people in this seven-state region through 158 power distributors and 58 directly served large industries and federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis, and the TVA Act directs TVA to sell power at rates as low as are feasible.

Dependable capacity on the TVA power system is about 37,000 MW. TVA generates most of this power with three nuclear plants, 11 coal-fired plants, nine combustion-turbine plants, a combined-cycle plant, 29 hydroelectric dams, a pumped-storage facility, a wind farm, a methane-gas cofiring facility, and several small renewable generating facilities. A portion of delivered power is obtained through long-term power purchase agreements. About 60 percent of TVA's annual generation is from fossil fuels, predominantly coal; 30 percent is from nuclear; and the remainder is from hydro and other renewable energy resources. TVA transmits electricity from these facilities over almost 16,000 miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding the Tennessee Valley region and purchases and sells power on an economic basis almost daily.

In the mid-1990s, TVA developed an Integrated Resource Plan (IRP) with extensive public involvement. This process was completed with publication of the Energy Vision 2020 Integrated Resource Plan and Final Environmental Impact Statement (IRP/FEIS) in 1995 and the associated record of decision (ROD) in 1996. Based on the extensive evaluation, TVA decided to adopt a flexible portfolio of supply- and demand-side energy resource options to meet the growing demand for electricity in the region and achieve the goals of the TVA Act and other congressional directives. The portfolio of alternatives analyzed in the IRP/FEIS encompassed the current proposal to complete one nuclear unit at the BLN site. On June 15, 2009, TVA announced its intent to conduct a new comprehensive study and environmental impact statement (EIS) entitled the Integrated Resource Plan. The proposal set out in this NOI also supports TVA's goal of reducing its carbon footprint by 2020 and the need to make beneficial use of the existing infrastructure at the BLN site.

Bellefonte Nuclear Plant

The BLN site is located in northeast Alabama on 1,600 acres adjacent to the Tennessee River at Mile 392, near the cities of Hollywood and Scottsboro in Jackson County. The site includes two partially completed Babcock and Wilcox (B&W) pressurized water reactors known as BLN Units 1 and 2 (BLN 1&2), with a capacity of about 1,200 MW each. The then Atomic Energy Commission (now called the Nuclear Regulatory Commission or NRC) issued construction permits for BLN 1&2 on December 24, 1974. When TVA halted

construction activities in 1988, in response to decreased power demand, BLN 1 was approximately 90 percent complete, and BLN 2 was approximately 58 percent complete.

TVA maintained the plant in deferred status until November 2005, when TVA's Board of Directors approved the cancellation of BLN 1&2 in order to facilitate consideration of the BLN site for other possible uses. TVA submitted a Site Redress Plan to the NRC, along with a request for withdrawal of the construction permits. Under the redress plan, TVA maintained environmental permits and equipment associated with ongoing activities at BLN, including a training center and a substation. The construction permits were withdrawn by the NRC in September 2006. Subsequent asset recovery activities, along with more recent inspections of remaining equipment, resulted in BLN 1&2 now being considered approximately 55 percent and 35 percent complete, respectively.

In 2006, TVA joined NuStart Energy Development LLC (NuStart), a consortium of 10 utility companies and two reactor vendors, to demonstrate the feasibility of processing a combined construction and operating license application (COLA) under 10 CFR Part 52 and to complete the design engineering for the Westinghouse AP1000 advanced design for a pressurized water reactor. Preliminary designs for two new reactors at BLN, known as Units 3 and 4 (BLN 3&4), were developed as part of the application process. In choosing the BLN 3&4 proposal as a COLA candidate, NuStart recognized that a substantial portion of the existing BLN 1&2 equipment and ancillary structures (e.g., cooling towers, intake structure, transmission switchyards) could be used to support such a new facility and that their use could reduce the cost of new construction. The COLA for BLN 3&4 was submitted to the NRC in October 2007 with TVA as the applicant of record. The COLA described the siting of two AP1000 reactors with an estimated thermal reactor power level of 3,400 MW and a net electrical output of at least 1,100 MW from each reactor. Although TVA is the applicant of record for the NuStart demonstration, TVA has not decided to construct these advanced reactors at the BLN site.

In August 2008, in response to changes in power generation economics since 2005 and the possible effects of constraints on the availability of the worldwide supply of components needed for new generation development, TVA requested reinstatement of the construction

permits for BLN 1&2. Reinstatement would allow TVA to return the units to deferred status; resume preservation and maintenance activities; and determine whether the completion of construction and operation of the units would be a viable option. The NRC reinstated TVA's construction permits for BLN 1&2 in terminated plant status in March 2009. TVA is currently working to return the plant to deferred plant status. In addition to this current SEIS, TVA is conducting a Detailed Scoping, Estimating, and Planning (DSEP) study to further explore the feasibility of completing BLN 1 or BLN 2.

In April 2009, NuStart transferred the initial licensing efforts and reference plant designation for the AP1000 from BLN 3&4 to Southern Nuclear's Plant Vogtle. The transfer of the reference designation will help the NRC complete the reference plant licensing process sooner and help move the industry closer to new plant construction and commercial operation of the AP1000 technology. Notwithstanding the transfer of the reference plant designation to Plant Vogtle, TVA is continuing to pursue a combined operating license for BLN 3&4 to preserve future base load generation options.

Proposed Action and Alternatives

To address the need for additional low or zero carbon-emitting base load generation in the 2017 to 2020 time frame, TVA proposes to supplement the 1974 FES and other pertinent environmental reviews discussed in related documents identified below. The SEIS will evaluate the Action Alternatives of (1) completing and operating one partially completed B&W unit and (2) constructing and operating one new Westinghouse AP1000 unit. For either of these two Action Alternatives, use of the BLN site offers TVA the opportunity to maximize the value of existing assets, minimize environmental disturbance from new plant construction, and utilize licensing processes that are already underway. TVA will also consider the No Action Alternative.

Under both Action Alternatives, the existing 161-kilovolt (kV) and 500-kV switchyards constructed on the BLN site would be refurbished and reenergized; four 500-kV transmission lines that terminate in the BLN switchyard would be reestablished; the right-of-way would be brought back to current TVA standards; the capacity of nine existing transmission lines would be increased; and two 161-kV transmission lines that supply a 161-kV switchyard to provide site power would be reestablished. TVA

owns and operates the regional transmission system.

No decision to build any new generating capacity at the BLN site has been made at this time. TVA is preparing this SEIS to supplement the original 1974 FES and update the information in related documents discussed below in order to inform decision makers and the public about the potential for environmental impacts associated with a decision to complete (or construct) and operate one unit at the BLN site. The draft SEIS will be made available for public comment. In making its final decision, the TVA Board will consider the assessment in this SEIS, including input provided by reviewing agencies and the public, as well as the information in the DSEP study and the cost and engineering studies for the AP1000.

Summary of Relevant Environmental Reviews

Several evaluations in the form of environmental reviews, studies, and white papers have been prepared for actions related to the construction and operation of a nuclear plant or alternative power generation source at the BLN site. As provided in the regulations (40 CFR Part 1502) for implementing NEPA, this SEIS will update, tier from, and incorporate by reference information contained in these documents about the BLN site and about nuclear plant construction and operation.

The environmental consequences of constructing and operating BLN 1&2 were addressed comprehensively in the 1974 FES. In 1993, TVA issued a white paper in support of TVA's 120-day notice to NRC for resumption of plant construction. The white paper reviewed 10 aspects of TVA's proposal in the 1974 FES that had changed or were likely to change. TVA subsequently chose not to resume construction.

Environmental conditions at the BLN site have been comprehensively reviewed three more times since 1993. The 1997 FEIS for the Bellefonte Conversion Project considered construction and operation of five types of fossil fuel generation, four of which involved plants with total electricity production capacity equivalent to BLN 1&2 (approximately 2,400 MW). The proposed combustion turbine plant was not constructed.

TVA participated as a cooperating agency with the Department of Energy (DOE) in preparing an EIS evaluating the production of tritium at one or more commercial light water reactors to ensure safe and reliable tritium supply for U.S. defense needs. The FEIS for the

Production of Tritium in a Commercial Light Water Reactor addressed the completion and operation of BLN 1&2 and updated the environmental record with regard to their operation. TVA adopted this FEIS in May 2000. DOE did not select BLN for tritium production, and TVA's current proposal to complete additional generating capacity at BLN does not involve the production of tritium. The tritium production FEIS included pertinent information on spent nuclear fuel management, health and safety, decommissioning, as well as other topics.

Most recently in 2007, as a part of the COLA for BLN 3&4, TVA, as a member of the NuStart consortium, prepared and submitted a comprehensive environmental report (ER) entitled Bellefonte Nuclear Plant Units 3&4, COLA Application, Part 3, Environmental Report (COLA ER), for the construction and operation of two Westinghouse AP1000 nuclear plants at the BLN site. In addition to updating the description of environmental conditions at BLN and some operational aspects related to the cooling water system, this report fully describes the environmental effects of constructing and operating BLN 3&4. It also contains a discussion of alternative sites and energy resource options.

In addition to documents directly related to the BLN site, two other TVA documents are relevant to this SEIS. First is the above-mentioned 1995 IRP/FEIS. Deferral and completion of BLN 1&2 were among the suite of alternatives evaluated in the IRP/FEIS, but not as part of the preferred alternative. This was because in the IRP's economic analyses, TVA made conservative assumptions about the capacity factor (roughly how much a unit would be able to run) achieved by nuclear units. TVA's nuclear units, consistent with U.S. nuclear industry performance, now routinely exceed this earlier assumed capacity factor, which will be taken into account in the current consideration of completing or constructing a single nuclear unit at the BLN site.

In February 2004, TVA issued the Reservoir Operations Study Programmatic Environmental Impact Statement evaluating the potential environmental impacts of alternative ways for operating the agency's reservoir system to produce overall greater public value for the people of the Tennessee Valley. This FEIS evaluated, among other things, the adequacy of the water supply necessary for reliable, efficient operation of TVA generating facilities within the operating limits of their National Pollutant Discharge Elimination System permits and other permits. A ROD for this FEIS was issued

in May 2004. TVA will incorporate assumptions for reservoir operations resulting from this FEIS review in the present evaluation.

Need for Power

The proposal under consideration by TVA is to meet the demand for additional base load capacity on the TVA system and maximize the use of existing assets by either completing one of the unfinished B&W units or by constructing one new AP1000 unit. The environmental impacts of other energy resource options were evaluated as part of TVA's IRP/FEIS and in the COLA ER. This proposal also helps achieve TVA's goal to have at least 50 percent of its generation portfolio comprised of low or zero carbon-emitting sources by 2020.

Demand for energy in the TVA power service area is expected to grow at an average rate of approximately 1.1 percent per year over the next 20 years. In addition, TVA continues to set new peaks for power demand on its system, including a new all-time winter peak. TVA's current plan to meet growing demand includes a diversified expansion portfolio of market purchases (including up to 2,000 MW of renewable energy through a public request for proposal), intermediate and peaking gas-fired capacity, continued modernization of TVA's hydro plants to increase their power producing capacity, and expansion of TVA's Generation Partners Program. Combined with these actions, TVA anticipates having to add new base load capacity to its system no later than the 2017–2020 time frame. As part of this SEIS, TVA will update the Need for Power analysis, as well as consider any new environmental information.

Preliminary Identification of Environmental Issues

This SEIS will update the analyses of potential environmental, cultural, recreational, and socioeconomic impacts resulting from completion (or construction), operation, and maintenance of one nuclear unit and of reenergizing and upgrading the existing transmission system. The impact analyses will include, but not necessarily be limited to, the potential impacts on water quality and use; vegetation; wildlife; aquatic ecology; endangered and threatened species; floodplains; wetlands; land use; recreational and managed areas; visual, archaeological, and historic resources; noise; socioeconomic; solid and hazardous waste; geology and seismicity; meteorology, air quality, and climate change; uranium fuels cycle effects and radiological impacts; nuclear plant safety and security including

design basis accidents; and severe accidents and intentional destructive acts. Information from TVA's and NRC's previous environmental reviews (described above) relevant to the current assessment will be incorporated by reference and summarized in the SEIS.

Public and Agency Participation

This SEIS is being prepared to update information and to inform decision makers and the public about the potential environmental impacts of completing and operating a single nuclear unit at the BLN site. The SEIS process also will provide the public an opportunity to comment on TVA's analyses. Other federal, state, and local agencies and governmental entities will be asked to comment, including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the Alabama Department of Environmental Management, and Alabama Department of Conservation and Natural Resources.

TVA will invite the review agencies and the public to submit written, verbal, e-mail, or online comments on the draft SEIS. It is anticipated that the draft SEIS will be released in fall 2009. Notice of availability of the draft SEIS will be published in the **Federal Register**, as well as announced in local news media. TVA expects to release a final SEIS in early spring 2010.

Dated: August 4, 2009.

Anda A. Ray,

Senior Vice President & Environmental Executive, Office of Environment and Research, Tennessee Valley Authority.

[FR Doc. E9-19045 Filed 8-7-09; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 3, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 9, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513-XXXX.

Type of Review: New Information Collection Activity.

Title: Certificate of Taxpaid Alcohol.

Description: TTB F 5100.4

consolidates taxes paid on distilled spirits used in the manufacture of nonbeverage products for exportation. The form is completed by TTB industry members to receive back \$1 for each proof gallon of nonbeverage products exported. The form is certified by TTB as proof that the taxes have been paid and not previously received back. The completed form is sent to the Director of Customs and Border Patrol who processes it and returns the \$1 per proof gallon.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000 hours.

Clearance Officer: Frank Foote (202) 927-9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9-19074 Filed 8-7-09; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Update to Identifying Information Associated With Two Entities Previously Designated Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") has made changes to the identifying information associated with the following two entities, previously designated pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

FIRST PERSIA EQUITY FUND (a.k.a. FIRST PERSIAN EQUITY FUND; a.k.a. FPEF), Rafi Alley, Vali Asr Avenue, Nader Alley, P.O. Box

15875–3898, Tehran 15116, Iran; Walker House, 87 Mary Street, George Town, Grand Cayman KY1–9002, Cayman Islands; Clifton House, 75 Fort Street, P.O. Box 190, Grand Cayman KY1–1104, Cayman Islands [NPWMD] [Exhibit 1]
MEHR CAYMAN LTD., Walker House, 87 Mary Street, George Town, Grand Cayman KY1–9002, Cayman Islands [NPWMD]

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.*: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability: This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.*: (202) 622–0077.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (“IEEPA”), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the “Order”), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the

Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have

provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

The listings for these two entities now appear as:

FIRST PERSIA EQUITY FUND (a.k.a. FIRST PERSIAN EQUITY FUND; a.k.a. FPEF), Rafi Alley, Vali Asr Avenue, Nader Alley, P.O. Box 15875–3898, Tehran 15116, Iran; Commercial Registry Number 188924 (Cayman Islands); Cayman Islands [NPWMD]

MEHR CAYMAN LTD., Commercial Registry Number 188926 (Cayman Islands); Cayman Islands [NPWMD]

Dated: July 20, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.
[FR Doc. E9–19076 Filed 8–7–09; 8:45 am]

BILLING CODE 4811–45–P



Federal Register

**Monday,
August 10, 2009**

Part II

Nuclear Regulatory Commission

**10 CFR Parts 50 and 52
Risk-Informed Changes to Loss-of-Coolant
Accident Technical Requirements;
Proposed Rule**

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC-2004-0006]

RIN 3150-AH29

Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern domestic licensing of production and utilization facilities and licenses, certifications, and approvals for nuclear power plants to allow current and certain future power reactor licensees and applicants to choose to implement a risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). The proposed amendments would also establish procedures and acceptance criteria for evaluating certain changes in plant design and operation based upon the results of the new analyses of ECCS performance.

DATES: Submit comments on this supplemental proposed rule by September 24, 2009. Submit comments specific to the information collections aspects of this supplemental proposed rule by September 9, 2009. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement of this document.

Federal e Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2004-0006. Address questions about NRC dockets to Carol Gallagher, (301) 415-5905; 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) 415-1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. during Federal workdays. (Telephone (301) 415-1966).

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

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine publicly available documents at the NRC's PDR, Public File Area O-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 page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or (301) 415-4737, or by e-mail to PDR.Resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-1116; e-mail: richard.dudley@nrc.gov.

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I. Background

During the last few years, the NRC has had numerous initiatives underway to make improvements in its regulatory requirements that would reflect current knowledge about reactor risk. The overall objectives of risk-informed modifications to reactor regulations include:

- (1) Enhancing safety by focusing NRC and licensee resources in areas commensurate with their importance to health and safety;
- (2) Providing NRC with the framework to use risk information to take action in reactor regulatory matters, and
- (3) Allowing use of risk information to provide flexibility in plant operation and design, which can result in reduction of burden without compromising safety, improvements in safety, or both.

The Commission published a Policy Statement on the Use of Probabilistic Risk Assessment (PRA) on August 16, 1995 (60 FR 42622). In the policy statement, the Commission stated that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data, and in a manner that complements the deterministic approach and that supports the NRC's defense-in-depth philosophy. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available. The policy statement also

stated that, in making regulatory judgments, the Commission's safety goals for nuclear power reactors and subsidiary numerical objectives (on core damage frequency and containment performance) should be used with appropriate consideration of uncertainties.

To implement the policy statement, the NRC developed guidance on the use of risk information for reactor license amendments and issued Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessments in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis," (ADAMS Accession No. ML023240437). This RG provided guidance on an acceptable approach to risk-informed decision-making consistent with the Commission's policy, including a set of key principles. These principles include:

- (1) Being consistent with the defense-in-depth philosophy;
- (2) Maintaining sufficient safety margins;
- (3) Allowing only changes that result in no more than a small increase in core damage frequency or risk (consistent with the intent of the Commission's Safety Goal Policy Statement); and
- (4) Incorporating monitoring and performance measurement strategies.

Regulatory Guide 1.174 further clarifies that in implementing these principles, the NRC expects that all safety impacts of the proposed change are evaluated in an integrated manner as part of an overall risk management approach in which the licensee is using risk analysis to improve operational and engineering decisions broadly by identifying and taking advantage of opportunities to reduce risk; and not just to eliminate requirements that a licensee sees as burdensome or undesirable.

II. Rulemaking Initiation

The process described in RG 1.174 is applicable to changes to plant licensing bases. As NRC experience with the process and applications grew, the NRC recognized that further development of risk-informed regulation would require making changes to the regulations. In June 1999, the Commission decided to implement risk-informed changes to the technical requirements of Part 50. The first risk-informed revision to the technical requirements of Part 50 consisted of changes to the combustible gas control requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.44 (68 FR 54123; September 16, 2003). Other risk-informed regulations promulgated by the NRC include § 50.48(c) on fire

protection (69 FR 33550; June 16, 2004), § 50.69 on special treatment requirements for systems, structures, and components (69 FR 68047; Nov. 22, 2004), and § 50.61 on fracture toughness requirements for protection against pressurized thermal shock events.

The NRC also decided to examine the ECCS requirements for large break LOCAs. A number of possible changes were considered, including changes to General Design Criterion (GDC) 35 and changes to § 50.46 acceptance criteria, evaluation models, and functional reliability requirements. The NRC also proposed to refine previous estimates of LOCA frequency for various sizes of LOCAs to more accurately reflect the current state of knowledge with respect to the mechanisms and likelihood of primary coolant system rupture. During public meetings, industry representatives expressed interest in a number of possible changes to licensed power reactors resulting from redefinition of the large break LOCA. These include: containment spray system setpoint changes; fuel management improvements; optimization of plant modifications and operator actions to address postulated sump blockage issues; power uprates; and changes to the required number of accumulators, diesel start times, sequencing of equipment, and valve stroke times.

The Staff Requirements Memorandum (SRM), of March 31, 2003, (ML030910476), on SECY-02-0057, "Update to SECY-01-0133, 'Fourth Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.46 (ECCS Acceptance Criteria)'" (ML020660607), approved most of the NRC staff recommendations related to possible changes to LOCA requirements and also directed the NRC staff to prepare a proposed rule that would provide a risk-informed alternative maximum break size. The NRC began to prepare a proposed rule responsive to the SRM direction. However, after holding two public meetings, the NRC found that there were differences between stated Commission and industry interests.

To reach a common understanding about the objectives of the LOCA redefinition rulemaking, the NRC staff requested additional direction and guidance from the Commission in SECY-04-0037, "Issues Related to Proposed Rulemaking to Risk-Inform Requirements Related to Large Break Loss-of-Coolant Accident (LOCA) Break Size and Plans for Rulemaking on LOCA with Coincident Loss-of-Offsite Power,"

(March 3, 2004; ML040490133). The Commission provided direction in a SRM dated July 1, 2004, (ML041830412). The Commission stated that the NRC staff should determine an appropriate risk-informed alternative break size and that breaks larger than this size should be removed from the design basis event category. The Commission indicated that the proposed rule should be structured to allow operational as well as design changes and should include requirements for licensees to maintain capability to mitigate the full spectrum of LOCAs up to the double-ended guillotine break (DEGB) of the largest reactor coolant system (RCS) pipe. The Commission stated that the mitigation capabilities for beyond design-basis events should be controlled by NRC requirements commensurate with the safety significance of these capabilities. The Commission also stated that LOCA frequencies should be periodically reevaluated and should increase in frequency require licensees to restore the facility to its original design basis or make other compensating changes, the backfit rule (10 CFR 50.109) would not apply.

On March 29, 2005, in SECY-05-0052, "Proposed Rulemaking for 'Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements,'" the NRC staff provided a proposed rule to the Commission for its consideration. In an SRM on July 29, 2005, the Commission directed the NRC staff to publish the proposed rule for public comment after making certain changes. The most significant change requested by the Commission was to require that after implementing the alternative § 50.46a requirements, all subsequent plant changes made by a licensee would be evaluated by the licensee's risk-informed process to ensure that they met all of the requirements in § 50.46a. Another change requested by the Commission was to address the issue of seismic loading of degraded piping during very large earthquakes and to solicit public comments on the subject.

On November 7, 2005, (70 FR 67598), the proposed rule was published in the **Federal Register** (FR) with a comment period of 90 days. On December 6, 2005, the Nuclear Energy Institute¹ (NEI) requested that the comment period be extended for 30 additional days. NEI stated that additional time was needed to prepare high quality comments that reflected an industry consensus perspective. On December 20, 2005, the

¹ All utilities licensed to operate commercial nuclear power plants in the United States are members of NEI.

Westinghouse Owners Group (WOG) submitted a letter endorsing the NEI extension request. On January 18, 2006, the NRC extended the comment period by 30 days to expire on March 8, 2006. As directed by the Commission in its SRM on SECY-05-0052, the NRC staff addressed the seismic issue by preparing a report entitled "Seismic Considerations for the Transition Break Size" (ML053470439). This report was posted on the NRC's rulemaking Web site and a notice of its availability and opportunity for public comment was published in the FR on December 20, 2005, (70 FR 75501). A public workshop was held on February 16, 2006, to ensure that stakeholders understood the NRC's intent and interpretation of the proposed rule and two public meetings were held on June 28, 2006, and August 17, 2006, to discuss public comments received on the proposed rule.

After evaluating all written public comments and comments received at the public meetings, the NRC completed draft final rule language that addressed nearly all commenters' concerns. On October 31 and November 1, 2006, the NRC staff met with the Advisory Committee on Reactor Safeguards (ACRS) to discuss the draft final rule. In a letter dated November 16, 2006, (ML063190465) the ACRS provided its evaluation of the draft final rule. In its November 16, 2006, letter to the Commission, the ACRS recommended that the rule not be issued in its current form. The ACRS recommended numerous changes to the rule, primarily to increase the defense-in-depth provided for large pipe breaks. The NRC staff evaluated the ACRS recommendations, and in SECY-07-0082, "Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements"; 10 CFR 50.46a "Alternative Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors," (May 16, 2007) sought additional guidance from the Commission on the priority of the rule and on the issues raised by the ACRS. In its August 10, 2007, SRM (ML072220595) in response to SECY-07-0082, the Commission approved NRC staff recommendations for a revised priority and approach for addressing the ACRS concerns and completing the final rule. On April 1, 2008, the NRC staff provided the Commission with its planned schedule (ML080370355) for completing the rule.

As the NRC staff proceeded to modify the rule in response to the ACRS recommendations and the Commission's direction, numerous substantive changes were made to the requirements

in the draft final rule. After consideration of the extent of these changes, the NRC has decided to provide another opportunity for public comment focusing on the revised proposed rule, in order to provide public stakeholders with another opportunity to review and comment on the new language. Because of the interrelated nature of the regulatory requirements, the NRC is republishing the entire 10 CFR 50.46a proposed rule to allow public comments on the changed requirements and on other closely-related regulatory provisions.

III. Description of November 2005 Proposed Rule

The proposed rule published on November 7, 2005, (70 FR 67598) would divide the current spectrum of LOCA break sizes into two regions. The division between the two regions is delineated by a "transition break size" (TBS).² The first region includes small size breaks up to and including the TBS. The second region includes breaks larger than the TBS up to and including the DEGB of the largest RCS pipe. Break area associated with the TBS is not based upon a double-ended offset break. Rather, it is based upon the inside area of a single-sided circular pipe break.

Pipe breaks in the smaller break size region are considered more likely than pipe breaks in the larger break size region. Consequently, each break size region is subject to different ECCS requirements, commensurate with likelihood of the break. LOCAs in the smaller break size region must be analyzed by the methods, assumptions, and criteria currently used for LOCA analysis; accidents in the larger break size region will be analyzed by less conservative assumptions based on their lower likelihood. Although LOCAs for break sizes larger than the transition break would become "beyond design-basis accidents," the proposed rule would require licensees to maintain the ability to mitigate all LOCAs up to and including the DEGB of the largest RCS pipe during all operating configurations.

Licensees who perform LOCA analyses using the risk-informed alternative requirements could find that their plant designs are no longer limited by certain parameters associated with previous DEGB analyses. Reducing the DEGB limitations could enable some licensees to propose a wide scope of design or operational changes up to the point of being limited by some other

² Different TBSs for pressurized water reactors and boiling water reactors would be established due to the differences in design and operation between those two types of reactors.

parameter associated with any of the required accident analyses. Potential design changes include modification of containment spray designs, modifying core peaking factors, modifying setpoints on accumulators or removing some from service, eliminating fast starting of one or more emergency diesel generators, increasing power, *etc.* Some of these design and operational changes could increase plant safety because a licensee could modify its systems to better mitigate the more likely small-break LOCAs. Other design changes, such as increasing power, could cause increases in plant risk. Accordingly, the risk-informed § 50.46a option would establish risk acceptance criteria to ensure the risk acceptability of all subsequent facility changes. The proposed rule required that *all* future facility changes³ made by licensees after adopting § 50.46a be evaluated by a risk-informed integrated safety performance (RISP) assessment process that has been reviewed and approved by the NRC via the routine process for license amendments.⁴ The RISP assessment process would ensure that the cumulative effect of all plant changes involved acceptable changes in risk and was consistent with other criteria from RG 1.174 to ensure adequate defense-in-depth, safety margins and performance measurement. Licensees with an approved RISP assessment process could make certain facility changes without NRC review if they met § 50.59⁵ and § 50.46a requirements, including the criterion that risk increases cannot exceed a "minimal" level. Licensees could make other facility changes after NRC approval if they met the § 50.90 requirements for license amendments and the criteria in § 50.46a, including

³ The scope of changes subject to the change criteria in § 50.46a(f) of the proposed rule would be greater than the changes currently subject to § 50.59, which applies only to changes to "the facility as described in the FSAR." The change criteria in the proposed rule would apply to all facility and procedure changes, regardless of whether they are described in the Final Safety Analysis Report (FSAR).

⁴ Requirements for license amendments are specified in §§ 50.90, 50.91 and 50.92. They include public notice of all amendment requests in the **Federal Register** and an opportunity for affected persons to request a hearing. In implementing license amendments, the NRC typically prepares an appropriate environmental analysis and a detailed NRC technical evaluation to ensure that the facility will continue to provide adequate protection of public health and safety and common defense and security after the amendment is implemented.

⁵ Requirements in § 50.59 establish a screening process that licensees may use to determine whether facility changes require prior review and approval by the NRC. Licensees may make changes meeting the § 50.59 requirements without requesting NRC approval of a license amendment under § 50.90.

the criterion that total cumulative risk increase cannot exceed a “small” threshold. Potential impacts of the plant changes on facility security would be evaluated as part of the license amendment review process.

The NRC would periodically evaluate LOCA frequency information. Should estimated LOCA frequencies significantly increase such that the risk associated with pipe breaks larger than the TBS is unacceptable, the NRC would undertake rulemaking (or issue orders, if appropriate) to change the TBS. In such a case, the backfit rule (10 CFR 50.109) would not apply. If previous plant changes were invalidated because of a change to the TBS, licensees would have to modify or restore components or systems as necessary so that the facility would continue to comply with § 50.46a acceptance criteria. The backfit rule (10 CFR 50.109) would also not apply to these licensee actions.

IV. Discussion of Public Comments

The NRC received comments on the proposed rule from six nuclear power plant licensees, four nuclear industry organizations, two reactor vendors, and an NRC employee. The comments provided by NEI were specifically endorsed by the WOG, the Boiling Water Reactors Owners Group (BWROG), and three nuclear power plant licensees. The NRC considered all comments in formulating the revised proposed rule language. The NRC also received comments from a nuclear engineering professor on the expert elicitation process for determining the relationship between pipe break frequency and pipe size that was used as the baseline for selecting the transition break size. Although these comments were submitted for NUREG-1829 (Draft Report), “Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process” (ML051520574), they were also considered in the development of the § 50.46a final rule.

Comments and other publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC’s Public Document Room (PDR), Public File Area O-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, may be viewed and downloaded electronically via the Federal e Rulemaking Portal. Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2004-0006.

Comments addressed six different general topics: selection of the TBS, the

effect of seismic considerations on the TBS, thermal-hydraulic ECCS analyses, probabilistic risk analysis, applicability of the backfit rule, and comments on questions posed by the Commission. The comments are discussed below by topic area.

A. Comments on Selection of the TBS

Comment. NEI stated that the TBS proposed for boiling water reactors (BWRs) is overly conservative and may unnecessarily limit or preclude benefits for BWRs. They suggested that the specified piping for the BWR TBS should be equivalent to the 16-inch schedule 80 piping in the shutdown cooling suction line inside containment. The BWROG supported a reduced TBS for BWRs consistent with the 95th percentile TBS noted from the expert elicitation (*i.e.*, without additional conservatism).

NRC response. The proposed TBS for BWRs is currently based on the cross-sectional area of the larger of either the shutdown cooling residual heat removal (RHR) or feedwater pipes which are connected to the RCS inside containment. These pipe sizes are generally in the 18” to 24” range, and are similar in size to the 95th percentile estimates from the expert elicitation process results for BWRs at a 10^{-5} per year frequency. (It should be noted that the NRC also considered uncertainties in the estimates based on analysis sensitivities of the expert elicitation results, such as the method of aggregating the individual frequency estimates. The 95th percentile estimate of BWR break size diameter for the geometric mean aggregation method is approximately 13 inches, and the corresponding break size for the arithmetic mean aggregation method is approximately 20 inches.) The actual plant pipe sizes were used as a logical selection criterion; because for a given size break, it is more likely that a break will be circumferentially oriented (*i.e.*, a complete severance of the pipe). The NRC selected the TBS by considering the actual size of the attached piping, rather than by selecting a single break size value which would conservatively bound all plant configurations. For BWRs, the pipes connecting to the RCS, other than the largest reactor recirculation piping or main steam line piping, are the feedwater and RHR piping. Also, these pipes are large enough so that a single-ended break of one of them will generally bound the total cross-sectional discharge area for a double-sided break in smaller size feedwater or recirculation pipes. For these reasons, the NRC continues to believe that the TBS for BWRs should be

based on the cross-sectional area of the larger of either the feedwater or RHR lines inside containment. No changes to the BWR TBS have been made in the revised proposed rule.

Comment. The Nuclear Energy Institute, the Westinghouse Owners Group (WOG) and a reactor licensee stated that for pressurized-water reactors (PWRs) with large piping connected to both the hot and cold legs, the TBS for the hot leg should be based on the largest connecting hot leg pipe, and the TBS for the cold leg should be based on the largest connecting cold leg pipe. These are logical break sizes and avoid the arbitrary nature of the size of the connecting pipe on the hot leg being also applied to breaks on the cold leg. If no attached piping is connected to the cold leg, the cold leg TBS should be the same as the hot leg TBS. The WOG stated that the NRC and the industry should take the opportunity of this rule change to determine the appropriate transition break size and not settle for a rule that is needlessly conservative. Because the rulemaking cannot easily be changed in the future as new information becomes available, the TBS should be based on sound technical facts and expert opinions with some margin for uncertainties and unknowns that could show up in the future and erode margins. It is not appropriate to set the TBS on the basis of where the most benefit would be realized because this may change tomorrow and there will be no easy recourse. The WOG also said that the Commissioners have recommended a design basis LOCA cut-off frequency of 10^{-5} per reactor year, which corresponds to a break size of about a three or four-inch diameter effective break (for PWRs). The WOG believes that selecting a TBS equal to the largest attached piping (8- to 12-inch diameter break) is very conservative. However, the WOG has conducted thermal-hydraulic and risk analyses that show that there are substantial potential benefits for PWR plants even with this larger TBS. The WOG agreed that setting the transition break size at the sizes of the piping attached to the RCS loop is reasonable because it will provide significant benefit while providing substantial margin to account for uncertainties or any new information that may become available on break size vs. frequency. The requirement that plants must still be able to mitigate breaks larger than the TBS provides even more margin.

NRC response. In developing the basis for the PWR TBS, the NRC not only used the mean break frequency estimates from the expert elicitation but also included additional allowances for

various uncertainties. To address uncertainties in the elicitation process, the 95th percentile estimates of break size diameter were used. Further, the methods of aggregating the individual frequency estimates were evaluated for sensitivities. For PWRs, the break size at a 10^{-5} per year frequency using the geometric mean method is approximately 6 inches, and the corresponding break size for the arithmetic mean method is approximately 10 inches. This is similar in size to the cross-sectional area of the largest pipe attached to the main reactor coolant loop on which the TBS is ultimately based. The largest attached piping in PWRs is generally in the 12- to 14-inch nominal pipe size range (with inside diameters corresponding to 10.1 to 11.2 inches), and typically corresponds to the surge line which is attached to the hot leg. However, on some Combustion Engineering and Babcock and Wilcox plants, the largest attached pipes may be the RHR, safety injection, or core flood lines, which may not be similarly attached to the hot leg. However, as stated in the statement of considerations for the initial proposed rule (*see* 70 FR at 67603–67606), the NRC selected only one size which would uniformly apply for all locations in the RCS piping, because the expert elicitation did not provide sufficient detail to distinguish the hot leg from the cold leg break frequencies. The commenters did not provide additional information or technical data that justifies different break frequencies or use of a smaller TBS on the cold leg piping. Thus, no changes to the PWR TBS were made in the revised proposed rule.

B. Comments on Seismic Considerations Related to the TBS

The TBS specified by the NRC in the November 7, 2005, proposed rule did not include an adjustment to address the effects of seismically-induced LOCAs. (*See* 70 FR at 67604.) On December 20, 2005, the NRC released a report discussing seismic considerations for the transition break size (“Seismic Considerations for the Transition Break Size”, December 2006; ML053470439). The NRC requested specific public comments on the effects of pipe degradation on seismically-induced LOCA frequencies and the potential for affecting the selection of the TBS. These public comments were considered in the final, published report (NUREG–1903, “Seismic Considerations for the Transition Break Size”, February 2008; ML080880140).

Comment. NEI, WOG, BWROG, and a reactor licensee all commented that the

proposed TBS need not be further adjusted due to seismic considerations. NEI indicated that the NRC’s December 20, 2005, report demonstrates that the seismically-induced LOCA frequency contribution is less than the 10^{-5} per reactor year guideline used by the NRC in determining the TBS. NEI further commented that median seismic capacities for both the primary piping system and primary system components are higher than most other safety related power plant components within the nuclear power plant. Because of these relative capacities, NEI said the seismic risk from very large, low probability earthquakes would be controlled by consequential safety component failure. In addition, NEI stated that the creation of the TBS by itself does not produce a physical change in the plant that would result in an appreciable change in seismic risk. The WOG, the BWROG, and a reactor licensee endorsed the NEI comments. WOG included an additional comment which stated that the NRC’s December report indicated that seismic loading will only have a small (10 per cent) effect on the LOCA frequencies estimated by the NRC expert panel (NUREG–1829, Draft report, June 2005) and that effect is well within the uncertainty bounds of the frequency estimate of the panel. Furthermore the NRC has already included a very substantial margin above the break size that would correspond to a LOCA frequency of 10^{-5} per reactor year. Therefore, seismic effects should not change the transition break size.

NRC Response. The NRC agrees with the commenters’ conclusion that the TBS defined in the proposed rule need not be adjusted further to account for the effects of seismically induced LOCAs in piping greater than the TBS. In reaching its conclusion the NRC considered the comments received as well as historical information related to piping degradation and the potential for the presence of cracks sufficiently large that pipe failure would be expected under loads associated with rare (10^{-5} per year) earthquakes.

The NRC report NUREG–1903, “Seismic Considerations for the Transition Break Size” (February 2008; ML080880140) considered the potential contribution from two mechanisms: direct piping failures and indirect failures. Direct failures are those pipe ruptures that result when the combined earthquake loadings and normal stresses exceed the strength of the pipe. The report concluded that direct failures from earthquakes with return frequencies of 10^{-5} per year and 10^{-6} per year would not be expected unless cracks on the order of 30 percent

through-wall and approximately 145 degrees around the piping circumference were present at the time of the earthquake. The NRC reviewed its experience with flaws in reactor coolant system piping to assess whether cracks of this magnitude have ever been found in RCS main loop piping, or if other information suggests that cracks of this magnitude are likely. The NRC considered both fabrication induced flaws and service induced flaws. No large fabrication flaws have ever been reported. If large fabrication flaws were present and were not detected by the initial fabrication inspections and subsequent in-service inspections, it would be expected that some would have grown through-wall over time as a result of fatigue or other mechanisms and would have been discovered through leakage. This has not been observed even though most plants have been in operation for more than 20 years.

With respect to service induced flaws, the NRC also considered the potential for known degradation mechanisms to induce cracks of the critical size. For BWRs, intergranular stress corrosion cracking (IGSCC) is the only mechanism that has been shown to produce large cracks. However, regulatory and industry programs have been in place for many years to specifically address this mechanism and as a result, IGSCC is being effectively managed. In PWRs, a number of partly through-wall flaws and a small number of through-wall flaws have been discovered and have been attributed to primary water stress corrosion cracking (PWSCC). To date, all flaws discovered were considerably smaller than flaws that would lead to failure under 10^{-5} and 10^{-6} per year earthquake loadings. PWR plant owners have established programs to address PWSCC in susceptible reactor coolant system piping welds. They are inspecting these welds more frequently and, in most cases, are applying mitigation techniques to manage PWSCC. The NRC is working with the American Society of Mechanical Engineers (ASME) to establish a regulatory framework for improved inspection and mitigation of PWSCC in these welds. The NRC expects that these measures will ensure that PWSCC will be effectively managed. As a result of the above considerations, the NRC considers the likelihood of flaws large enough to fail under 10^{-5} and 10^{-6} per year earthquake loadings to be sufficiently low that the TBS need not be modified to address seismically induced direct failures.

Indirect failures are primary system pipe ruptures that are a consequence of

failures in non-primary system components or structural support failures (such as a steam generator support). Structural support failures could then cause displacements in components that stress the piping and result in pipe failure. The NRC performed studies on two plants to estimate the conditional pipe failure probability due to structural support failure given a low return frequency earthquake (10^{-5} to 10^{-6} per year). The results indicated that the conditional failure probability was on the order of 0.1. These studies used seismic hazard curves from NUREG-1488, "Revised Livermore Seismic Hazard Estimates for Sixty-Nine Nuclear Power Plant Sites East of the Rocky Mountains," (April 1994; ML052640591). More recent indirect failure studies were completed by the Electric Power Research Institute (EPRI) on three plants using updated seismic hazard estimates. The updated seismic hazard increases the peak ground acceleration at some sites. The highest pipe failure probability calculated for the three plants in the industry analyses was 6×10^{-6} per year. Although the EPRI failure probability was higher than either of the two cases calculated by the NRC, the result is still lower than the TBS selection guideline of 10^{-5} per reactor year. The NRC noted in its report that indirect failure analyses are highly plant-specific. Therefore it is possible that example plants assessed in the NRC and EPRI analyses are not limiting for all plants.

The NRC has considered the importance of indirect failures on the selection of the TBS. For the cases considered in both the EPRI and NRC studies, the likelihood of indirectly induced piping failures resulting from major component support failures is less than 10^{-5} per reactor year, the frequency criterion used to select the TBS. Also, as noted in the public comments, the median seismic capacities for both the primary piping system and primary system components are typically higher than other safety related components within the nuclear power plant. Because of these relative capacities, it is expected that a seismic event of sufficient magnitude to cause consequential failure within the primary system would also induce failure of components in multiple trains of mitigation systems, or even induce multiple RCS pipe breaks. Consequently, the risk contribution from seismically induced indirect failures is expected to depend more heavily on the relative fragilities of plant components and systems than the size of the TBS. Therefore, adjustment

to the TBS for seismically induced indirect LOCAs is also not warranted.

Comment. In the proposed rule, the NRC stated that the final rule might include requirements for licensees to perform plant-specific assessments of seismically-induced pipe breaks and, if necessary, implement augmented in-service inspection plans before implementing the alternative ECCS requirements. NEI, WOG, BWROG, and a reactor licensee all commented that plant specific assessments should not be required to demonstrate that the seismically induced pipe breaks do not significantly affect the likelihood of pipe breaks larger than the TBS. NEI indicated that the NRC's December 20, 2005 report, "Seismic Considerations for the Transition Break Size" demonstrates that the seismically induced LOCA frequency contribution is less than the 10^{-5} per reactor year guideline limit used by the NRC in determining the TBS. NEI further commented that indirect LOCA seismic studies had been performed by EPRI for a limited number of plants using more recent seismic hazard estimates than those used in the NRC's December study. The EPRI study estimated that the indirect LOCA probability was less than 10^{-5} per year for the plants examined. The EPRI study found that although the latest seismic hazard has increased for some parts of the central and eastern United States, there are several mitigating phenomena that have been established within the new plant seismic program which tend to counter much of that increase. NEI also stated that for a risk informed application, the change in risk should be the primary metric for decision making. The change in risk relative to seismic events is estimated to be negligible based upon the fact that the TBS threshold does not directly impact either the seismic hazard or the plant seismic fragilities. The WOG, the BWROG, and a licensee all endorsed the NEI comments. WOG included an additional comment which stated that the NRC's December report indicated that seismic loading will only have a small (~10 percent) effect on the LOCA frequencies estimated by the NRC expert panel (NUREG-1829 Draft Report, June 2005) and that effect is well within the uncertainty bounds of the frequency estimate of the panel. A reactor licensee had an additional comment that plant specific assessments to determine the frequency of seismically induced pipe breaks would be very difficult to complete. The licensee said that because pipe inspection and repair are such an integral part of plant operations, after a

plant seismic assessment was completed, its conclusions would then be prejudiced by implementation of piping inspection and repair programs. The commenter did not explain in detail how the results would be prejudiced. The commenter also suggested that more technically valid piping failure probabilities might be obtainable through an extensive research program, but noted it is questionable whether this would provide additional risk insights.

NRC response. The NRC disagrees with the commenters that plant specific assessments of seismically induced pipe breaks are not necessary before implementing the alternative ECCS requirements. As discussed in the previous comment, although seismic considerations do not significantly affect TBS selection, the generic nature of the seismic risk studies requires an applicant to demonstrate that these studies are applicable to its plant and site.

The NUREG-1903 study did generically conclude (based on operating experience, probabilistic risk assessment insights, experimental testing, and analysis) that the likelihood of seismic-induced unflawed piping failure was much less than 10^{-5} per year. However, a general conclusion about the likelihood of seismic-induced flawed piping failure could not be reached for all plants. Twenty-six plant-specific calculations were conducted in NUREG-1903 using available seismic hazard assessments for plants east of the Rocky Mountains (*i.e.*, from NUREG-1488; April, 1994) and piping stress and material information obtained from historical leak-before-break applications. These calculations indicated that extremely large circumferential flaws (*i.e.*, greater than 30 percent of the piping wall thickness for a flaw approximately 145 degrees around the piping circumference) would be required before failure would occur due to earthquakes with a return frequency of 10^{-5} or 10^{-6} per year. However, the plant-specific conditions used in the calculations were not chosen to bound conditions at all nuclear power plants. Additionally, some plants may have updated seismic hazard, piping stress, material property, or other information used in the flawed piping evaluation. Thus, the NUREG-1903 results may not be applicable to every plant.

The ACRS, in its letter dated November 16, 2006 (ML063190465), also noted that seismic hazards are very plant specific. The ACRS further recommended that licensees who adopt § 50.46a should demonstrate that the results developed by the NRC bound the

likelihood of seismically induced failure at their plants. The Committee further stated that licensees may have to perform additional calculations to demonstrate a comparable robustness of flawed piping. The ACRS recommendations are consistent with the limitations of the NUREG-1903 study as noted above.

It would also be inconsistent with the Commission's intent to allow the relaxation of ECCS requirements at a plant with a seismically induced large break LOCA frequency greater than the 10^{-5} per reactor year criteria used for selecting the TBS in the proposed rule. Because seismic analyses and, in particular, indirect failure estimates are highly plant and site specific (as noted in NUREG-1903 and in ACRS comments), the NRC believes that it is necessary for a licensee to demonstrate that its seismic LOCA frequency is sufficiently low before implementation of the alternative ECCS requirements. Depending upon the results of the plant specific assessment, it may be necessary to implement augmented in-service inspection plans. As discussed below in Section V.C. of this document, the NRC is currently preparing guidance for conducting these plant-specific assessments ("Plant-Specific Applicability of 10 CFR 50.46 Technical Basis," February 2009; ML090350757).

C. Comments on Thermal-Hydraulic Analysis

Comment. Both NEI and WOG recommended that the proposed new reporting requirement in § 50.46a(g)(1)(i) of a 0.4 percent change in oxidation as the threshold for reporting a change, or the sum of changes, in calculated clad oxidation be changed from 0.4 percent to 2.0 percent. WOG noted that the rationale for selecting 0.4 percent is that it is the same, on a percentage basis, as the existing peak cladding temperature (PCT) change reporting requirement. WOG also stated that this rationale is only true if one considers the range of interest of PCT as 0 to 2200 degrees Fahrenheit (°F) [$(50\text{ °F}/2200\text{ °F}) \times (17\text{ percent}) = 0.4\text{ percent}$]. If instead, one considers the range of interest of PCT as 1700–2200 °F or 1800–2200 °F, from the perspective of transient oxide build-up, this same rationale gives a significance threshold of 1.7 or 2.1 percent. On this basis, WOG recommended that the significance threshold for changes in oxidation be revised to 2.0 percent.

WOG also noted that changes in oxidation are much more difficult to estimate than changes in peak cladding temperature because oxidation is an integrated parameter based on the

temperature transient versus time, whereas PCT is a point value. If the significance threshold for oxidation is not adjusted as recommended above, it is anticipated that the new oxidation reporting requirement will require more frequent re-analyses than the current regulations require, with no commensurate benefit to the public health and safety.

NRC response. The basis for the 0.4 per year oxidation change is that the ratio of the reporting threshold value to the change in oxidation from a "normal" operating level of 4 percent (based on a twice-burned oxidation thickness of 65 μ for Zircalloy-4) to a maximum level of 17 percent should be the same as the ratio of the reporting threshold value to the change from the normal operating cladding temperature of 600 °F to the allowed PCT of 2200 °F. On that basis the oxidation change of 0.4 percent was chosen. The trend toward thinner cladding material raises the initial oxidation percentage even closer to the maximum local oxidation limit and reduces the margin for change in predicted oxidation.

Additionally, the NRC agrees with the WOG comment that calculating oxidation is more time-consuming than calculating PCT. However, the NRC believes WOG is incorrect in stating that not reducing the significance threshold for reporting changes in calculated oxidation will cause the need for performing additional oxidation calculations. The significance threshold for reporting to the NRC only affects the frequency of reporting and has no effect on the need to do reanalysis. Reanalysis is necessary when licensees discover errors or make changes to analytical codes.

The Commission has directed the NRC staff to revise the ECCS acceptance criteria in § 50.46(b) to account for new experimental data on cladding ductility and to allow for the use of advanced cladding alloys. The NRC will soon issue an Advance Notice of Proposed Rulemaking (ANPR) seeking public comments on a planned regulatory approach. The NRC expects that this rulemaking (Docket ID NRC-2008-0332) will establish new cladding embrittlement acceptance criteria in § 50.46(b) for design basis LOCAs. As these new acceptance criteria are being established, the NRC will also make conforming changes to § 50.46a as necessary for both below and above TBS breaks. As a consequence, the NRC now believes that the need for a reporting requirement in § 50.46a associated with errors or changes in ECCS analysis methodology would be more appropriately addressed in the ongoing

§ 50.46(b) proceeding. Accordingly, the changes to the oxidation reporting requirements in the initial proposed rule have been removed from the revised proposed rule.

Comment. Framatome commented that the analysis or case requirements in § 50.46a(e)(2) for beyond the transition break size evaluations are excessive. The desire for this portion of the regulation is to establish in a reasonable way that the plant remains able to mitigate a large break LOCA. It is unnecessary and inconsistent to elevate the consideration of break size effects beyond that of other portions or aspects of the evaluation that are to be treated as reasonable values. Under the proposed rule language, a full § 50.46 evaluation will be required for breaks of area less than the TBS. The results for these analyses can be extended to the smaller break sizes in the greater than TBS spectrum with assurance. Combining a reasonable selection of discharge coefficient (0.6) with the use of the 1994 ANS decay heat standard would roughly equate a 14-inch schedule 160 pipe area (0.7 ft²), treated as below the TBS, with a 1.4 ft² break, treated as a beyond TBS break. Similarly, at the upper end of the break spectrum, what used to be considered as an 8 to 9 ft² break of the cold leg will be the equivalent of a historical 5 ft² break. The requirement to perform sensitivity studies to identify a worst case break between these two limits seems unwarranted. It would be reasonable to just perform the full double area break or at most that break and one intermediate break. The only sensitivity required should be relative to break location. Historically, break location can have a substantial influence on the calculated results. This should be resolved prior to the greater than TBS calculation either by sensitivity studies or by reference to appropriate historical analyses. The concern can be allayed by either altering the rule so that the identification of the most severe break size is not required or by inserting the concept of reasonable confidence that breaks within the beyond TBS spectrum will not pose consequences substantially more severe than those of the calculations performed.

The WOG stated that for NRC-approved best-estimate or Appendix K evaluation models, the requirement for analyzing a spectrum of break sizes is unwarranted. The BWROG said that the requirement to re-validate over 30 years of experience with performing large break LOCA analysis to confirm "for a number of postulated LOCAs of different sizes and locations * * * that

the most severe postulated LOCAs * * * are analyzed” is unnecessarily burdensome and appears to serve no specific technical need. Current best-estimate large break LOCA models, which are benchmarked to testing data, have yielded no insights that would invalidate the previous analytical experience and knowledge. WOG concluded that this provision in the rule language should be removed.

NRC response. The NRC disagrees with the commenters on the need for analyzing a spectrum of break sizes. The proposed rule language was selected because there are two peak cladding temperatures, one that occurs below the TBS and one that occurs above the TBS. The peak above the TBS may not occur for the DEGB, but rather, for a break area in the range of 0.6 to 0.8 times the DEGB area. Because there can be a fairly large temperature difference between that break and the DEGB, use of the DEGB could be non-conservative. The NRC also believes that the language of the rule provides considerable flexibility in implementation (relative to the stated comments) because the requirement is to analyze a “number of postulated LOCAs * * * sufficient to provide assurance that the most severe LOCAs * * * are analyzed”. The use of historical analyses is not precluded. No changes were made in the revised proposed rule.

Comment. NEI commented that in § 50.46a(e)(2) on ECCS analysis methods, one requirement is that “comparisons to applicable experimental data must be made.” NEI stated that other approaches such as comparison of results to accepted analysis techniques or to textbook approaches are also appropriate and suggested that the requirement be reworded to state that “sufficient justification” must be provided.

NRC response. The NRC disagrees with this commenter. Computer code-to-code comparisons are not adequate because all codes have uncertainty in their results. Only code-to-data comparisons can be used to accurately assess code uncertainties. Similarly, computer code results cannot be validated by comparison to “textbook approaches” because no simple textbook approaches exist for modeling the highly complex thermal-hydraulic phenomena associated with pipe break analyses. No changes were made in the revised proposed rule.

Comment. WOG submitted four options for how to perform ECCS analysis in the beyond-TBS region to assist the NRC staff in developing the regulatory guide for implementing the § 50.46a rule.

NRC Response. The NRC will evaluate the WOG ECCS analysis options and will provide additional implementation guidance in the associated regulatory guide.

Comment. The BWROG stated that it supports applying the requirements of § 50.46a(b)(1) to reactors with MOX [mixed oxide] fuel.

NRC response. The proposed § 50.46a is intended to be an alternative to the current ECCS requirements in § 50.46. Because § 50.46 does not address the use of mixed oxide fuel, the NRC believes that the commenter’s proposal is beyond the scope of this rulemaking. The NRC did not make changes in the revised proposed rule to address MOX fuel.

Comment. Proposed § 50.46a(e)(2): The following sentence should be moved from its current location to just in front of the sentence beginning, “These calculations * * *”: “The evaluation must be performed for a number of postulated LOCAs of different sizes and locations sufficient to provide assurance that the most severe postulated LOCAs larger than the TBS up to the double-ended rupture of the largest pipe in the reactor coolant system are analyzed.” This relocated sentence should begin a new paragraph. These changes will properly group the more detailed analysis requirements.

NRC response. The NRC agrees that movement of the noted sentence improves the rule presentation. In the revised proposed rule, this sentence has been relocated as the commenter suggested, but the structure of § 50.46a(e)(2) was not modified.

Comment. In proposed § 50.46a(e)(2), the NRC should clarify the requirements for licensee documentation to be maintained onsite versus generic documentation in or supporting a licensing topical report.

NRC response. In the revised proposed rule, the NRC modified § 50.46a(e) to require that analysis methods for all LOCAs “must be approved for use by the NRC. Appendix K, Part II, to 10 CFR Part 50, sets forth the documentation requirements for evaluation models.” Thus, the documentation requirements for analysis methods used for breaks larger than the TBS are the same as for analysis methods used for breaks smaller than the TBS. The purpose of this change is to increase confidence in the ability to mitigate breaks greater than the TBS, as recommended by the Advisory Committee on Reactor Safeguards.

Comment. In proposed § 50.46a(e)(2), the NRC states that these calculations [for breaks larger than the TBS] may

take credit for the availability of offsite power and do not require the assumption of a single failure. It should also be noted that availability of equipment is not limited to safety-related equipment.

NRC response. The NRC agrees that the suggested language is more descriptive and has incorporated the change into that last sentence of § 50.46a(e)(2).

Comment. For PWR LOCAs below and above the TBS, the mitigating systems and equipment are the same for the full spectrum of LOCAs. Although non-safety LOCA mitigation systems/components may be applicable in the context of BWR LOCA analysis, this is not the case for PWRs. If this element of the proposed regulation (allowing the use of non-safety grade systems) is intended to address a situation that is only applicable to BWRs, then it should not be required for PWRs.

NRC response. The element of the proposed regulation—allowing the use of non-safety grade systems—noted by the commenter is not intended to address a situation that is only applicable to BWRs. Although PWR plants may not currently have non-safety systems that could be credited for LOCA mitigation (for breaks larger than the TBS), modifications could be made in the future that facilitate use of non-safety systems. The revised proposed rule would relax existing § 50.46 requirements to allow ECCS analyses of breaks larger than the TBS to take credit for both safety-grade and non-safety-grade equipment if such equipment exists, is maintained available and reliable, and is capable of being powered by an on-site source of electrical power.

Comment. The WOG commented that the rule should not contain a requirement for licensees to submit beyond TBS thermal-hydraulic analyses to the NRC for approval. One reactor licensee commented that the proposed rule states that licensees will not be required to submit their beyond-TBS analysis method or application to the NRC for review and approval; instead, the NRC intends to maintain regulatory oversight of these analyses by inspection. That licensee said that although not requiring NRC review and approval has the appearance of a benefit to the licensees, it actually introduces a risk of a regulatory crisis should an inspection identify a deficiency in the beyond-TBS analysis method following implementation. Such an identified deficiency could result in a consequence such as the regulator imposing restrictions on reactor operation. This risk is greater than for

the current situation where LOCA evaluation models and applications are pre-approved by the NRC. It would be preferable that NRC review and approval of § 50.46a applications be obtained prior to implementation to avoid such a regulatory crisis. This commenter proposed that the NRC agree to perform a pre-approval of a licensee's beyond-TBS analysis method and application if requested by a licensee.

NRC response. The NRC has changed the proposed rule to require NRC review and approval of analysis methods used to evaluate plant response to LOCAs larger than the transition break size. The purpose of this change is to increase confidence in the ability to mitigate breaks greater than the TBS, as recommended by the ACRS.

Comment. NEI, a reactor vendor, and a reactor licensee requested that M5 cladding (M5) be specified as an approved fuel cladding material in existing § 50.46(a) and in proposed § 50.46a(b)(1) to avoid the need for requesting an exemption to allow its use. The reactor vendor stated that because M5 is currently being used in 11 nuclear power reactors of varying designs across the United States, it is obvious that M5 is an acceptable and desirable cladding material. The BWROG stated that § 50.46a should be made available to reactors with alternate cladding materials.

NRC response. As previously discussed, the Commission directed the NRC staff to initiate a separate rulemaking effort to amend § 50.46(b) to address the use of advanced cladding alloys. The NRC is considering cladding specific issues in that proceeding and will also incorporate appropriate conforming changes to § 50.46a. The NRC is working to revise the ECCS acceptance criteria in § 50.46(b) to account for new experimental data on cladding ductility and to facilitate the licensing review of advanced cladding alloys such as M5. The NRC plans to issue an ANPR during the summer of 2009 to solicit public comments on a planned regulatory approach. In the interim, the NRC will continue to evaluate the use of cladding materials other than Zircalloy or ZIRLO on a case-by-case basis.

D. Comments Related to Probabilistic Risk Assessment

1. Summary

The initial proposed rule required that all future facility changes⁶ made by

⁶ The scope of changes subject to the change criteria in § 50.46a(f) of the proposed rule would be greater than the changes currently subject to § 50.59, which applies only to changes to "the

licensees after adopting § 50.46a be evaluated by a risk-informed integrated safety performance (RISP) assessment process that has been reviewed and approved by the NRC via the routine process for license amendments.⁷ (See 70 FR 67612–67615.) Most of the commenters on the proposed rule stated that current regulatory processes that control changes to the facility are adequate and therefore, there is no need for the RISP change control process. In comments generally supported by all nuclear industry commenters, NEI argued that the controls on the existing licensing basis make it virtually impossible to make significant adverse changes to the risk profile of the plant without being required to submit a license amendment request for prior NRC review and approval. NEI concluded that the only item that might be missing from the current framework that would provide additional assurance that the licensee is appropriately maintaining the risk profile of the facility after adoption of § 50.46a would be a requirement that the licensee periodically assess the cumulative impact of facility changes to the risk profile.

Industry commenters also considered the proposed rule's unbounded scope of the facility changes requiring a RISP assessment to be an unnecessary burden and some argued that this requirement is potentially adverse to safety. In this regard, the commenters said that because most facility changes have no material safety significance, requiring a RISP assessment of facility changes beyond even the criteria established in current regulations, such as in § 50.59, would add a wide range of activities and components to the licensing basis that were never reviewed or ever intended to be reviewed by the NRC. Thus, licensees would be forced to divert valuable resources from monitoring plant safety to tracking a multitude of items that have no safety or risk significance. A few commenters recognized that most facility changes could be dispositioned with a qualitative RISP assessment but argued that there would still be cost

facility as described in the FSAR." The change criteria in the proposed rule would apply to all facility and procedure changes, regardless of whether they are described in the FSAR.

⁷ Requirements for license amendments are specified in §§ 50.90, 50.91 and 50.92. They include public notice of all amendment requests in the **Federal Register** and an opportunity for affected persons to request a hearing. In implementing license amendments, the NRC typically prepares an appropriate environmental analysis and a detailed NRC technical evaluation to ensure that the facility will continue to provide adequate protection of public health and safety and common defense and security after the amendment is implemented.

associated with the performance and documentation of the assessment.

All commenters stated that the rule should not include the operational restriction that all allowable at-power configurations be demonstrated to meet the ECCS acceptance criteria. The suggested alternatives ranged from reducing the restrictions and placing them under licensee control to eliminating them entirely. The commenters argued that:

(1) Existing plant configuration control programs, including technical specifications and implementation of the maintenance rule, provide sufficient controls to ensure that implementation of § 50.46a will not lead to plant operation in high risk configurations;

(2) Because of the low frequency of breaks greater than the TBS there should be a minimum of associated operating restrictions;

(3) Any operating restrictions for breaks larger than the TBS need to be commensurate with risk contribution of these larger break sizes; and

(4) Operating restrictions would remove or reduce any potential benefit that licensees might gain from the adoption of § 50.46a.

NRC summary response. The NRC believes that a risk-informed change process is a necessary component of this rule because this rule would permit changes to facility design bases that would not be allowed under current regulations. The current regulatory processes that control facility changes are not adequate to control risk-informed plant changes that would be allowed under § 50.46a. However, the NRC has modified the risk-informed change process considerably by reducing the scope of facility changes for which a risk assessment is required. The NRC considered requiring all facility changes to be evaluated as risk informed changes and permitting licensees to make all facility changes, with some exceptions, that satisfy the criteria in § 50.59 or other NRC regulations without prior NRC review and approval. The ACRS commented that requiring the change in risk from all facility changes to be compared to the acceptable risk increase criteria was a significant departure from RG 1.174 guidance and other past risk-informed applications. The ACRS recommended that this proposal be reviewed for its implications.

Instead of requiring risk assessment of all future facility changes, the revised proposed rule would require risk assessments for only those facility changes enabled by the new ECCS requirements for pipe breaks greater than the TBS. This change would

reduce unnecessary burden and bring the change control process into conformance with RG 1.174 and other risk-informed rules and licensing actions. Two previous risk-informed regulations promulgated by the NRC (*i.e.*, §§ 50.69 and 50.48(c)) have included similar requirements related to the use of PRA and risk-informed principles to demonstrate the acceptability of facility changes enabled by new, risk-informed regulations before being implemented by licensees.

The revised proposed rule defines facility changes enabled by § 50.46a as changes to the facility, technical specifications, and procedures that satisfy the revised ECCS analysis requirements in § 50.46a but do not satisfy the ECCS analysis requirements in § 50.46. A risk-informed analysis, consistent with that described in RG 1.174, shall be applied to facility changes enabled by the rule. The risk-informed framework established in RG 1.174 permits licensees to propose several individual changes to a facility's licensing basis that have been evaluated and will be implemented in an integrated fashion. Some facility changes proposed by licensees may not be enabled by the rule but may lead to a risk decrease. RG 1.174 permits integrated (bundled) changes in risk to be compared to the acceptance guidelines from RG 1.174 in order to encourage changes that reduce risk. The NRC has retained this guidance in § 50.46a(f)(2)(iv) which would permit the change in risk from changes enabled by the rule to be combined with the change in risk from other plant changes unrelated to the rule for the purpose of demonstrating that the change in risk from all changes made under the rule meets the acceptance criteria.

In addition to reducing the scope of facility changes to which the risk-informed change process must be applied, the NRC has discarded the acronym "RISP" in favor of the simpler "risk-informed" label because the elements and processes described by the RISP are the elements and processes that make up a risk-informed evaluation.

The NRC considered whether to simplify the risk-assessment process further by relying primarily on current regulations to identify which facility changes a licensee must submit for prior NRC review and approval. The ACRS commented that the NRC should use risk criteria to determine whether a licensee should submit a change enabled by the rule for review and approval. Subsequently, the NRC retained the criteria specifying the maximum risk increase for a change that

a licensee may make without prior NRC review and approval. This requirement frees licensees and the NRC from the burden of evaluating and accounting for the many individual facility changes that do not have a significant impact on risk while retaining NRC review and approval for changes that might pose a safety concern.

In response to comments received on the operational restrictions in the proposed rule, the NRC has decided that restrictions must remain on plant operation in configurations where it has not been demonstrated that breaks larger than the TBS can be mitigated, but the restrictions will be modified. The proposed rule prohibited at-power operation in any configuration without the demonstrated ability to mitigate a LOCA larger than the TBS. The revised proposed rule would restrict at-power operation in such a configuration to not exceed a total of fourteen days in any 12 month period. Rather than requiring licensees to use risk methods to determine how long such operation would be permitted, what actions would be required, and how the controls would be implemented, in the republished proposed rule the NRC is specifying a time limit that simplifies implementation without sacrificing flexibility and introducing unnecessary burden. The NRC believes it is unlikely that licensees would experience circumstances when they would consider operating in such a condition for more than fourteen days but feels that maintaining the restriction is necessary.

Although the LOCA frequencies on which the TBS are founded indicate that the expected frequency of breaks larger than the TBS is low, these frequencies are estimates derived from an expert elicitation process. The NRC has addressed the associated uncertainty, in part, by incorporating other elements into the selection of the TBS while recognizing that facility changes permitted by the rule could reduce the capability to mitigate some accidents that would currently be mitigated. The NRC concluded that the consequence of a challenge to the facility from an unmitigated break larger than the TBS is severe enough to warrant some confidence that the break could be mitigated.

Although the NRC currently has no guidance explicitly applicable to determine an acceptable time interval for operation without mitigation capability for a beyond-TBS LOCA, some related guidance is available. Previously, the NRC determined that events having at least a 10^{-7} probability per year should generally be taken into

consideration in facility design. This approach is reflected in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants." Events taken into consideration in facility design are design basis events and must meet the regulations specifying the required ability to mitigate the event. This guideline indicates that events with a frequency less than 10^{-7} per year need not be considered in facility design. Applying this criterion to develop an acceptable time interval during which a beyond-TBS LOCA might not be successfully mitigated yields about 4 days per year. Regulatory Guide 1.177, "An Approach for Plant-Specific Risk-Informed Decisionmaking; Technical Specifications," provides risk guidelines that are routinely used to judge the acceptability of time intervals that safety-related equipment can be unavailable. Applying the RG 1.177 criterion yields about 18 days. Neither of these guidelines is fully applicable to this configuration. The 10^{-7} annual probability was developed to identify events external to the plant that need not be included in the design basis and is not specifically applicable to internal events such as LOCAs. Regulatory Guide 1.177 guidelines are normally applied to an operating configuration when mitigation capability would still be available although a single failure might fail that capability. Nevertheless, they provide an indication that an acceptable period of time should be measured in days.

The NRC chose fourteen days as the appropriate limit on how long a plant can operate in a configuration not demonstrated to meet the ECCS acceptance criteria for LOCA break sizes larger than the TBS. The NRC believes that fourteen days should be sufficient to allow completion of on-line maintenance activities relied on to ensure high reliability for safety systems while providing adequate protection of public health and safety, consistent with the low frequency of these LOCAs. The NRC believes that a longer time period for operating in such a plant condition would not be consistent with its stated goal of retaining the ability to successfully mitigate the full spectrum of LOCAs and would not adequately address uncertainties in the evaluation used to select the TBS. Conversely, a shorter time period could lead to significant burden to the industry with no clear safety benefits and, if maintenance activities were adversely affected, a possible reduction in safety. Therefore, the NRC will limit the allowed time period for operation in an

unanalyzed condition to fourteen days to ensure that mitigation capability is maintained except for occasional, brief periods necessary to perform online maintenance of mitigation structures, systems and components.

The NRC concludes that the fourteen day operational restriction would protect public health and safety, provide adequate time for licensees to perform beneficial maintenance activities, be commensurate with the safety significance of LOCAs with a break size larger than the TBS and be consistent with the Commission's intent that mitigation capability be retained for the full spectrum of LOCA events "commensurate with the safety significance of these capabilities."

The NRC agrees with commenters that operational restrictions could reduce the benefits that may be derived from adopting § 50.46a, but the NRC believes that this reduction in benefits is necessary and prudent to ensure that some capability to successfully mitigate LOCAs larger than the TBS is retained consistent with the risk of these events.

As an example, because the new § 50.46a ECCS analysis requirements provide relief from the single failure criterion for pipe breaks larger than the TBS, they could permit a facility to increase power to the extent that flow from both low pressure safety injection trains would be required to fully mitigate beyond-TBS breaks. However, the operational restriction in the re-noticed proposed rule would require that such a facility reduce power to a level where injection from one train is sufficient to mitigate beyond-TBS breaks if the second train is inoperable or is removed from service for preventative maintenance for longer than fourteen days. The plant would be permitted to operate at the increased power level at all other times.

2. Discussion of Specific Comments

Comment. The RISP process would be an extreme regulatory burden on licensees and the NRC to implement. Five reactor licensees said they would not implement the proposed rule because of excessive burden.

NRC response. The NRC disagrees with the commenters that the burden to develop and implement a risk-informed evaluation process as described in the initial proposed rule is an extreme regulatory burden because many elements of a risk-informed evaluation process should already exist at power reactors. However, as discussed above, the NRC has substantially reduced the scope of facility changes requiring a risk-informed evaluation. The revised proposed rule now would require a risk-

informed evaluation as described in RG 1.174 which is consistent with the risk-informed evaluations required by other risk-informed applications and regulations. The NRC believes that the burden associated with implementing a risk-informed evaluation program would be offset by the flexibility provided by the new ECCS analysis requirements that will permit facility changes that were not permitted by the previous ECCS analysis requirements.

Comment. The risk-informed evaluation process emphasizes insignificant facility changes. The proposed change control requirements would require the NRC to be in the business of individually reviewing a myriad of insignificant facility changes. The risk acceptance criteria for allowing minimal risk changes appear to be contrary to the stated goal of enhancing safety. It seems illogical to adopt more restrictive requirements on safeguards for beyond design basis events than exist for design basis events.

NRC response. The NRC disagrees that the proposed rule's requirements would lead to the NRC individually reviewing insignificant facility changes. Facility changes that are enabled by the new ECCS requirements may lead to a wide range of estimated increases in risk, from immeasurably small to very large. The NRC has established an acceptance criterion that specifies the total amount of risk increase that would be considered acceptable from changes made under this rule. The revised proposed rule also includes a provision that prior NRC review is not required for individual facility changes that cause no more than a minimal increase in risk when compared to the overall plant risk profile. As discussed below, the NRC would consider any increase that is less than ten percent of the total acceptable risk increase to be minimal. The revised proposed rule includes these criteria to prevent NRC review of insignificant changes while retaining the capability to review facility changes that might pose a safety concern before implementation.

Comment. The scope of the required PRA is excessive. One commenter stated that the PRA scope requirements of § 50.46a(f)(4)(i) in the proposed rule appear excessive and should instead use text from NRC policy regarding PRA scope requirements relative to an application, *i.e.* " * * * the PRA scope is such that all operational modes and initiating events that could change the regulatory decision substantially are included in the model quantitatively." Another commenter stated that requirements for PRA should not be prescribed in the rule. Standards and processes exist to establish requirements

for PRA technical adequacy (*e.g.*, RG 1.174, RG 1.200, ASME PRA standard). A peer-reviewed internal events PRA that meets RG 1.200 should be sufficient for § 50.46a implementation. A final commenter stated that a requirement for shutdown PRAs is not appropriate because of the low risk associated with shutdown configurations at BWRs. Requirements for seismic PRAs are also inappropriate because these constitute a typically small fraction of the overall risk for most plants.

NRC response. The NRC does not agree with commenters that the scope of the required PRA is excessive and has made no changes to the PRA requirements in the revised proposed rule. Further, the NRC believes that the proposed rule language regarding PRA scope requirements provided by one of the above commenters is consistent with the language in both the proposed and the revised proposed rules. Thus, the commenter's text was not incorporated into the revised proposed rule.

The required overall characteristics of the PRA (and the non-PRA risk assessment) are included in the rule because these characteristics have been determined to be necessary to support decision making and inclusion of the characteristics in the rule provides clarity and predictability. The revised proposed rule does not prescribe how it will be determined whether a licensee's risk-assessment complies with these characteristics. The process to evaluate the suitability of each licensee's risk assessment will be described in the regulatory guide associated with this rule. This process will include staff-endorsed industry standards and the peer review process currently used by the NRC to evaluate the technical adequacy of PRAs supporting license amendment requests.

Comment. The requirement to update the PRA at a frequency no less often than once every two refueling cycles is potentially burdensome. An alternative would be to require that after every second refueling cycle, that the need for a PRA update is assessed and that appropriate action be initiated.

NRC response. The commenter's suggestion that the need for a PRA update be first assessed and appropriate action then be taken is consistent with the revised proposed rule. Section 50.46a(f)(2)(iv) would require that the PRA reasonably represent the current configuration of the plant. If a PRA continues to reasonably represent the configuration of the plant after a periodic review, the update requirement could be satisfied with a simple conclusion that changes to the PRA are not needed. The NRC believes that an

update interval no longer than two operating cycles is not unduly burdensome; thus, the PRA update periodicity was not changed in the revised proposed rule.

Comment. The description of the risk-informed process should not be included in the application for a license amendment to implement § 50.46a. NEI provided complete alternative rule language in its comments. At the June 28, 2006, public meeting to clarify the comments, NEI emphasized that the proposed rule provided in their comments did not require that the RISP process be submitted for review because they felt that such a review was unnecessary. Although this comment was not formally submitted, several other participants at the June 2006 public meeting agreed with this comment.

NRC response. The NRC disagrees with the comment that a description of a licensee's risk-informed assessment process need not be submitted for NRC review as part of the licensee's application to adopt § 50.46a. However, the NRC believes that the amount and complexity of the process description that must be submitted will vary appropriately depending on which, and how many, facility changes enabled by the rule a licensee chooses to make.

As discussed, the NRC has revised the proposed rule by reducing the requirement that all future facility changes be evaluated using a risk-informed evaluation to only requiring that facility changes enabled by the rule be evaluated. Licensees who make limited facility changes under the rule, may choose to not submit a request to make future facility changes enabled by the rule without prior NRC approval as would be permitted in paragraph (c)(1)(iv). Licensees who make one or more risk-informed submittals without requesting the authority permitted under § 50.46a(c)(1)(iv) would only need to demonstrate that the process used to evaluate the specific change(s) described in each submittal provides confidence that the requirements of § 50.46a(f)(2) are satisfied. The content of these submittals is expected to be similar to, and consistent with, risk-informed license amendment requests currently accepted for review by the NRC.

A licensee requesting authority to make future changes without NRC review as permitted by § 50.46a(c)(1)(iv) must submit for NRC review and approval additional information, *i.e.*, the licensee's process including its risk assessment models and methods that will be used for making future risk-informed changes. Section

50.46a(c)(3)(iii) provides that the NRC may approve an application if, in part, the licensee's risk-informed evaluation process is adequate for determining whether the acceptance criteria in § 50.46a(f) have been met. As described in RG 1.174, the technical acceptability of a PRA should be commensurate with the application for which it is intended; the level of detail required of the PRA should be sufficient to model the impact of the proposed change; and the effects of the changes should be appropriately accounted for. A licensee's submittal to make future changes must provide sufficient information on both the risk assessment models and how future changes will be reflected in these models, to allow the NRC to conclude that the requirement in § 50.46a(c)(3)(iii) is met.

Comment. Requirements on late containment failure should be removed. It is inappropriate to require licensees to retain a level of mitigation for late containment failure and late radiological releases, because these releases constitute a very small fraction of overall plant risk. Therefore, these references should be removed.

NRC response. The NRC is proposing changes in the revised proposed rule that would make this topic moot. The commenter was remarking on the parenthetical "(early and late)" that was added to the containment related defense in depth element described in RG 1.174 when three of the elements were incorporated as acceptance criteria in the proposed rule. The NRC has removed the defense-in-depth acceptance criteria in the revised proposed rule, including the reference to early and late containment failures, but has retained the general criterion that defense-in-depth be maintained.

The NRC will continue to follow the guidelines in RG 1.174 to address defense-in-depth when evaluating whether a licensee has satisfied the rule criterion that defense-in-depth has been maintained. The RG 1.174 guidelines for defense-in-depth in risk-informed applications have been used successfully by the NRC for more than a decade and do not need further clarification through rulemaking. Retaining the defense-in-depth guidelines in a regulatory guide instead of promulgating acceptance criteria in the rule would also allow the NRC to more effectively update its guidance as new information becomes available or if the Commission changes its policy.

Comment. Section 50.46a(f)(4) contradicts § 50.46a(f)(5). One commenter stated that § 50.46a(f)(4) implies that only a PRA meeting the requirements of the following

paragraphs may be used in the risk-informed assessment. This was seen as contradictory to § 50.46a(f)(5), which allows non-PRA risk assessment methods.

NRC response. The NRC disagrees that the rule language is contradictory. The relevant phrase in § 50.46a(f)(4) states that " * * * to the extent that a PRA is used in the risk-informed assessment, it must * * *," meet the following PRA requirements. If a PRA need not be used according to § 50.46a(f)(1)(i) and (f)(2)(ii), and a PRA is not used, then non-PRA risk assessment methods that satisfy the requirements in § 50.46a(f)(5) may be used. No changes were made in the revised proposed rule.

Comment. Performance monitoring is already covered by Appendix B to Part 50. One commenter stated that the proposed requirement for a monitoring program designed to detect and prevent degradation of systems, structures, and components (SSCs) before plant safety is compromised is unnecessary. The commenter stated that 10 CFR Part 50, Appendix B, Criterion XVI for corrective action already contains this requirement.

NRC response. The NRC does not agree. Appendix B to 10 CFR Part 50 applies to safety-related SSCs and activities. The risk-informed decision process includes risk models that consider a much broader set of accidents and can credit a larger set of equipment and actions to mitigate these accidents than the set of safety-related equipment or actions. The NRC believes that performance measurement is an important part of risk-informed decision making that must be applied irrespective of the classification of an SSC or activity as "safety-related." The performance monitoring requirement remains in the revised proposed rule.

Comment. Power uprates and relaxation of the single failure criteria for breaks larger than a TBS LOCA could result in a situation when all emergency power supplies are needed to successfully mitigate a break larger than the TBS when accompanied by a loss-of-offsite power. The potential consequences of relying on the availability of offsite power supply in a deregulated environment or a requirement to have both divisions of onsite power available (without single failure capability) to mitigate the uprated reactor accident would not appear to be offset by any compensatory factors.

NRC response. The NRC agrees that licensees who adopt § 50.46a could potentially make changes to the facility such that all emergency onsite power

supplies were required to demonstrate successful mitigation of a break larger than the TBS when accompanied by a loss-of-offsite power. Such an operating configuration would not be permitted by the current regulations. Licensees who adopt § 50.46a would have the flexibility to make facility changes that would not normally be permitted by current ECCS regulations but must comply with all the requirements of § 50.46a. One requirement is to demonstrate that all changes made under the rule meet the risk acceptance criteria in § 50.46a(f) before the facility change may be implemented. Another requirement is that the change in risk from all changes to the facility must be periodically assessed and steps must be taken if the result exceeds the acceptance criteria in § 50.46a(f)(2). If changes to the plant-specific emergency power configuration and/or grid reliability over time result in risk increases exceeding the acceptance criteria, the plant changes that would permit this operating configuration may not be implemented, or other steps must be taken to reduce overall facility risk.

However, in response to the ACRS recommendation in the November 16, 2006, letter from Graham Wallis to Chairman Dale E. Klein, (ML063190465), to increase the level of defense-in-depth provided by the rule for mitigating LOCAs larger than the TBS, the NRC has modified the revised proposed rule with respect to the availability of onsite electrical power. The NRC has added the requirement that all equipment needed to mitigate pipe breaks larger than the TBS must be designed so that onsite power can be provided to the equipment. Onsite power may be provided automatically or as the result of manual actions taken by facility staff within a time frame that provides mitigation of damage and accident consequences. Although the ECCS analyses for pipe breaks larger than the TBS may still assume the availability of offsite power, the availability of onsite power to the necessary equipment provides additional defense-in-depth for postulated large break accidents.

E. Comments Related to the Applicability of the Backfit Rule

Comment. Commenters stated that the proposed rule provision limiting the applicability of the backfit rule is unnecessary. These commenters stated that the rule requires maintaining a mitigation capability up to the largest LOCA, regardless of the size of the TBS. The NRC should either apply the backfit rule to future changes in the TBS, or define a set of criteria defining how and

when the NRC would determine that the TBS is no longer acceptable. Licensees should be provided with a great deal of latitude on achieving compliance following any change in the TBS, with the goal being that risk requirements are achieved with a reasonable mix of prevention and mitigation.

NRC response. The NRC disagrees, for the most part, with the comments on this question. Because the estimated low LOCA frequency and corresponding low risk of large LOCAs is necessary to maintain assurance of public health and safety with this risk-informed regulation, the NRC believes that the exclusion of TBS changes from the backfit rule must be maintained in case future changes in estimated LOCA frequency require changes to the TBS.

With respect to a commenter's argument about the continuing regulatory requirement for LOCA mitigative capability beyond the TBS, the NRC notes that even though mitigative capability is retained, the proposed beyond-TBS mitigative capability is reduced, as compared to the capability required under the current ECCS rule. In developing the proposed rule, the NRC recognized the open-ended nature of the backfit exclusion. The NRC attempted to develop criteria for assessing whether new information mandates a change to the TBS. Unfortunately, the NRC was unable to develop relatively clear criteria and it was concluded that adoption of generalized criteria for constraining the NRC in future changes to the TBS would not prove useful or practical. Thus, the proposed rule did not set forth proposed criteria for assessing whether new information mandates a change to the TBS. The NRC notes that no commenter suggested any criteria for assessing the need for, or desirability of, changes to the TBS based upon new information.

The NRC agrees that the proposed amendment should provide licensees with substantial flexibility to determine the manner in which they would come back into compliance with applicable regulatory requirements following any future change in the TBS. Licensees who must take actions to come back into compliance need not return the plant to the precise conditions and circumstances in effect immediately before implementation of the § 50.46a regulation. Rather, licensees should be afforded the flexibility of deciding what actions to implement to comply with a revised TBS. Further, as one of the commenters suggests, the overall goal of any actions taken to restore compliance is to achieve a reasonable mix of prevention and mitigation. The NRC

will consider making this clear in implementing guidance. For these reasons, the NRC has decided to adopt the exclusion of future TBS changes from the backfit rule by retaining the provisions of proposed §§ 50.46a(m) and 50.109(b)(2) in the revised proposed rule.

Comment. Proposed §§ 50.109(b)(2) and 50.46a(d)(5) should not be adopted, and any changes to the TBS should be accomplished by rulemaking, and evaluated under the backfit rule. Excluding future changes to the TBS from compliance with the backfit rule would defeat the goal of regulatory stability embodied in the backfit rule and may result in changes that are not cost-justified.

NRC response. The NRC disagrees with the comment that the NRC's three reasons for exempting TBS changes and any consequent licensee reanalyses and changes from the backfit rule do not address how the objectives of the backfit rule are met. On the contrary, the NRC's first reason (consideration of costs and benefits in a regulatory analysis) and the third reason (flexibility may reduce impacts of changes in the TBS) directly address the underlying objectives of the backfit rule. In addition, the second reason (application of the backfit rule favors incremental increases in risk) is relevant to the backfit rule's "substantial increase in protection" criterion. A backfitting standard that limits increases in protection to public health and safety or common defense and security to those which are both substantial and cost-justified, but ignores (or allows) incremental decreases in protection without restriction does not seem to be a justifiable regulatory approach. Hence, the NRC believes that adoption of criteria to control these incremental decreases is justifiable and appropriate, even if inconsistent with the objective of regulatory stability, which is, arguably, the primary objective of the backfit rule.

Finally, the NRC agrees that the goal of regulatory stability is not negated by the fact that a licensee's decision to comply with § 50.46a rule would be optional or voluntary. On the contrary, the NRC believes that regulatory stability should be an important factor in developing a rule. However, the NRC disagrees with the commenter's implicit assertion that, absent consideration under the backfit rule, regulatory stability would not be appropriately considered in any future revisions to the TBS. As the NRC stated in the statement of considerations in the proposed rule, a regulatory analysis would be required for any revision to the TBS. (See 70 FR 67617–67618.) This regulatory tool provides an appropriate means of

ensuring that regulatory stability is considered by the NRC when determining whether to revise the TBS.

Comment. The NRC should not adopt the backfitting exclusion provision in § 50.46a(d), which would require that any facility changes made necessary by the maintenance and upgrading of risk assessments, would not be deemed to be backfitting.

NRC response. The NRC disagrees with this comment, which was part of a broader comment opposing the proposed rule's provision excluding from backfit consideration changes to a plant and its procedures that are necessitated by any future TBS changes mandated by the NRC (see the immediately-preceding comment analysis). The commenter did not provide a separate basis supporting its position that licensee changes necessitated by the periodic risk assessment maintenance and upgrading (as contrasted with NRC-mandated TBS changes) should be subject to backfitting consideration.

The NRC believes that the policy and regulatory considerations with respect to backfitting of changes stemming from future TBS changes are irrelevant to the policy and regulatory considerations with respect to backfitting of changes required to maintain compliance with updated risk analyses. The NRC regards plant changes necessitated by periodic risk assessments under § 50.46a to be analogous (from a backfitting standpoint) to the 120-month updating of inservice inspection (ISI) and inservice testing (IST) under § 50.55a(f) and (g). Under those provisions, a licensee must update its ISI and IST program every 120 months to the latest version of the ASME Code in effect 12 months before the beginning of the next inspection interval. The NRC has stated that the 120-month updating does not constitute backfitting, in part because the regulatory requirement for updating is known to the operating license applicant before it receives its license, which addresses the policy of regulatory stability and predictability embodied in the backfit rule. See 69 FR 58804, 58817 (third column) (October 1, 2004); 67 FR 60520, 60536–60537 (September 26, 2002). This logic also applies to the periodic risk assessment maintenance and upgrading under § 50.46a(d)(4) and any necessary licensee actions necessary to maintain compliance with the relevant 50.46a acceptance criteria. The NRC also notes that § 50.46a does not prescribe any specific manner or approach for achieving compliance following the periodic risk assessment maintenance and upgrading under § 50.46a(d)(4); this performance-based

approach to regulation affords the licensee substantial flexibility and gives the licensee control over how best to achieve compliance. This further tends to reduce the impact of § 50.46a(d)(4) on licensees, which is an implicit objective of the backfit rule. For these reasons, the NRC declines to adopt the commenter's recommendation.

Comment. The fact that the proposed rule provides an alternative or voluntary approach for LOCA analysis does not negate either the backfit rule itself or the policy of regulatory stability.

NRC response. The NRC disagrees with the comment. As discussed elsewhere in the backfitting discussion, the backfit rule's protections apply only when the NRC is imposing (directly or indirectly) a change to the activities authorized by a license; it does not apply when the NRC is providing a regulatory approach as an alternative to compliance with an existing regulatory requirement. As a general matter, the regulatory stability and predictability afforded to a licensee by the backfit rule applies to the scope of activities approved by the license. If a licensee seeks a change to its licensing basis—which is what a transition to a voluntary alternative is—the licensee is seeking to do something that is not within the scope of activities authorized by its license. It is the NRC's view that, in such a circumstance, the licensee has no reasonable expectation that the NRC's criteria for judging the acceptability of that proposed change remains the same as the criteria used by the NRC in judging the original license application. Thus, the protections of the backfit rule do not apply either when a licensee seeks a voluntary change to its licensing basis, or when the NRC develops a voluntary alternative.

Comment. The NRC set forth three justifications for excepting TBS changes from backfitting protection: the consideration of alternatives will occur in the required regulatory analysis; application of the backfitting rule effectively favors increases in risk; and the flexibility provided by the rule will tend to reduce the burden of any changes in the TBS. However, even if these justifications are true, they do not address how the objective of the backfit rule will be met or that this objective does not apply.

NRC response. The NRC disagrees in part with this comment. The NRC views the backfit rule as having three underlying objectives: regulatory stability and predictability for a licensee; reasoned agency decisionmaking (that NRC's decision to impose a backfit is assessed against rational criteria); and transparency of

agency decisionmaking (that the reasons for the NRC's determination on the overall backfitting criteria are publicly available). The second and third objectives would be met if the NRC imposes future TBS changes by rulemaking (which is by far the most likely course), inasmuch as such a rulemaking must include preparation of a regulatory analysis. A regulatory analysis which is performed in accordance with the NRC's "Regulatory Analysis Guidelines", NUREG/BR-0058, Revision 4 (2004), provides for a disciplined agency decisionmaking process. The draft regulatory analysis is published and made available for public comment as part of the proposed rule. The final regulatory analysis, which addresses public comments, is also made available to the public as part of the final rulemaking. Hence, the NRC believes that the backfit rule's objectives of reasoned decisionmaking and transparency of agency decisionmaking will be satisfied by any rulemaking changes to the TBS. With respect to the first objective of the backfit rule, the NRC recognizes that exclusion of future changes to the TBS from the backfit rule could lead to reduced regulatory stability and predictability because neither the adequate protection, compliance, or substantial safety increase criteria would be binding as checks against unwarranted agency action. However, the NRC believes that this is offset to some extent by two factors. First, by explicitly excluding future TBS changes and necessary changes from the backfit rule, licensees who choose to adopt § 50.46a are aware that the NRC may revise the TBS in the future (the argument here is similar to the Commission's determination that the backfit rule does not apply to rulemakings endorsing more recent editions and addenda of the ASME Code for mandatory use in the 120-month interval process for ISI and IST in §§ 50.55a(f) and (g)). Second, the NRC acknowledges that plant-specific orders imposing TBS changes would not necessarily meet all of the backfit rule objectives. However, the NRC's internal process governing the development and issuance of orders should, at minimum, result in reasoned decisionmaking. Moreover, as is the case with rulemaking changes to the TBS, regulatory predictability for changes to the TBS by order is addressed somewhat by explicitly stating in both §§ 50.109 and 50.46a that the backfit rule does not apply if a revised TBS is imposed by order. These provisions provide notice to licensees considering adoption of § 50.46a of the special backfitting

process under § 50.46a. Licensees contemplating adoption of § 50.46a may then factor this limited exclusion from the backfit rule into their decision whether to adopt § 50.46a.

Comment. The Commission-proposed exclusion of TBS changes from backfitting protection would leave licensees who voluntarily adopt § 50.46a without recourse to a backfit appeal process.

NRC response. The NRC disagrees with the comment. Licensees who adopt § 50.46a would continue to have access to the backfitting appeals process with respect to licensee-claims of backfit for all matters other than those attributable to TBS changes.

Further, affected licensees would have an opportunity to raise concerns about the cost and expected benefits of proposed TBS changes, whether the TBS changes are imposed by rulemaking or by order. If the TBS were accomplished through rulemaking, all licensees would have an opportunity to comment on the proposed rule, including the associated regulatory analysis. By contrast, if the NRC imposes a TBS change by order, the affected licensee would have an opportunity to request a hearing on the order. During this hearing any issues could be raised on costs and benefits for the TBS change as applied to that licensee. Although these opportunities do not constitute, strictly speaking, a backfit appeal process, the NRC believes that they are the functional equivalent of a backfit appeal process.

Finally, as noted earlier, it is the NRC's expectation that should it mandate a change in the TBS, that licensees would have substantial discretion and flexibility with respect to how they would address that TBS change. Accordingly, the NRC sees no additional benefit from providing a licensee with a plant-specific backfitting appeal process related to TBS changes in addition to the public comment and hearing opportunities already provided for by law.

F. Comments on Topics Requested by the Commission

In the initial proposed rule, the NRC identified 16 significant topics associated with the proposal and invited the public to submit specific comments on those issues. (See 70 FR 6718—6719.)

NRC Topic 1. In proposed § 50.46a(b), the NRC specifically precludes the application of the § 50.46a alternative requirements to future reactors. However, future light water reactors might benefit from § 50.46a. The NRC requests specific public comments

regarding whether § 50.46a should be made available to future light water reactors.

Comments. Framatome commented that § 50.46a should be available to nuclear power plants licensed after the publication of the rule that are of similar design to the current generation of operating BWRs and PWRs. Framatome stated that the advanced LWR designs previously certified (ABWR, System 80+, AP 600, AP 1000), under design certification review (ESBWR) and in the pre-review process (US EPR), all fit into this category and can realize benefits from § 50.46a. However, for § 50.46a to apply to a new design, the NRC must first make a determination that the design is substantially similar to currently operating LWRs. The applicability to the new design of the frequency of pipe rupture versus break size curves used as a basis for establishing the TBS in § 50.46a must be established. The WOG stated that future PWRs and BWRs operating with materials, pressures and temperatures similar to operating LWRs should be able to use § 50.46a because there is no technical reason that new plants should have to meet outdated requirements for which existing plants can opt out. The BWROG and three other commenters also stated that § 50.46a should be made available to future light water reactors.

NRC response. The NRC agrees with the commenters who stated that there are no technical reasons which prevent the new § 50.46a regulations from being applied to new light water reactor designs that are similar in nature (with respect to design and expected LOCA pipe break frequency) to current operating reactors. However, it would be difficult to apply the new regulation to certified reactor designs which have already received NRC approval. These design approvals were completed as rulemaking activities for the particular standardized design as of the date of the application, as amended. Changes may not be made to these designs unless the designers choose to resubmit the designs for reevaluation and reopen the design approval/rulemaking process to address § 50.46a. Moreover, it is not clear that these changes could be made under the special backfitting criteria in § 52.63, because it does not appear that there is an issue related to adequate protection, compliance with requirements in effect at the time of certification, reduction of unnecessary burden, providing detailed design information, correcting material errors in the certification information, increasing standardization, or providing a substantial increase in overall safety, reliability, or security.

Three new standardized LWR designs and one resubmitted LWR design are now being considered by the NRC.

Although the NRC has not performed a detailed analysis of these new designs in the manner done for establishing the technical basis of this rule for existing designs, the frequency of large LOCAs at these facilities could be as low as it is at current LWRs. Thus, it may be appropriate to apply the alternative § 50.46a requirements to these future designs. Accordingly, the revised proposed rule has been modified to apply to new reactor designs, e.g. facilities other than those which are currently licensed to operate. Applicants for design certification or combined licenses, holders of combined licenses under Part 52, or future licensees of operating new light-water reactors who wish to apply § 50.46a must submit an analysis for NRC approval, demonstrating why it would be appropriate to apply the alternative ECCS requirements and what the appropriate TBS would be for the new design to meet the intent of § 50.46a.

In its analysis, the applicant, holder, or licensee must demonstrate that the proposed reactor facility is similar to reactors licensed before the effective date of the rule. In addressing similarity of the proposed reactor design to current reactor designs licensed before the effective date of the rule, the applicant, holder, or licensee would need to address design, construction and fabrication, and operational factors that include, but are not limited to:

(1) The similarity of the piping materials of construction and construction techniques for new reactors to those in the currently operating fleet;

(2) The similarity of service conditions and operational programs (e.g., in-service inspection and testing, leak detection, quality assurance etc.) for new reactors to those for operating plants;

(3) The similarity of piping design, e.g. pipe sizes and pipe configuration, for new reactors to those found in operating plants;

(4) Adherence to existing regulatory requirements, regulatory guidance, and industry programs related to mitigation and control of age-related degradation (e.g., aging management, fatigue monitoring, water chemistry, stress corrosion cracking mitigation etc.); and

(5) Any plant-specific attributes that may increase LOCA frequencies compared to the generic results in NUREG-1829 and NUREG-1903.

The analysis must also include a recommendation for an appropriate TBS and a justification that the

recommended TBS is consistent with the technical basis for this proposed rule. For new reactor designs that employ design features that effectively increase the break size, via opening of specially designed valves, to rapidly depressurize the reactor coolant system during any size loss of coolant accident, justification of the relevance of a TBS would be necessary. The methodology used to determine the proposed TBS should be described in the justification. Based on information currently available, new reactor designs may have similar piping materials, similar service conditions and operational programs, similar piping designs, and similar mitigation and control of age-related degradation programs to those found in currently operating plants. Therefore, based on information currently available, the NRC envisions that the TBS defined in the revised proposed rule could be applicable to the new reactor designs.

In addition, a holder of an operating or combined license for a plant with a currently approved standard design could adopt § 50.46a if the design is demonstrated, by satisfying the five criteria above, to be similar to the designs of plants licensed before the effective date of the rule and the TBS proposed by the licensee is found acceptable by the NRC.

In the revised proposed rule language and elsewhere in this document, whenever the NRC refers to similarity of the designs of new reactors to the designs of current operating reactors, the NRC intends for “design” to be broadly interpreted to encompass design, construction and fabrication, and operational factors that should be addressed, at a minimum, by considering the five similarity factors identified above.

NRC Topic 2. The TBS specified by the NRC in the proposed rule does not include an adjustment to address the effects of seismically-induced LOCAs. NRC is currently performing work to obtain better estimates of the likelihood of seismically-induced LOCAs larger than the TBS. By limiting the extent of degradation of reactor coolant system piping, the likelihood of seismically-induced LOCAs may not affect the basis for selecting the proposed TBS. However, if the results of the ongoing work indicate that seismic events could have a significant effect on overall LOCA frequencies, the NRC may need to develop a new TBS. To facilitate public comment on this issue, a report from this evaluation will be posted on the NRC rulemaking Web site at <http://ruleforum.llnl.gov> before the end of the comment period. Stakeholders should

periodically check the NRC rulemaking Web site for this information. [The NRC published the report on December 20, 2005 (70 FR 75501; ML053470439).] The NRC requests specific public comments on the effects of pipe degradation on seismically-induced LOCA frequencies and the potential for affecting the selection of the TBS. The NRC also requests public comments on the results of the NRC evaluation that will be made available during the comment period.

NRC response. Comments received on this topic were previously discussed in Section IV.B. of this document, “Comments on Seismic Considerations Related to the TBS.” Because this topic was identified for public comment in the initial proposed rule, the NRC completed and published the study on the risks associated with seismically induced LOCAs larger than the TBS (NUREG–1903, “Seismic Considerations for the Transition Break Size” February 2008; ML080880140). The NRC considered the public comments received on seismic considerations in the final version of NUREG–1903. As previously discussed in Section IV.B of this document, the NRC has concluded that no adjustment to the TBS is needed to account for seismically-induced LOCAs.

NRC Topic 3. Depending on the outcome of an ongoing NRC study, the final rule could include requirements for licensees to perform plant-specific assessments of seismically-induced pipe breaks. These assessments would need to consider piping degradation that would not be prejudiced by implementation of the licensee’s inspection and repair programs. The assessments would have to demonstrate that reactor coolant system piping will withstand earthquakes such that the seismic contribution to the overall frequency of pipe breaks larger than the TBS is insignificant. The NRC requests specific public comments on this and any other potential options and approaches to address this issue.

NRC response. After this topic was identified, the NRC completed and published the study on the risks associated with seismically-induced LOCAs larger than the TBS (NUREG–1903, “Seismic Considerations for the Transition Break Size” February 2008; ML080880140). Comments received on this topic were previously addressed in Section IV.B of this document, “Comments on Seismic Considerations Related to the TBS.” The NRC has concluded that applicants wishing to implement the alternative ECCS requirements should conduct a plant-specific assessment of the risk associated with seismically-induced

failures of flawed piping. The NRC is currently preparing guidance for conducting these plant-specific assessments (“Plant-Specific Applicability of 10 CFR 50.46 Technical Basis” February 2009; ML090350757).

NRC Topic 4. The ACRS noted that “a better quantitative understanding of the possible benefits of a smaller break size is needed before finalizing the selection of the transition break size.” The TBS to be included in the final rule should be selected to maximize the potential safety improvements. Thus, the NRC is soliciting comments on the relationship between the size of the TBS and potential safety improvements that might be made possible by reducing the maximum design-basis accident break size.

NRC response. No comments were received which specifically addressed the relationship between the size of the TBS and potential safety improvements that might be made possible by reducing the maximum design-basis accident break size. However, the WOG stated, “It is not appropriate to set the TBS on the basis of where the most benefit is, as this may change tomorrow and there will be no easy recourse.” This comment and other related issues were previously discussed in Section III.A of this document, “Comments on Selection of the TBS”. The NRC made no changes to the size of the TBS in the revised proposed rule.

NRC Topic 5. Proposed § 50.46a includes an integrated, risk-informed change process to allow for changes to the facility following reanalysis of beyond design basis LOCAs larger than the TBS. However, because the current regulations in 10 CFR part 50 already have requirements addressing changes to the facility (§§ 50.59 and 50.90), it might be more efficient to include the integrated, risk-informed change (RISP) requirements for plants that use § 50.46a under these existing change processes. The NRC solicits specific public comments on whether to revise existing §§ 50.59 and 50.90 to accommodate the requirements for making facility changes under § 50.46a.

Comments. Three commenters responded directly to this question. One stated that §§ 50.59 and 50.90 should not be revised to accommodate the requirements for making plant changes under § 50.46a. Another stated that § 50.59 requirements could be augmented to address the risk evaluations but that the augmentation was not necessary. The third commenter stated that §§ 50.59 and 50.90 should contain change requirements for § 50.46a but that these requirements

should not be the RISPC requirements included in the proposed rule.

NRC response. The NRC is not changing §§ 50.59 and 50.90 to include integrated, risk-informed change requirements. The NRC has modified the risk-informed change control process to apply only to facility changes made under the rule, *i.e.*, facility changes enabled by the rule as well as other facility changes unrelated to the rule but bundled together by the licensee for estimating the change in risk. Other facility changes would be unrelated insofar as the basis of the changes and NRC approval, when necessary, will rely on regulations, guidelines, or facility priorities that do not depend on the new TBS. The NRC changed the process to more closely follow the process described in RG 1.174, which has been used successfully for a wide variety of risk-informed applications. The NRC has concluded that this risk-informed change control process can be used to successfully and safely implement facility changes enabled by the new TBS LOCA in the § 50.46a final rule.

NRC Topic 6. The proposed rule would rely on risk information. The NRC has included specifically applicable PRA quality and scope requirements in the proposed rule. However, there are other NRC regulations that also rely on risk information (*e.g.* the maintenance rule in § 50.65 and § 50.69 pertaining to alternative special treatment requirements). Consistent with the Commission policy on a phased approach to PRA quality, it might be more efficient and effective to describe PRA requirements (*e.g.*, contents, scope, reporting, changes, *etc.*) in one location in the regulations so that the PRA requirements would be consistent among all regulations. The NRC is seeking specific public comments on whether it would be better to consolidate all PRA requirements into a single location in the regulations so that they were consistent for all applications or to locate them separately with the specific regulatory applications that they support.

Comments. Five commenters recommended that it would be preferable to collect all PRA requirements in a single location in the regulations, but they all also stated that it would be premature to use the § 50.46a rulemaking to combine PRA requirements at the present time. Some commenters argued that different applications have different requirements for the supporting PRA analyses and cautioned that PRA requirements

should not be based on the most demanding application.

NRC response. The NRC takes note of the recommendation that PRA requirements be eventually collected into a single location in the regulations. The NRC agrees that the § 50.46a rulemaking is not the appropriate vehicle to achieve this regulatory change. The NRC will include PRA requirements adequate to support this rulemaking in the § 50.46a rule. After the NRC develops broad-based PRA requirements suitable for use on a generic basis in different applications, the NRC will be able to codify these generic PRA requirements in a single regulatory location and could remove the § 50.46a specific PRA requirements (or limit them to existing licensees approved under § 50.46a to avoid backfitting).

NRC Topic 7. Proposed § 50.46a would include the requirement that all allowable at-power operating configurations be included in the analysis of LOCAs larger than the TBS and demonstrated to meet the ECCS acceptance criteria. Historically, operational restrictions have not been contained in § 50.46 but were controlled through other requirements (*e.g.*, technical specifications and maintenance rule requirements). It might be more practical to control the availability of equipment credited in the beyond design-basis LOCA analyses in a manner more consistent with other operational restrictions. As a result, the NRC is soliciting public comments on the most effective means for implementing appropriate operational restrictions and controlling equipment availability to ensure that ECCS acceptance criteria are continually met for beyond design-basis LOCAs.

Comment. As previously discussed, all commenters stated that the NRC should not include the operational restriction that all allowable at-power operating configurations be demonstrated to meet the ECCS acceptance criteria. Several commenters proposed alternatives ranging from placing limits that might be required in licensee-controlled documentation to eliminating all operational restrictions associated with breaks greater than the TBS. Most commenters stated that operational restrictions negated the relief from the requirement to assume the worst single failure during the evaluation of beyond TBS breaks.

NRC response. As discussed in Section III.D of this document, the NRC has decided that operational restrictions must be retained if it cannot be demonstrated in the analysis of LOCAs larger than the TBS that the ECCS

acceptance criteria are met, but the restrictions would be reduced. The proposed rule prohibited at-power operation in a configuration without the demonstrated ability to mitigate a LOCA larger than the TBS. The revised proposed rule would require that at-power operation in such a configuration shall not exceed a total of fourteen days in any 12-month period. The NRC believes that this change will satisfy the Commission's intention that mitigative capability be maintained for all breaks up to the double-ended rupture of the largest reactor coolant pipe and still allow a reasonable amount of time for licensees to make corrective actions needed to restore the plant to a fully analyzed configuration.

NRC Topic 8. Given the Commission's intent (see SRM for SECY-04-0037) that facility changes made possible by this proposed rule should be constrained in areas where the current design requirements "contribute significantly to the 'built-in capability' of the plant to resist security threats," the NRC seeks examples on either side of this threshold (facility changes allowed versus facility changes prohibited), and additionally any examples of facility changes made possible by § 50.46a that could *enhance* plant security and defense against radiological sabotage or attack. The NRC also solicits comments on whether the proposed § 50.46a rule should explicitly include a requirement to maintain plant security when making facility changes under § 50.46a or otherwise rely on a separate rulemaking now being considered by the NRC to more globally address safety and security requirements when making facility changes under §§ 50.59 and 50.90. Any examples of facility changes that involve safeguards information should be marked and submitted using the appropriate procedures.

Comments. On the first question regarding examples of facility changes that should or should not be constrained in areas where the current design requirements "contribute significantly to the 'built-in capability' of the plant to resist security threats," NEI said that the proposed rule would not enable facility changes that reduce plant safety margins as well as the capacity to deal with security threats. NEI stated that the opposite is true because the proposed rule would increase the safety focus on risk-significant events and mitigating equipment, and improve the reliability and availability of this equipment by removing excessive conservatism from the design basis.

On the second question as to whether the § 50.46a rule should contain a security requirement, NEI said that

existing change control requirements in the regulations preclude significant reductions in safety or security. The BWROG supported the NEI position on this issue. The WOG stated that the security-related aspects of facility changes that might be enabled by this rule change should be addressed in the evaluation of those specific facility changes. The WOG also stated that the changes to § 50.46a should not be tied to security issues. Making a “security connection” to this proposed amendment would introduce needless complications and be counterproductive. Issues related to preserving “built-in capability” of the plant to resist threats should be addressed centrally in a single location within the regulations. Maintaining all requirements related to security in one place, either in the regulations or in Commission policy, is the most appropriate way to avoid conflicting information and enhance the ease of change. Progress Energy stated that consideration for security concerns should be included in the consideration of safety concerns to avoid possible negative effects caused by these sometimes competing objectives. However, to simplify the processes and maintain consistency, the safety and security interface should be addressed globally by a separate rulemaking.

NRC response. The NRC agrees with commenters that security requirements should be addressed by regulations separate from those in § 50.46a. The NRC is not adding security requirements to proposed § 50.46a. Security requirements will continue to be addressed by overall security requirements located elsewhere in the regulations. Specifically, 10 CFR 73.58, “Safety/security Interface Requirements for Nuclear Power Reactors” of the new Power Reactor Security Rule (74 FR 13926; March 27, 2009), requires licensees to communicate plans for proposed plant changes that could impact plant security to security personnel who are qualified to analyze and identify potentially adverse impacts that the changes may have on safety and/or security programs. After security personnel analyze the changes for potential impacts, the regulation requires the licensee to take appropriate actions to mitigate the security impacts.

NRC Topic 9. Given the potential impact to the licensee (because the backfit rule would not apply) of the NRC’s periodic re-evaluation of estimated LOCA frequencies which could cause the NRC to increase the TBS, should the proposed rule require licensees to maintain the capability to bring the plant into compliance with an

increased transition break size (TBS), within a reasonable period of time?

Comments. NEI, the BWROG, and the WOG commented that licensees should be provided with a great deal of latitude on achieving compliance following any change in the TBS, with the goal being that risk requirements are achieved with a reasonable mix of prevention and mitigation.

NRC response. The NRC agrees with commenters that the § 50.46a rule should provide licensees with substantial flexibility to determine how they will come back into compliance with applicable regulatory requirements following any future change in the TBS. Licensees who must take actions to come back into compliance need not return the plant to the precise conditions and circumstances in effect immediately before implementation of § 50.46a. Rather, licensees would be afforded the flexibility of deciding what actions they will implement to bring about compliance under any revised TBS. Further, as one of the commenters suggests, the overall goal of any actions taken to restore compliance is to achieve a reasonable mix of prevention and mitigation.

NRC Topic 10. Is the proposed rule sufficiently clear as to be “inspectable?” That is, does the rule language lend itself to timely and objective NRC conclusions regarding whether or not a licensee is in compliance with the rule, given all the facts? In particular, are the proposed requirements for PRA quality sufficient in this regard?

Comment. On the question of whether the proposed rule is clear enough to be inspectable, NEI was particularly concerned that the operational restrictions would conflict with the existing technical specifications. The BWROG supported the NEI position on this topic.

NRC response. To reduce potential conflict between plant technical specifications and the operability requirements in § 50.46a, the NRC has also modified operability requirements to allow limited operation (for no more than a total of fourteen days in any 12-month period) in configurations where mitigation of LOCAs larger than the TBS has not been demonstrated. A detailed discussion on the basis for this new provision is provided below in Section V.F of this document, *Operational Requirements*.

Comment. NEI stated that the rule would be difficult to inspect because it overlaps so many existing regulatory requirements. The WOG stated that the risk-informed aspects of the proposed rule, including the PRA quality requirements, should rely on the

guidance of RG 1.174 and RG 1.200. The WOG stated that proposed § 50.46a should require no more “inspectability” than any other performance-based risk-informed application. Another commenter stated that the NRC should clarify certain aspects of the proposed rule and that the rule appropriately includes language like “reasonable balance” that requires a knowledgeable individual to exercise judgment which should be informed by appropriate regulatory guidance documents.

NRC response. The NRC has modified the proposed rule to provide greater operational flexibility and reduce the potential for conflict with plant technical specification requirements that might cause “inspectability” problems. Although the WOG stated that the proposed rule would not have inspectability problems if it relied on the guidance in RG 1.174 and RG 1.200, the NRC notes that inspectors may not inspect licensees for compliance with regulatory guides because these guides are not regulatory requirements. The NRC has incorporated the important aspects of RG 1.174 and PRA quality guidance into the revised proposed rule itself so that inspectors would have a clear indication of the § 50.46a requirements. Specific inspection guidance will be developed as necessary after the final rule is published.

NRC Topic 11. Proposed § 50.46a would impose no limitations on “bundling” of different facility changes together in a single application. Facility changes which would increase plant risk substantially or create risk outliers could be grouped with other facility changes which would reduce risk so that the net change would meet the risk acceptance criteria. Are the net change in risk acceptance criteria in the proposed rule adequate or should some additional limitations be imposed to avoid allowing facility changes which are known to increase plant risk?

Comments. Several commenters said that “bundling” is essential for meeting the objectives of this proposed rule which concerns overall plant risk. Bundling provides licensee management with the necessary flexibility to reallocate resources for implementation of the alternative requirements. The RG 1.174 criteria related to bundling (combined change request in RG 1.174) are sufficient and no additional criteria or restrictions on bundling should be imposed by this proposed rule.

NRC response. The NRC agrees that bundling of facility changes is desirable because it appropriately permits licensees to credit risk beneficial facility changes and encourages licensees to identify and implement facility changes

that decrease risk. The NRC also agrees that the guidelines on combined changes in RG 1.174 are sufficient to avoid facility changes which would unacceptably increase plant risk.

NRC Topic 12. Is there an alternative to tracking the cumulative risk increases associated with facility changes made after implementing § 50.46a that is sufficient to provide reasonable assurance of protection to public health and safety and common defense and security?

Comments. Four of the commenters who responded to the question stated that tracking cumulative risk increases was reasonable but they appeared to define cumulative tracking differently than as specified in the requirements of the proposed rule. NEI, whose comments were generally endorsed by most of the 12 commenters, recommended rule text stating “[t]he licensee shall periodically assess the cumulative effect of changes to the plant design configuration and update as necessary, the PRA and other risk analyses.” After discussing this proposed text at the June 28, 2006, public meeting, the NRC determined that the recommendation equated tracking cumulative risk increases with periodically updating the PRA and estimating the latest core damage frequency (CDF) and large early release frequency (LERF) using the updated PRA. NEI intended for these latest risk estimates themselves to represent the assessment of the cumulative increase. However, the proposed rule required that some previous estimates of CDF and LERF be subtracted from the latest estimates to obtain the amount by which the CDF and LERF has increased. One of the four commenters added that tracking the cumulative risk increase (as intended by the NRC in the proposed rule) was not necessary because the threshold for risk increase is low enough so that the cumulative effect is not significant. A fifth commenter argued that tracking cumulative risk should not be required by the rule because compliance with the guidance in RG 1.174 should be sufficient to ensure that cumulative risk does not impact the health and safety of the public.

NRC response. The NRC has retained the requirement to track the total risk increases in CDF and LERF made under the proposed rule and has retained the definition of risk “increase” as being the amount by which risk increases. RG 1.174 provides guidance on judging the acceptability of proposed facility changes based primarily on the amount by which the facility changes increase CDF and LERF. The NRC has clarified

what it has concluded must be tracked in § 50.46a(f)(2)(iv) utilizing the requirement for tracking the cumulative effect on risk of changes made under the NFPA–805 standard which was incorporated by reference into § 50.48(c) (see, 69 FR 33536; June 16, 2004). By utilizing the same language in both rules, the NRC intends that the implementation of both rules would be consistent.

The NRC has concluded that the alternative proposed by the commenters (i.e. to track cumulative risk by simply updating the PRA) is not acceptable because the latest estimates of CDF and LERF alone provide insufficient information to be used in the risk-informed framework contained in RG 1.174. Two other commenters argued that risk tracking is not needed because controls external to proposed § 50.46a (e.g., in RG 1.174) would ensure that the cumulative effect would not be significant. The commenters provided no basis for their assertions that controls external to the rule would keep increases in risk small enough to ensure protection of public health and safety. RG 1.174 does discuss tracking changes in cumulative risk, but regulatory guides are not enforceable requirements. The NRC has determined that it is necessary to establish a regulatory requirement to track the cumulative risk increases from all changes made under this proposed rule. The NRC continues to believe that risk tracking as described in the proposed rule is needed to ensure that facility changes permitted by the revised ECCS analyses under § 50.46a do not result in greater increases in risk than were intended by the Commission.

NRC Topic 13. The NRC requested specific public comments on the acceptability of applying the change in risk acceptance guidelines in RG 1.174 to the total cumulative change in risk from all changes in the plant after adoption of § 50.46a. Should other risk guidelines be used and, if so, what guidelines should be used?

Comments. As discussed, four commenters proposed tracking cumulative risk increases by periodically updating the PRA, estimating the latest CDF and LERF using the updated PRA, and equating these latest estimates with tracking the cumulative risk increase. Applying this definition for tracking cumulative risk increase, these commenters concluded that the change in risk acceptance guidelines should not be applied to the total cumulative change in risk which would not, under their proposals, be estimated.

In general, most commenters’ either explicitly or implicitly recommended

that the rule should not include the acceptance criteria that “the total increases in CDF and LERF should be small and the overall risk should remain small.” Proposals for alternatives varied. NEI’s proposed rule text did not include acceptance criteria related to increases in CDF and LERF. Instead, NEI proposed requiring the licensee to report the results of the updated PRA and other risk analyses to the NRC. One commenter argued that for facility changes enabled by the new § 50.46a, compliance with RG 1.174 should be sufficient. Two commenters stated that risk tracking accomplished by updating the PRA and estimating the latest CDF and LERF can be used to ensure that the total risk as well as the risk from specific initiators or classes of accidents is not increasing.

NRC response. The NRC has retained the requirement in the revised proposed rule that the total change in risk from facility changes, measured as the amount by which CDF and LERF (or LRF for new reactors) increase, be tracked and compared to the RG 1.174 acceptance criteria. However, the NRC has reduced the scope of facility changes that must be tracked from all changes to only those changes made to the plant under § 50.46a. Implementation of all RG 1.174 guidelines can only be achieved using a process that includes an estimate of the cumulative change in risk. Also, consistent with the Commission’s direction in the SRM for SECY–07–0082, the NRC has reduced the size of an acceptable risk increase from “small” to “very small”. The revised proposed rule would continue to use the quantitative guidelines in RG 1.174.

NEI’s proposal for reporting the latest estimates of CDF and LERF to the NRC after each periodic assessment would not be useful because the NRC has no criteria for determining which CDF and LERF values would be acceptable. It would be a lengthy process to establish such acceptance criteria. Lack of acceptance criteria against which the latest CDF and LERF can be compared will result in different stakeholders applying different criteria to judge the acceptability of the results most likely leading to different conclusions.

The NRC believes that the two comments proposing that the total CDF as well as the CDF from specific initiators or class of accidents could be tracked to ensure that risk from these scenarios is not increasing would satisfy the requirement that the total increase in risk remains very small provided that the appropriate initiators or class of accident is identified (and including LERF or LRF). The commenters did not

appear to be proposing that such a constraint be included in the rule, instead they were only making observations on what would be possible. Nevertheless, in an SRM on August 10, 2007, the Commission concluded that only a very small increase in risk is acceptable when implemented according to the requirements in this rule. Requiring that there be no risk increase, as hypothesized by the commenters, is more restrictive than the criteria in the revised proposed rule.

Although the revised proposed rule would permit licensees to make plant changes that result in very small risk increases, the NRC requests stakeholder comments on whether any increase in risk should be allowed. Instead of the risk acceptance criteria allowing very small risk increases, should the acceptance criteria in the final rule require that the net effect of plant changes made under § 50.46a be risk neutral or risk beneficial? The NRC requests stakeholders to provide comments on the use of risk acceptance criteria that would not allow a cumulative increase in risk for plant changes made under § 50.46a.

NRC Topic 14. After approval to implement § 50.46a, the proposed rule would require tracking risk associated with all proposed facility changes but would not require a licensee to include risk increases caused by previous risk-informed facility changes that were implemented before § 50.46a was adopted. Licensees who adopt § 50.46a before implementing other risk-informed applications would have a smaller risk increase “available” compared to licensees who have already incorporated some risk-informed facility changes into their overall plant risk before adopting § 50.46a. The NRC requests specific public comments on whether this potential inconsistency should be addressed and, if so, how?

Comments. Three commenters stated that these potential inconsistencies in acceptable risk increases should be addressed by deleting the requirement that the cumulative risk increase be tracked and compared to the RG 1.174 acceptance guidelines. The commenters argued that licensees and the NRC have effectively managed incremental risk without the need for this structure and that any facility changes that seek to apply the revised design bases should be evaluated using the same methods proven effective in the past. A fourth commenter agreed with the others but proposed that inconsistencies among licensees created by the order of implementing risk-informed applications could be resolved by allowing a licensee to reestablish the

baseline and removing some facility changes from tracking.

NRC response. The NRC is proposing additional changes in the revised proposed rule that would make this topic moot. The proposed rule would have required tracking total risk from all facility changes. This requirement reflected a difficulty uniquely associated with comparing the total risk increases from all facility changes to the acceptance criteria. The revised proposed rule would only require that facility changes made under the rule be tracked. Other risk-informed facility changes referred to in Topic 14 would no longer be included in this change in risk estimate and therefore, the acceptability of those facility changes will be independent of facility changes made under this rule (aside from the indirect affect these facility changes have on the plant’s risk profile).

NRC Topic 15. Proposed § 50.46a would require licensees to report every 24 months all “minimal” risk facility changes made under § 50.46a(f)(1) without NRC review. Are there less burdensome or more effective ways of ensuring that the cumulative impact of an unbounded number of “minimal” changes remains inconsequential?

Comments. Several commenters stated that the § 50.46a(g)(3) report summarizing minimal risk changes every 24 months is redundant to reports required under § 50.59(d)(2) as well as § 50.71(e). Thus, § 50.46a(g)(3) should be deleted. The requirement needlessly focuses licensee and NRC resources directly on a large set of information that by its very definition has no safety or risk significance.

NRC response. The NRC agrees with the commenters that the reporting requirements in proposed § 50.46a(g)(3) could be redundant to other reporting requirements for some facility changes because some changes made under the new rule might be reportable under both § 50.59 and § 50.46a(g)(3). The NRC has determined that breaks larger than the TBS should be removed from the design basis event category. Therefore, the NRC believes that some facility changes that may be made under the new rule would no longer be reportable under § 50.59 because the change would no longer affect design basis events. The NRC is proposing to reduce the scope of facility changes that need to be evaluated under the new provision, from all changes made to the facility after adoption of the rule to only facility changes that are made under the new rule. This change would reduce the number of potentially redundant reports.

To avoid the possibility that potentially risk-significant changes are

not reported, the NRC has concluded that all facility changes made under the new rule should be reported because the NRC will rely on the risk evaluation to prevent facility changes that might not be protective of public health and safety. Therefore, the NRC has retained the reporting requirements in § 50.46a(g)(3) because these requirements would ensure the reporting of all potentially risk-significant facility changes made under the proposed rule.

NRC Topic 16. Should the § 50.46a rule itself include high-level criteria and requirements for the risk evaluation process and acceptance criteria described in RG 1.174? If these criteria were included in the regulatory guide only, and not in § 50.46a, how could the NRC take enforcement action for licensees who failed to meet the acceptance criteria?

Comments. Four commenters stated that proposed § 50.46a rule should not contain the high-level criteria and requirements for the risk evaluation process and acceptance criteria described in RG 1.174. These commenters did not specifically propose how the NRC could take enforcement action to ensure compliance with the criteria, but instead asserted that regulatory guidance documents and inspection guidelines are the appropriate places for the risk acceptance criteria.

NRC response. The NRC does not agree with the commenters. The proposed rule would have to contain high-level requirements for the risk evaluation and acceptance criteria to establish the legally enforceable alternative regulatory requirements needed to ensure adequate protection of public health and safety in a manner which maximizes regulatory predictability and stability. The NRC believes that proposed § 50.46a should build upon NRC and industry experience with the key principles of risk-informed decision making set forth in RG 1.174, but notes that RG 1.174 only contains guidance, not requirements. To be enforceable, proposed § 50.46a must contain and does contain high-level requirements relating to risk, defense-in-depth, safety margins, risk, and performance measurement. Specific, detailed guidance on how to meet the high-level requirements will be set forth in regulatory guidance and inspection guidelines, as appropriate.

V. Revised Proposed Rule

A. Overview

The NRC's revised proposed rule would establish an alternative set of risk-informed requirements with which licensees may choose to comply in lieu of meeting the current emergency core cooling system requirements in 10 CFR 50.46. Using the alternative ECCS requirements would provide some licensees with opportunities to change other aspects of facility design.

As was the case in the initial proposed rule, the revised proposed rule divides the current spectrum of LOCA break sizes into two regions. The division between the two regions is delineated by the TBS. The first region includes small size breaks up to and including the TBS. The second region includes breaks larger than the TBS up to and including the DEGB of the largest RCS pipe. Break area for the TBS is not based on a double-ended offset break. Rather, it is based on the inside area of a single-sided circular pipe break. Pipe breaks in the smaller break size region are considered more likely than pipe breaks in the larger break size region. Consequently, each break size region will be subject to different ECCS requirements, commensurate with likelihood of the break. LOCAs in the smaller break size region must be analyzed by the same conservative methods, assumptions, and criteria currently used for LOCA analysis. Accidents in the larger break size region may be analyzed using more realistic methods and assumptions based on their lower likelihood. Although LOCAs for break sizes larger than the transition break would become "beyond design-basis accidents," the revised proposed rule would require that licensees maintain the ability to mitigate all LOCAs up to and including the DEGB of the largest RCS pipe. However, mitigation analyses for LOCAs larger than the TBS need not assume the loss-of-offsite power or the occurrence of a single failure.

Licensees who perform LOCA analyses using the risk-informed alternative requirements may find that their plant designs are no longer limited by certain parameters associated with previous DEGB analyses. Reducing the DEGB limitations could enable licensees to propose a wide scope of design or operational changes up to the point of being limited by some other parameter associated with any of the other required accident analyses. Potential design changes include modification of containment spray designs, modifying core peaking factors, modifying setpoints on accumulators or removing

some from service, eliminating fast starting of one or more emergency diesel generators, and increasing power, etc. Some of these design and operational changes could increase plant safety because a licensee could modify its systems to better mitigate the more likely LOCAs. Other changes, such as increasing power, could increase overall risk to the public. The risk-informed § 50.46a option would include risk acceptance criteria for evaluating future design changes to ensure that any risk increases are acceptably small. These acceptance criteria would be consistent with the guidelines for risk-informed license amendments in RG 1.174 and would ensure both the acceptability of the changes from a risk perspective and the maintenance of sufficient defense-in-depth, safety margins, and performance monitoring. The requirements for the risk-informed evaluation process are discussed in detail in Section V.E of this document.

The NRC will periodically evaluate LOCA frequency information. Should estimated LOCA frequencies increase causing a significant increase in the risk associated with breaks larger than the TBS, the NRC would undertake rulemaking (or issue orders, if appropriate) to change the TBS. In such a case, the backfit rule (10 CFR 50.109) will not apply. If previous plant changes are invalidated because of a change to the TBS, licensees would have to modify or restore components or systems as necessary so that the facility would continue to comply with § 50.46a acceptance criteria. The backfit rule (10 CFR 50.109) also would not apply in these cases.

Changes consist of a new § 50.46a and conforming changes to existing §§ 50.34, 50.46, 50.46a (redesignated as § 50.46b), 50.109, 10 CFR Part 50, Appendix A, General Design Criteria 17, 35, 38, 41, 44 and 50, and §§ 52.47, 52.79, 52.137, and 52.157.

B. Determination of the Transition Break Size

To help establish the TBS, the NRC developed pipe break frequencies as a function of break size using an expert opinion elicitation process for degradation-related pipe breaks in typical BWR and PWR reactor coolant systems (NUREG-1829; "Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process" March 2008; ML082250436). The elicitation process is used for quantifying phenomenological knowledge when data or modeling approaches are insufficient. The elicitation focused solely on determining event frequencies that

initiate unisolable primary system side failures related to material degradation.

A baseline TBS was established from the expert elicitation results for each reactor type (*i.e.*, PWR and BWR) that corresponded to a break frequency of once per 100,000 reactor years (1×10^{-5} or 10^{-5} per reactor year). The NRC then considered uncertainty in the elicitation process, other potential mechanisms that could cause passive component failure that were not explicitly considered in the expert elicitation process, and the higher susceptibility to rupture/failure of specific locations in the reactor coolant system (RCS); adjusting the TBS upwards to account for these factors. Other mechanisms that contribute to the overall LOCA frequency include LOCAs resulting from failures of non-passive components and LOCAs resulting from low probability events (earthquakes of magnitude larger than the safe shutdown earthquake and dropped heavy loads). These LOCAs have a strong dependency on plant-specific factors.

LOCAs caused by failure of non-passive components, such as stuck-open valves and blown out seals or gaskets have a greater frequency of occurrence than LOCAs resulting from the failure of passive components. LOCAs resulting from the failure of non-passive components would be small-break LOCAs, when considering the size of the opening that could result should components fail open or blow out (*e.g.*, safety valves, pump seals). LOCAs resulting from stuck-open valves are limited by the size of the auxiliary pipe. In some PWRs, there are large loop isolation valves in the hot and cold leg piping. However, a complete failure of the valve stem packing is not expected to result in a large flow area, because the valves are back-seated in the open configuration. Based on these considerations, non-passive LOCAs are relatively small in size and are bounded by the selected TBS.

LOCAs could also be caused by dropping heavy loads that could cause a breach of the RCS piping. During power operation, personnel entry into the containment is typically infrequent and of short duration. The lifting of heavy loads that if dropped would have the potential to cause a LOCA or damage safety-related equipment is typically performed while the plant is shutdown. The majority of heavy loads are lifted during refueling evolutions when the primary system is depressurized, further reducing the risk of a LOCA and a loss of core cooling. If loads are lifted during power operation, they would not be loads similar to the heavy loads lifted during plant

shutdown, e.g., vessel heads and reactor internals. In addition, the RCS is inherently protected by surrounding concrete walls, floors, missile shields, and biological shielding. Thus, the contribution of heavy load drops to overall LOCA frequency is not considered to be significant and would not affect the TBS.

Seismically-induced LOCA break frequencies can vary greatly from plant to plant because of factors such as site seismicity, seismic design considerations, and plant-specific layout and spatial configurations. Seismic break frequencies are also affected by the amount of pipe degradation occurring prior to postulated seismic events. Seismic PRA insights have been accumulated from the NRC Seismic Safety Margins Research Program and the Individual Plant Examination of External Events submittals. Based on these studies, piping and other passive RCS components generally exhibit high seismic capacities and, therefore, are not significant risk contributors. However, these studies did not explicitly consider the effect of degraded component performance on the risk contributions. Therefore, the NRC conducted a study to evaluate the seismic performance of undegraded and degraded passive system components (NUREG-1903, "Seismic Considerations for the Transition Break Size," February 2008; ML080880140). This effort examined operating experience, seismic PRA insights, and models to evaluate the failure likelihood of undegraded and degraded piping. The operating experience review considered passive component failures that have occurred as a result of strong motion earthquakes in nuclear and fossil power plants as well as other industrial facilities. No catastrophic failures of large pipes resulting from earthquakes between 0.2g and 0.5g peak ground acceleration have occurred in power plants. However, piping degradation could increase the LOCA frequency associated with seismically-induced piping failures. The NUREG-1903 report evaluated seismic loadings on degraded piping and concluded that a very large, pre-existing crack on the order of 30 percent through-wall and 145 degrees around the piping circumference would have to be present during a 10^{-5} or 10^{-6} per year earthquake in order for pipe failure to occur. The NRC concluded that the likelihood of flaws large enough to fail during a seismic event is sufficiently low that the TBS need not be modified to address seismically-induced direct piping failures. In reaching its

conclusion, the NRC considered the comments received as well as historical information related to piping degradation and the potential for the presence of cracks sufficiently large that pipe failure would be expected under loads associated with rare (10^{-5} per year) earthquakes.

Indirect failures are primary system ruptures that are a consequence of failures in nonprimary system components or structural support failures (such as a steam generator support). Structural support failures could then cause displacements in components that stress and in turn, fail the piping. The NRC performed studies on two plants to estimate the conditional pipe failure probability due to structural support failure given a low return frequency earthquake (10^{-5} to 10^{-6} per year). The results indicated that the conditional probability was on the order of 0.1. These studies used seismic hazard curves from NUREG-1488 (NUREG-1488, "Revised Livermore Seismic Hazard Estimates for Sixty-Nine Nuclear Power Plant Sites East of the Rocky Mountains, April 1994; ML052640591). More recent studies were completed by EPRI on three plants using updated seismic hazard estimates. The updated seismic hazard increases the peak ground acceleration at some sites. The highest pipe failure probability calculated for the three plants in the industry analyses was 6×10^{-6} per year. The NRC noted in its report that indirect failure analyses are highly plant-specific. Therefore, it is possible that example plants assessed in the NRC and EPRI analyses are not limiting for all plants.

The NRC has considered the importance of indirect failures on the selection of the TBS. For the cases considered in both the EPRI and NRC studies, the likelihood of indirectly induced piping failures resulting from major component support failures is less than 10^{-5} per reactor year, the frequency criterion used to select the TBS. Also, as noted in the public comments, the median seismic capacities for both the primary piping system and primary system components are typically higher than other safety related components within the nuclear power plant. Because of these relative capacities, it is expected that a seismic event of sufficient magnitude to cause consequential failure within the primary system would also induce failure of components in multiple trains of mitigation systems, or even induce multiple RCS pipe breaks. Consequently, the risk contribution from seismically induced indirect failures is expected to depend more

heavily on the relative fragilities of plant components and systems than the size of the TBS. Therefore, the NRC believes that adjustment to the TBS for seismically induced indirect LOCAs is also not warranted.

The final consideration in selecting the TBS was actual piping system design (e.g., sizes) and operating experience. For example, due to configuration and operating environment, certain piping is considered to be more susceptible than other piping in the same size range. For PWRs, the range of pipe break sizes determined from the various aggregations of expert opinion was 6 to 10 inches in diameter (*i.e.*, inside dimension) for the 95th percentile. This is only slightly smaller than the PWR surge lines, which are attached to the RCS main loop piping and are typically 12- to 14-inch diameter Schedule 160 piping (*i.e.*, 10.1 to 11.2 inch inside diameter piping). The RCS main loop piping is in the range of 30 inches in diameter and has substantially thicker walls than the surge lines. The expert elicitation panel concluded that this main loop piping is much less likely to break than other RCS piping. The shutdown cooling lines and safety injection lines may also be 12- to 14-inch diameter Schedule 160 piping and are likewise connected to the RCS. The difference in diameter and thickness of the reactor coolant piping and the piping connected to it forms a reasonable line of demarcation to define the TBS. Therefore, to capture the surge, shutdown cooling, and safety injection lines in the range of piping considered to be equal to or less than the TBS, the NRC specified the TBS for PWRs as the cross-sectional flow area of the largest piping attached to the RCS main loop.

For BWRs, the arithmetic and geometric means of the break sizes having approximately a 95th percentile probability of 10^{-5} per year ranged from values of approximately 13 inches to 20 inches equivalent diameter. The information gathered from the elicitation for BWRs showed that the estimated frequency of pipe breaks dropped markedly for break sizes beyond the range of approximately 18 to 20 inches. After evaluating BWR designs, it was determined that typical residual heat removal piping connected to the recirculation loop piping and feedwater piping is about 18 to 24 inches in diameter. These pipe sizes are consistent with break sizes beyond which the pipe break frequency is expected to decrease markedly below 10^{-5} per year. It was also recognized that the sizes of attached pipes vary somewhat among plants. Thus, for

BWRs, the TBS is specified as the cross-sectional flow area of the larger of either the feedwater or the RHR piping inside primary containment.

Because the effects of TBS breaks on core cooling vary with the break location, the NRC evaluated whether the frequency of TBS breaks varies with location and whether TBS breaks should, therefore, vary in size with location. In PWRs, the pressurizer surge line is only connected to one hot leg and the pipes attached to the cold legs are generally smaller than the surge line. The cold legs (including the intermediate legs) operate at slightly cooler temperatures. Thermally-activated degradation mechanisms would be expected to progress more slowly in the cold leg than in the hot leg. Therefore, the NRC evaluated whether it may be appropriate to specify a TBS for the cold leg that would be smaller than the size of the surge line. The frequency of occurrence of a break of a given size is composed of both the frequency of a completely severed pipe of that size (a complete circumferential break) plus the frequency of a partial break of that size in an equal or larger size pipe (a partial circumferential or longitudinal break). Therefore, the NRC evaluated an option where the TBS for the hot and cold legs would be distinctly different and would be composed of two components: (1) Complete breaks of the pipes attached to the hot or cold legs at the limiting locations within each attached pipe, and (2) partial breaks of a constant size, as appropriate for either the hot or cold leg, at the limiting locations within the hot or cold legs. The NRC attempted to estimate the appropriate size of the partial break component for the TBS by reviewing the expert elicitation results to determine the frequencies of occurrence of partial breaks within hot and cold legs that would be equivalent to the frequency of a complete surge line break. The NRC found that frequencies of occurrence of partial breaks of a given size are generally lower for the cold leg than for the hot leg. However, other than this general trend, the elicitation results do not contain sufficient information to adequately quantify differences among the hot leg, cold leg, and surge line pipe break frequencies. Because it was not possible to establish a smaller partial break TBS criterion in the hot or cold legs, the NRC concluded that the TBS associated with partial breaks in the hot and cold legs should remain equivalent in size to the internal cross sectional area of the surge line. Similarly, the elicitation results do not contain sufficient detail to quantify break

frequency differences among the BWR recirculation, residual heat removal, and feedwater system piping. Thus, a smaller partial break TBS criterion also could not be established for BWR recirculation piping.

The NRC also evaluated whether TBS breaks should be analyzed as single-ended or double-ended breaks. To address this issue, the NRC reviewed the expert elicitation process and the guidance given to the experts in developing their frequency estimates. The NRC concluded that the expert elicitation LOCA frequency estimates correspond to a break area having an equivalent circular diameter at each break size. This correspondence is representative of a single-ended break. Additionally, the experts based their estimates on knowledge of postulated failure mechanisms in pressure boundary components and not on the flow rates emanating from the breaks. The flow rates are governed by the break location and system configuration which determines whether reactor coolant will be discharged from both ends of the break.

The current design basis analysis for light water reactors requires analysis of a DEGB of the largest pipe in the RCS. Under the proposed rule, all breaks up to and including the TBS would be analyzed under existing requirements. A possible reason for specifying the TBS for PWRs as double-ended could be that a complete break of the pressurizer surge line would result in reactor coolant exiting both ends of the break. Although this occurs initially during a LOCA, core cooling requirements are dominated by the flow rate of coolant exiting from the hot leg side of the break, with much less contribution from the flow rate of coolant exiting from the pressurizer side. Therefore, specifying the TBS break as an area equivalent to a double-ended break of the surge line would be overly conservative. For BWRs, the effect of a double-ended break area is also considered to be overly conservative. The selected TBS for BWRs is based on the larger of the residual heat removal or main feedwater lines attached to the main recirculation piping. A single-ended break in these lines would bound double-ended breaks of the smaller lines in the reactor recirculation and feedwater system. Therefore, the NRC concluded that treating the TBS as a single-ended break reasonably characterizes the expert elicitation results and represents the flow rates associated with postulated pipe breaks within the RCS.

For the TBS to remain valid at a particular facility, future plant modifications must not significantly

increase the LOCA pipe break frequency estimates generated during the expert elicitation and used as the basis for the TBS. For example, the expert elicitation panel did not consider the effects of power uprates in deriving the break frequency estimates. The expert elicitation panel assumed that future plant operating characteristics would remain consistent with past operating practices. The NRC recognizes that significant plant changes may change plant performance and relevant operating characteristics to a degree that they might impact future LOCA frequencies. The NRC will expect applicants for plant changes under revised proposed § 50.46a to demonstrate that those changes do not significantly increase break frequencies. As discussed in Section V.C. of this document, the NRC is currently preparing guidance for applicants to use to demonstrate that proposed plant changes do not undermine the § 50.46a technical basis ("Plant-Specific Applicability of 10 CFR 50.46 Technical Basis" February 2009; ML090350757).

The baseline TBS was adjusted upward to account for uncertainties and failure mechanisms leading to pipe rupture that were not considered in the expert elicitation process. As the NRC obtains additional information that may tend to reduce those uncertainties or allow for more structured consideration of degradation mechanisms, the NRC will assess whether the TBS (as defined in § 50.46a) should be adjusted, and may initiate rulemaking to revise the TBS definition to account for this new information. The NRC will also continue to assess the failure precursors that might be indicative of an increase in pipe break frequencies in BWR and PWR plants to establish whether the TBS would need to be adjusted.

However, these TBS values are within the range supported by the expert elicitation estimates when considering the uncertainty inherent in processing the degradation-related frequency estimates. In addition, the NRC believes that the TBS definitions in the proposed rule would provide necessary conservatism to compensate for possible future increases in break frequencies. The NRC expects that the TBS values would result in regulatory stability because future LOCA frequency reevaluations are less likely to make it necessary for the NRC to change the TBS and cause licensees to undo plant modifications made after implementing § 50.46a.

C. Evaluation of the Plant-Specific Applicability of the Transition Break Size

As discussed in Section V.B. of this document, the NRC has published two reports, NUREG-1829 (ML082250436), and NUREG-1903 (ML080880140) that form part of the technical basis used to select the TBS for BWR and PWR plants. NUREG-1829 used expert elicitation to develop generic LOCA frequency estimates of passive system failure as a function of break size for both BWR and PWR plants and considered normal operational loading and transients expected over a 60-year plant life. NUREG-1903 assessed the likelihood that rare seismic events would induce primary system failures larger than the postulated TBS. NUREG-1903 evaluated both direct failures of flawed and unflawed primary system pressure boundary components and indirect failures of nonprimary system components and supports that could lead to primary system failures. Because these studies were not intended to develop bounding estimates, unique plant attributes may result in plant-specific LOCA frequencies due to normal operational and/or seismic loading that are greater than reported in either NUREG-1829 or NUREG-1903. Consequently, the NRC has included a requirement that applicants wishing to implement § 50.46a conduct an evaluation to demonstrate that the results in NUREG-1829 and NUREG-1903 are applicable to their individual plants.

The NRC is preparing guidance for conducting the plant specific review to demonstrate the applicability of both the NUREG-1829 and NUREG-1903 results. The scope of this applicability guidance would be limited to primary system piping and other primary pressure boundary components that are large enough to result in LOCA break sizes larger than the TBS. This guidance is applicable to aspects of the facility design affecting compliance with ECCS requirements and would not pertain to design-bases or operational procedures associated with other aspects of the facility licensing basis.

The plant applicability evaluation would require that § 50.46a applicants first demonstrate that the applicable systems in the plant adhere to the current licensing basis. Additionally, the evaluation would require that licensees consider the effects of unique, plant-specific attributes on the generic LOCA frequencies developed in NUREG-1829. The licensee would also evaluate the effect of proposed plant changes on both direct and indirect

system failures to demonstrate that NUREG-1829 results remain applicable after the proposed changes have been implemented. After a licensee is approved to implement revised proposed § 50.46a requirements, it would also be necessary to evaluate the effect of future proposed plant changes to demonstrate that NUREG-1829 results remain applicable after enacting the proposed changes.

An evaluation framework is also provided for determining the applicability of the NUREG-1903 assessment of direct piping failures. This framework identifies the aspects that applicants would consider in a plant-specific analysis, provides several options for conducting the analysis, and describes a systematic approach associated with each option. One important step is to determine whether the NUREG-1903 results can be used directly or if a plant-specific analysis is required to determine the limiting flow sizes under rare seismic loading. NUREG-1903 also addressed indirect piping failures caused by rare seismic loading. However, the risk of indirect failure is highly plant-specific and NUREG-1903 only considered the risks associated with two different plants. Consequently, the limited analysis of indirect piping failures does not provide a sufficient technical basis for allowing generic changes to the seismic design, testing, analysis, qualification, and maintenance requirements associated with any component under § 50.46a. Any proposed changes to these criteria would be justified using a plant-specific analysis to assess the change in risk associated with seismically induced failures of the relevant component and/or system that results from the proposed plant changes. After receiving approval to implement revised proposed § 50.46a requirements, it would also be necessary for licensees to demonstrate that the NUREG-1903 results remain applicable after implementing proposed changes.

More specific details on how to conduct these applicability reviews are available in a white paper entitled, "Plant-Specific Applicability of the 10 CFR 50.46 Technical Basis" February 2009 (ML090350757). Commenters on this revised proposed rule may review this white paper to get a better understanding of the scope of the evaluation being considered by the NRC.

D. Alternative ECCS Analysis Requirements and Acceptance Criteria

The revised proposed rule would require licensees to analyze ECCS cooling performance for breaks up to and including a double-ended rupture

of the largest pipe in the RCS. These analyses would have to be performed by methods acceptable to the NRC and must demonstrate that ECCS cooling performance conforms to the acceptance criteria set forth in the rule. For breaks at or below the TBS, § 50.46a(e)(1) would specify requirements identical to the existing ECCS analysis requirements set forth in § 50.46. However, commensurate with the lower probability of breaks larger than the TBS, § 50.46a(e)(2) of the revised proposed rule specifies less conservatism for the analyses and associated acceptance criteria for breaks larger than the TBS. LOCA analyses for break sizes equal to or smaller than the TBS would be applied to all locations in the RCS to find the limiting break location. LOCA analyses for break sizes larger than the TBS (but using the more realistic analysis requirements) would also be applied to all locations in the RCS to find the limiting break size and location. This analytical approach is consistent with current NRC regulatory positions and industry practice.

1. Acceptable Methodologies and Analysis Assumptions

Under existing § 50.46 requirements, prior NRC approval is required for ECCS evaluation models. Acceptable evaluation models are currently of two types; those that realistically describe the behavior of the RCS during a LOCA, and those that conform with the required and acceptable features specified in Appendix K to Part 50. Appendix K evaluation models incorporate conservatism as a means to justify that the acceptance criteria are satisfied by an ECCS design. In contrast, the realistic or best-estimate models attempt to accurately simulate the expected phenomena. As a result, comparisons to applicable experimental data must be made and uncertainty in the evaluation model and inputs must be identified and assessed. This is necessary so that the uncertainty in the results can be estimated so that when the calculated ECCS cooling performance is compared to the acceptance criteria, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II, contains the documentation requirements for evaluation models. All of these existing requirements are included in § 50.46a(e)(1) of the revised proposed rule for breaks at or below the TBS.

As currently required under § 50.46, the ECCS analysis performed with a model other than one based on Appendix K must demonstrate with a high level of probability that the

acceptance criteria will not be exceeded. The position taken in RG 1.157 has been that 95 percent probability constitutes an acceptably high probability. Section 50.46a(e)(1) of the revised proposed rule would retain the high level of probability as the statistical acceptance criterion.

Revised proposed §§ 50.46a(e)(1) and (e)(2) would require that the worst break size and location be calculated separately for breaks at or below the TBS and for breaks larger than the TBS up to and including a double-ended rupture of the largest pipe in the RCS. Different methodologies, analytical assumptions, and acceptance criteria may be used for each break size region. Consistent with current § 50.46 requirements, licensees would be required to analyze breaks at or below the TBS by assuming the worst single failure concurrent with a loss-of-offsite power, limiting operating conditions, and only crediting safety systems. For breaks larger than the TBS, licensees may take credit for operation of any equipment supported by availability data provided that onsite power (either safety or non-safety) can be reliably provided to that equipment through manual actions within a reasonable time after a loss of offsite power. All non-safety equipment that is credited for analyses of breaks larger than the TBS would have to be identified as such and listed in the plant technical specifications. Analyses of breaks larger than the TBS could assume nominal operating conditions rather than technical specification limits. This would also include combining actual fuel burnup in decay heat predictions with the corresponding operating peaking factors at the appropriate time in the fuel cycle. The assumptions of loss-of-offsite power and the worst single failure would not be required because breaks larger than the TBS are very unlikely; therefore, less margin would be needed in the analysis of breaks in this region. A capability to provide onsite power to non-safety equipment in a reasonable time following a loss of offsite power (e.g. approximately 30 minutes) is a defense-in-depth consideration for severe accident management.

2. Acceptance Criteria

ECCS acceptance criteria in § 50.46a(e)(3) for breaks at or below the TBS would be the same as those currently required in § 50.46. Therefore, licensees would be required to use an approved methodology to demonstrate that the following acceptance criteria are met for the limiting LOCA at or below the TBS:

- PCT less than 2200 °F;
 - Maximum local cladding oxidation (MLO) less than 17 percent;
 - Maximum hydrogen production—core wide cladding oxidation less than one percent;
 - Maintenance of coolable geometry; and
 - Maintenance of long-term cooling.
- Commensurate with the lower probability of occurrence, the acceptance criteria in § 50.46a(e)(4) for breaks larger than the TBS would be less prescriptive:

- Maintenance of coolable geometry, and
- Maintenance of long-term cooling.

The revised proposed rule would allow licensees flexibility in establishing appropriate metrics and quantitative acceptance criteria for maintenance of coolable geometry. A licensee's metrics and acceptance criteria must realistically demonstrate that coolable core geometry and long-term cooling will be maintained. Unless data or other valid justification criteria are provided, licensees should use 2200 °F and 17 percent for the limits on PCT and MLO, respectively, as metrics and quantitative acceptance criteria for meeting the rule. Other less conservative criteria would be acceptable if properly justified by licensees.

However, the NRC acknowledges that it would be expensive and time-consuming for industry to develop the necessary experimental and analytical data to justify alternative acceptance criteria as a surrogate for demonstrating coolable geometry. Because of the difficulty in demonstrating alternative metrics, the NRC is requesting stakeholder comments on whether the final § 50.46a rule should retain the coolable geometry criterion for beyond-TBS breaks. Retaining coolable geometry would give licensees the option to demonstrate alternative coolable geometry metrics or use the current metric (2200 °F PCT and 17 percent MLO). If the NRC removed the coolable geometry criterion, the beyond-TBS acceptance criteria would be the same as the acceptance criteria for TBS and smaller breaks (2200 °F PCT and 17 percent MLO). The NRC will evaluate stakeholder comments on this question before deciding which beyond-TBS acceptance criteria to include in the final rule.

As previously discussed in Section IV.C of this document, the NRC is working to revise the ECCS acceptance criteria in § 50.46(b) to account for new experimental data on cladding ductility and to allow for the use of advanced cladding alloys. The NRC will soon

issue an ANPR seeking public comments on a planned regulatory approach. The NRC expects that this rulemaking (Docket ID NRC-2008-0332) will establish new cladding embrittlement acceptance criteria in § 50.46(b) for design basis LOCAs. As these new acceptance criteria are established, the NRC will also make conforming changes to § 50.46a as necessary for both below and above TBS breaks.

3. Restriction of Reactor Operation

Section 50.46a(e)(5) would allow the Director of the Office of Nuclear Reactor Regulation to impose restrictions on reactor operation if it is determined that the evaluations of ECCS cooling performance are not consistent with the requirements for evaluation models and analysis methods specified in revised proposed § 50.46a(e)(1) through (e)(4). Non-compliance may be due to factors such as lack of a sufficient data base upon which to assess model uncertainty, use of a model outside the range of an appropriate data base, models inconsistent with the requirements of Appendix K of Part 50, or phenomena unknown at the time of approval of the methodology. Lack of compliance with methodological requirements would not necessarily result in failure to meet the acceptance criteria of revised proposed §§ 50.46a(e)(3) and (e)(4), but, rather, would provide results that could not be relied upon to demonstrate compliance with the appropriate acceptance criteria. Thus, depending upon the specific circumstances, it might be necessary for the NRC to impose restrictions on operation until these issues are resolved. This requirement is included in the revised proposed rule for consistency with the current ECCS regulations, because it is comparable to existing § 50.46(a)(2).

E. Risk-Informed Changes to the Facility, Technical Specifications, or Procedures

Licensees who adopt § 50.46a would use a risk-informed evaluation process to demonstrate, before implementation, that facility changes will satisfy the risk-informed acceptance criteria in revised proposed § 50.46a(f). Changes that must be evaluated are specified in revised proposed § 50.46a(d)(3) and would include all "enabled" changes that satisfy the alternative ECCS analysis requirements in § 50.46a but do not satisfy the current ECCS analysis requirements in § 50.46. Also, changes in risk from facility changes not enabled by the alternative ECCS requirements could be combined with changes in risk

from facility changes enabled by § 50.46a if the licensee chooses to combine the changes in its application of the risk-informed change process defined in the rule. In this case, the changes made under § 50.46a would include those enabled by § 50.46a and those not enabled by § 50.46a but included in the risk-informed application.

Licensees would be required to periodically maintain and upgrade the PRA used in the risk assessments and ensure that over time all changes made under § 50.46a continue to meet the risk-informed acceptance criteria. If necessary, revised proposed § 50.46a(g)(2) would require the licensee to propose steps and a schedule to bring the facility back into compliance with the acceptance criteria in § 50.46a(f)(2)(ii) or § 50.46a(f)(2)(iii), as applicable.

The risk-informed evaluation would be required to demonstrate that increases in plant risk (if any) meet appropriate risk acceptance criteria, defense-in-depth is maintained, adequate safety margins are maintained, and adequate performance-measurement programs are implemented. The NRC believes that all changes to a plant, its technical specifications, or its procedures which are based upon the analyses of ECCS performance permitted under § 50.46a(e)(2)—with the exception of those changes permitted under § 50.46a(f)(1)—must be reviewed and approved by the NRC for two reasons. First, a wide range of changes could be implemented under § 50.46a, which, if improperly implemented by licensees, could result in significant adverse impacts on public health and safety or common defense and security. NRC review and approval would provide verification that a licensee has properly evaluated each proposed change against the acceptance criteria in § 50.46a. Second, changes involving technical specifications must receive NRC review and approval in the form of a license amendment, as required by the Atomic Energy Act of 1954, as amended. Accordingly, the NRC's revised proposed rule would require NRC review and approval of all changes initiated under § 50.46a(f)(2).

1. Requirements for the Risk-Informed Evaluation

The revised proposed rule is based upon the regulatory premise that the acceptability of all licensee-initiated changes made under the rule should be judged in a risk-informed manner. The risk-informed assessment process must include methods for evaluating compliance with the risk criteria,

defense-in-depth criteria, safety margin criteria, and performance measurement criteria in § 50.46a(f). These attributes have been identified by the Commission as a necessary set of risk evaluation tools to ensure that changes to the facility do not endanger public health and safety.

Compliance with the risk criteria plays a key role in the regulatory structure of the proposed rule. A risk-assessment must be used to determine the change in risk associated with facility changes. Inasmuch as PRA methodologies are generally recognized as the best current approach for conducting risk assessments suitable for making decisions in areas of potential safety significance, § 50.46a(f)(4) of the revised proposed rule would require that a technically adequate PRA be used in demonstrating compliance with the requirements of § 50.46a that would affect the regulatory decision in a substantive manner. However, the NRC recognizes that non-quantitative PRA assessment methodologies and approaches could also be used to complement or supplement the quantitative aspects of a PRA, especially when performance of a quantitative PRA methodology of the level needed to support a particular decision is not justifiable because the safety significance of the decision does not warrant the level of technical sophistication inherent in a PRA. Accordingly, § 50.46a(f)(5) is written to recognize that non quantitative risk assessment may also be utilized.

a. Probabilistic Risk Assessment Requirements

Sections 50.46a(f)(4)(i) through (iv) set forth the four general attributes of an acceptable PRA for the purposes of this rule. Section 50.46a(f)(4)(i) would require that the PRA address initiating events from internal and external sources, and for all modes of operation, including low power and shutdown, that would affect the regulatory decision in a substantial manner. Failure to consider sources of risk from internal and external events, or from anticipated operating modes, could result in an inaccurate characterization of the level of risk associated with a plant change. Therefore, initiating events from internal and external sources and during all modes of operation would have to be considered by the PRA when the change in risk would affect the regulatory decision, in order to ensure that the effect on risk from licensee-initiated changes is adequately characterized in a manner sufficient to support a technically defensible determination of the level of risk.

Section 50.46a(f)(4)(ii) states that the PRA must reasonably represent the current configuration and operating practices at the plant. A plant's risk may vary as plant configuration and/or plant procedures change. Failure to update the PRA based upon these configuration or procedure changes may result in inaccurate or invalid PRA results. Accordingly, to ensure that estimates of risk adequately reflect the facility for which a decision must be made, the rule would require that the PRA address current plant configuration and operating practices.

Section 50.46a(f)(4)(iii) would require that the PRA have "sufficient technical adequacy" including consideration of uncertainty, as well as a sufficient level of detail to provide confidence that the calculated risk and the changes in risk adequately reflect the proposed facility change. The revised proposed rule would require the PRA to consider uncertainty because the decision maker must understand the limitations of the particular PRA that was performed to ensure that the decision is robust and accommodates relevant uncertainties. With respect to level of detail, failure to model the plant (or relevant portion of the plant) at the appropriate level of detail may result in calculated risk values that do not appropriately capture the risk significance of the proposed change.

Finally, § 50.46a(f)(4)(iv) would require that, to the extent that the PRA is used, the PRA must meet NRC-approved industry standards. The NRC has prepared a regulatory guide (RG 1.200) on determining the technical adequacy of PRA results for risk-informed activities. As one step in the assurance of technical quality, the PRA would be subjected to a peer review process assessed against an industry standard or set of acceptance criteria that is endorsed by the NRC. Industry standards for all initiators and operating modes are under development but not yet complete. The NRC will develop review guidelines that endorse criteria for considering the sufficiency of a PRA peer review process for this application in § 50.46(c) if this guidance becomes necessary before industry standards have been completed and endorsed in RG 1.200.

b. Requirements for Risk Assessments Other Than PRA

Risk assessment need not always be performed using PRA. The rule explicitly recognizes the possibility of using risk assessment methods other than PRA to demonstrate compliance with various acceptance criteria in the rule. However, as with PRA

methodologies, the NRC believes that minimum quality requirements for PRAs and risk assessments used by a licensee in implementing the rule must be established. Accordingly, § 50.46a(f)(5) would establish the minimum requirement for risk assessment methodologies other than PRA. The NRC believes that this requirement provides flexibility to licensees to use the non-PRA risk methodology (or combination of different methodologies) when these methodologies produce results that are sufficient upon which to base decisions that the various acceptance criteria in the proposed rule have been met.

2. Aggregation of Plant Changes When Evaluating Changes in Risk

Licensees often make changes to the facility, technical specifications, and procedures. Some changes that the licensees could make after adopting this rule would not have been permitted without the new § 50.46a (related or enabled changes). Other changes would be unrelated insofar as the basis of the changes and NRC approval, when necessary, will rely on regulations, guidelines, or facility priorities that do not depend on the new ECCS requirements in Section 50.46a. Unrelated changes will indirectly influence the change in risk of the § 50.46a related changes insofar as they change the risk profile of the facility. If unrelated changes are combined with related changes in determining the § 50.46a change in risk estimates (bundling), the result will normally be different than if the unrelated changes are considered as part of the baseline risk associated with the current design and operation of the facility. If bundling is permitted, a licensee could implement facility changes that would decrease risk to offset increased risk from § 50.46a enabled changes. These changes would increase the safety of the facility and are expected to result in a reallocation of resources to areas where safety can be improved. Current NRC practice, consistent with RG 1.174, is to compare the total or cumulative risk increase from all related changes, and only related changes, to the acceptance guidelines. RG 1.174 does, however, permit bundling changes (referred to as combined changes in RG 1.174) and provides additional acceptance guidelines that must be met when permitting unrelated plant changes that might decrease risk to be combined together with a group of related changes in a change in risk estimate that would be compared to the acceptance guidelines.

The NRC believes that allowing bundling of unrelated changes into the § 50.46a change in risk estimates will encourage licensees to use risk-informed methods to take advantage of opportunities to reduce risk, and not just eliminate requirements that a licensee deems as undesirable. However, in some situations, bundling could mask the creation of significant risk outliers. To ensure that outliers are not created, and that the additional guidelines in RG 1.174 are appropriately applied, the rule would not permit bundling of changes without previous review and approval. Therefore, the revised, proposed § 50.46a(f)(2)(iv) would allow changes not enabled by § 50.46a to be combined with changes enabled by § 50.46a in the calculation of the change in risk when a licensee submits an application for a change under 50.90.

3. NRC Approval of a Licensee Process for Making Changes to a Licensee's Facility or Procedures Without NRC Review and Approval

As a general matter, the licensee must obtain NRC review and approval (through a license amendment application) for any changes to the facility, technical specifications, or procedures that may be implemented under this section. However, the NRC believes that there is a subset of plant and procedure changes that would be made possible by § 50.46a involving minimal changes in risk which also have no significant impact upon defense-in-depth capabilities. Prior NRC review and approval of these changes on an individual basis would be unnecessary *if* the NRC has previously concluded that the licensee has an adequate technical process for appropriately identifying this subset of changes. In the NRC's view, plant changes which involve minimal changes in risk and have no significant impact upon defense-in-depth (and do not involve a change to the license), by definition, do not result in significant issues involving public health and safety or common defense and security.

Expending licensee resources to prepare an application for approval of plant changes involving minimal changes in risk and NRC resources to review and approve these applications is not an efficient use of resources. Rather, the NRC believes that if it reviews and approves in advance the licensee's processes (including the adequacy of the licensee's PRA and other risk assessment methods) and criteria for identifying changes which are both minimal from a risk standpoint and do not significantly affect defense-

in-depth or plant physical security, then there is no need to review and approve each of the changes individually. Further, the NRC believes that these minimal changes are unlikely to impact the built-in capability of the facility to resist security threats. Accordingly, the NRC has proposed an approach in § 50.46a(f)(1) allowing a licensee to obtain "pre-approval" of a process for identifying minimal plant and procedure changes made possible under § 50.46a.

The revised proposed § 50.46a(f)(1) states that a licensee may make changes based upon the provisions of this section without prior review and approval if the stated requirements in paragraphs (f)(1) and (f)(3) of this section are met. The revised proposed rule also states that the provisions of § 50.59 would apply. Licensees with a pre-approved change process would be allowed to make facility changes without NRC approval if they met § 50.59 and § 50.46a requirements. Compliance with the § 50.59 requirements is necessary to ensure that facility changes made without NRC approval do not result in plant conditions that could impact public health and safety. Compliance with the § 50.46a(f) requirements for risk assessments is required to ensure that facility changes result in acceptable changes in risk, adequate defense-in-depth, that safety margins will be maintained, and that adequate performance-measurement programs are implemented.

4. Risk Acceptance Criteria for Plant Changes

Sections 50.46a(f)(2)(ii) and (f)(2)(iii) would require that the total increases in risk are very small and that the overall plant risk remains small. Two sets of metrics are used to measure risk depending on when the applicant's operating license was issued. For reactors licensed before the effective date of the rule, § 50.46a(f)(2)(ii) would apply and CDF and LERF would be used. For new reactors licensed after the effective date of the rule, § 50.46a(f)(2)(iii) would apply and CDF and large release frequency (LRF) are used. The NRC believes that this requirement is a necessary element for ensuring that changes which would be permitted by the revised § 50.46a ECCS analyses do not result in a greater change in risk than intended by the Commission.

a. Risk Estimate

To satisfy the Commission's requirements in §§ 50.46a(f)(2)(ii) and (f)(2)(iii) that the total increases in risk

are very small would require that the change in risk for each facility change be evaluated and shown to meet the acceptance guidelines. If a series of changes are made over time, § 50.46a(f)(2)(iv) would require that cumulative effect of these changes be evaluated and shown to meet the acceptance criteria. Section 50.46a(f)(2)(iv) would also permit changes in risk from facility changes not enabled by § 50.46a to be combined by the licensee with facility changes that are enabled by this section for the purposes of meeting the acceptance guidelines. The total change in risk from all facility changes made under the rule after the adoption of § 50.46a must be evaluated and compared to the “very small” acceptance criterion before each change requiring a risk-informed evaluation and after the periodic PRA maintenance and upgrading. Requiring that the total change in risk from all facility changes made under the rule after the adoption of § 50.46a be compared to the § 50.46a acceptance criteria instead of allowing the changes in risk to be partitioned and individually compared to the acceptance criteria would ensure that the total risk increase of all changes, as they are implemented over time, would not constitute more than a very small increase in risk. If the total increase in the applicable risk metrics were not compared to the acceptance criteria, a number changes where every individual change’s risk increase is kept below the proposed rule’s risk acceptance criteria could, considered cumulatively, result in a significant increase in risk. A significant increase would not satisfy the Commission’s criteria that the overall plant risk remains small. Also, comparing the risk increase from each change to the acceptance criteria independently of all previous changes would render the use of the “very small” criterion inadequate to monitor and control increases in risk from a series of plant changes implemented over time.

Comparing the total risk increase to the risk increase criterion, and allowing bundling of unrelated changes in the change in risk estimate, will support the NRC’s philosophy that, consistent with the principles of risk-informed integrated decision making, licensees should have a risk management philosophy in which risk insights are not just used to systematically increase risk, but also to help reduce risk where appropriate and where it is shown to be cost effective.

b. Acceptance Criteria

In § 50.46a(f)(2)(ii), CDF and LERF are used as surrogates for early and latent health effects, which are used in the Commission’s Policy Statement on Safety Goals (51 FR 30028; August 4, 1986). The NRC has used CDF and LERF in making regulatory decisions for over 20 years. The NRC endorsed the use of CDF and LERF as appropriate measures for evaluating risk and ensuring safety in nuclear power plants when it adopted RG 1.174 in 1997. After the adoption of RG 1.174, the NRC has had eleven years of experience in applying risk-informed regulation to support a variety of applications, including amending facility procedures and programs (e.g., IST and ISI programs), amending facility operating licenses (e.g., power up-rates, license renewals, and changes to the FSAR), and amending technical specifications. On the basis of this experience, for current operating reactors, the NRC has determined that CDF and LERF are acceptable measures for evaluating changes in risk as the result of changes to a facility, technical specifications, and procedures, with the exception of certain changes that affect containment performance but do not affect CDF or LERF. Changes that affect containment performance are considered as part of the defense-in-depth evaluation.

For new reactors, CDF and LRF (instead of LERF) would apply as indicated in § 50.46a(f)(2)(iii). For new reactor licensing the Commission has established a goal based on LRF (*see* SRM on SECY-89-102—Implementation of the Safety Goals, June 15, 1990; and SRM on SECY-90-016—Evolutionary Light Water Reactor (LWR) Certification Issues and Their Relationship to Current Regulatory Requirements, June 26, 1990).

The Commission has concluded that changes under this rule should be restricted to very small risk increases. As discussed in RG 1.174, a very small risk increase is independent of a plant’s overall risk as measured by the current CDF and LERF. Increases in CDF of 10^{-6} per reactor year or less, and increases in LERF of 10^{-7} per reactor year or less are very small risk increases for existing reactor facilities.

For new reactors, the same CDF metric is used and the same definition of very small increase (*i.e.*, less than 10^{-6} per reactor year) would be used. The revised proposed rule uses LRF instead of LERF as a metric for new reactors. RG 1.174 provides no guidelines for LRF. The Commission has approved the overall mean frequency of a large release of radioactive material to

the environment (LRF) to be less than 10^{-6} per reactor year. The revised proposed rule requires the total increase in LRF to be no more than very small. The NRC proposes that increases in LRF of 10^{-8} per reactor year or less are very small risk increases for new reactors. Because of the difference between the LERF acceptance criteria for existing reactors and the LRF acceptance criteria for new reactors, the NRC is seeking specific public comments on this topic. Additional background information on how the NRC is addressing this issue and how the NRC is soliciting public input on this topic in this revised proposed rule and in other regulatory areas is provided in Section J.2. of this document.

After adopting RG 1.174 in 1997, the NRC has applied the quantitative change in risk guidelines to individual plant changes and to sequences of plant changes implemented over time. The NRC has found these guidelines and the CDF and LERF values (when used together with the defense in depth, safety monitoring, and performance measurement criteria) are capable of differentiating between changes, and sequences of changes, that are not expected to endanger public health and safety from those that might. The NRC believes that applying the LRF guideline for determining very small risk increases would also be protective of public health and safety.

Section 50.46a(f)(1) would permit licensees to make changes under this provision without prior review and approval if the changes involve minimal increases in risk which also have no significant impact upon defense-in-depth capabilities. A minimal risk increase is one which, when considered qualitatively by itself or in combination with all other minimal increases, would never become significant. Logically, a minimal increase is less than the very small increase in CDF and in LERF, and was chosen as an increase of less than 10^{-7} per reactor year for CDF and an increase in LERF of less than 10^{-8} per reactor year. Similarly, for new reactor licensing, an increase in LRF less than 10^{-9} per reactor year is a minimal increase. Although ten of these changes could cause the combination of minimal increases to exceed the very small criteria, the NRC believes that most of these changes will have a much smaller (and, in some cases, an unmeasurable) increase in risk. Regardless of whether a licensee makes changes under § 50.46a(f)(1) instead of § 50.46a(f)(2), the total cumulative risk including all the individually minimal risk increases as well as any increases approved by the NRC under § 50.46a(f)(2), would have to

be considered in the periodic reporting required by § 50.46a(g)(2). If a licensee implements an unexpectedly large number of minimal risk changes, the periodic reporting requirements in § 50.46a(g)(2) would provide adequate notice to ensure that the NRC is aware of potentially significant changes (or any collective impact), so that the NRC may undertake additional oversight actions as deemed necessary and appropriate.

Additionally, although the revised proposed rule would permit licensees to make plant changes that result in very small risk increases, the NRC is requesting stakeholder comments on whether the rule should allow plant changes that increase risk at all. Instead of the risk acceptance criteria allowing very small risk increases, should the risk acceptance criteria in final rule require that the net effect of plant changes made under § 50.46a be risk neutral or risk beneficial? The NRC requests stakeholders to provide comments on the use of risk acceptance criteria that would not allow a cumulative increase in risk for plant changes made under § 50.46a.

5. Defense-in-Depth

Section 50.46a(f)(3)(i) would require that the risk-informed evaluation demonstrate that defense-in-depth is maintained. Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. As conceived and implemented by the NRC, defense-in-depth provides redundancy in addition to a multiple barrier approach against fission product releases. Defense-in-depth continues to be an effective way to account for uncertainties in equipment and human performance. The NRC has determined that retention of adequate defense-in-depth must be ensured in all risk-informed regulatory activities.

6. Safety Margins

Section 50.46a(f)(3)(ii) would require that adequate safety margins be retained to account for uncertainties. These uncertainties include phenomenology, modeling, and how the plant was constructed or is operated. The NRC's concern is that plant changes could inappropriately reduce safety margins, resulting in an unacceptable increase in risk or challenge to plant SSCs. This provision would ensure that an adequate safety margin exists to account for these uncertainties, such that there are no unacceptable results or consequences (e.g., structural failure) if

an acceptance criterion or limit is exceeded.

7. Performance Measuring Programs

Section 50.46a(f)(3)(iii) would require that adequate performance measurement programs and feedback strategies be implemented to ensure that the risk-informed evaluation continues to reflect actual plant design and operation. The risk-informed evaluation includes the risk assessment, maintenance of defense-in-depth, and adequacy of safety margins. Results from implementation of monitoring and feedback strategies can provide an early indication of unanticipated degradation of performance of plant elements that may invalidate the demonstration by the risk-informed evaluation that the change satisfied all the acceptance criteria. This section would require that the monitoring programs be designed to detect degradation of SSCs before plant safety is compromised. Permitting degradation to advance until plant safety could be compromised would be inconsistent with the NRC's regulatory responsibility of protecting public safety. The NRC expects that licensees will integrate existing programs for monitoring equipment performance and other operating experience on their site and throughout industry with the performance measuring programs required by this section.

F. Operational Requirements

The revised proposed rule includes five specific operational requirements that apply to licensees who are approved to implement § 50.46a. These requirements are set forth in § 50.46a(d) and would remain in effect as long as the facility is subject to the § 50.46a alternative ECCS requirements until such time as the licensee permanently ceases operations by submitting the decommissioning certifications required under § 50.82(a). They are:

1. Maintain ECCS models and/or analysis methods that demonstrate compliance with the ECCS acceptance criteria.
2. Maintain reactor coolant leak detection equipment available at the facility and identify, monitor, and quantify leakage to ensure that adverse safety consequences do not result from leakage from piping and components larger than the transition break size.
3. Perform a risk-informed evaluation for each potentially risk-significant change (or group of changes) to the facility enabled by § 50.46a.
4. Periodically assess the cumulative effect of changes to the plant, operational practices, equipment

performance, and plant operational experience.

5. Do not operate the plant for more than fourteen days in any 12 month period in an at-power operating configuration that has not been demonstrated to meet the ECCS acceptance criteria for breaks larger than the TBS.

Each of the five operational requirements is discussed in detail below.

1. Maintain ECCS models and/or analysis methods that demonstrate compliance with the ECCS acceptance criteria.

Calculated results of licensee ECCS models and/or analysis methods must demonstrate compliance with the ECCS acceptance criteria throughout the operating lifetime of the plant. Licensees must also update ECCS models and/or analysis methods by modifying them as needed to address any plant design changes affecting ECCS performance during this time period.

2. Maintain reactor coolant leak detection equipment available at the facility and identify, monitor, and quantify leakage to ensure that adverse safety consequences do not result from leakage from piping and components larger than the transition break size.

In a Staff Requirements Memorandum dated August 10, 2007, responding to SECY-07-0082—"Rulemaking To Make Risk Informed Changes to Loss-of-Coolant Accident Technical Requirements; 10 CFR 50.46a, 'Alternative Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors'", the Commission directed the NRC staff to evaluate various approaches for enhancing the 10 CFR 50.46a rule with requirements for improved leak detection methods. This SRM also directed the NRC staff to "strengthen the assurance of defense-in-depth [provided by the § 50.46a rule] for breaks beyond the transition break size (TBS)."

In response to a recommendation made by the Davis-Besse Lessons Learned Task Force (DBLLTF), (see memorandum from Arthur T. Howell to William F. Kane, "Degradation of the Davis-Besse Nuclear Power Station Reactor Pressure Vessel Head Lessons-Learned Report; September 30, 2002; ADAMS Accession No. ML022740211) the NRC evaluated whether it should impose new requirements on licensees in the areas of tighter reactor coolant leakage limits and new leakage monitoring requirements. Specifically, the DBLLTF Recommendation 3.1.5(1) said that the NRC should determine whether PWR plants should install on-line enhanced leakage detection systems

on critical plant components which would be capable of detecting leakage rates of significantly less than 1 gallon per minute.

The evaluation identified techniques that could improve localized leak detection and on-line monitoring and several areas of possible improvements to leakage detection requirements that could provide increased confidence that plants are not operated at power with reactor coolant pressure boundary leakage. Although the NRC concluded that there was not a sufficient basis to require reduced technical specification leakage for existing licensees, the NRC recommended updating Regulatory Guide 1.45 on leak detection. This RG was revised in 2008.

RG 1.45, Revision 1 incorporates progress in reactor coolant pressure boundary leakage detection technology; addresses the effect on radiation monitoring, and, subsequently, on leak detection from reduced activity levels of coolant resulting from improved fuel integrity; and incorporates lessons learned from operating experience. The title of the Regulatory Guide 1.45, Revision 1, has been changed from "Reactor Coolant Pressure Boundary Leakage Detection Systems" to "Guidance on Monitoring and Responding to Reactor Coolant System Leakage," to reflect its broader scope. Revision 1 provides detailed guidance for timely detection and location of leaks, continuous monitoring, quantifying and trending of leak rates, assessing safety significance, and specifying plant actions following confirmation of an adverse trend in unidentified leak rate. Revision 1 describes acceptable leakage detection systems and methods, using risk-informed and performance-based criteria to the extent practical. It retains the recommendations for monitoring of sump level or flow, airborne particulate activity, and condensate flow rate from air coolers. Other supplementary detection methods are recommended for use where and when appropriate.

Paragraph 50.46a(d)(2) in the revised proposed rule contains new enhanced leak detection requirements. Enhanced leak detection is expected to provide increased defense-in-depth against large pipe breaks for licensees who implement the alternative ECCS rule. The NRC has concluded that implementing the guidance in Regulatory Guide 1.45, Revision 1, by licensees choosing to comply with 10 CFR 50.46a will result in improved monitoring and response to leaks in the reactor coolant system and will provide an acceptable method to satisfy the requirements of Section 50.46a(d)(2).

3. Perform a risk-informed evaluation for each change (or group of changes) to the facility enabled by § 50.46a.

In addition to meeting all other applicable requirements, a risk-informed evaluation required by § 50.46a(d)(3) would have to be performed for changes enabled by § 50.46a. If a licensee has a change methodology that was submitted under § 50.46a(f)(1) and approved by the NRC, that licensee could make some changes without NRC approval, if the acceptance criteria in § 50.46a(f)(1) are met. Otherwise, the licensee would be required to submit the results of its risk-informed evaluation for prior NRC review and approval in a license amendment request subject to the requirements of § 50.90. The licensee would have to retain the results of all risk-informed evaluations made under § 50.46a(f)(1) and periodically submit a summary of the results to the NRC as required under § 50.46a(g)(3).

4. Periodically assess the cumulative effect of changes to the facility.

Key components of risk-informed regulation are the monitoring of changes in plant risk and feedback to the risk assessment and/or plant design activities and processes which are the subject of the risk assessment. Section 50.46a(d)(4) would require that after adopting § 50.46a, a licensee would be required to periodically maintain and upgrade the risk assessments (both PRA and non-PRA) required under §§ 50.46a(f)(4) and (f)(5). In particular, it is necessary that the PRA be maintained to reflect all plant changes; such as modifications, procedure changes, or changes in plant performance data. This maintenance enables the licensee to demonstrate that the total increases in CDF and LERF (or LRF for new reactors) after adopting § 50.46a continue to meet the acceptance criteria in § 50.46a(f)(2). The risk assessments would have to continue to meet the minimum quality requirements in §§ 50.46a(f)(4) and (f)(5) to support reasoned decision making under the rule.

The revised proposed rule would specify that the maintenance and upgrading be conducted periodically "but no less often than once every two refueling outages." The NRC believes that this is an appropriate period because the uncertainty of risk changes occurring during the two refueling outage period is tolerable and unlikely to result in high risk situations developing as a result of the implementation of plant changes. The NRC's determination is based upon the stringent acceptance criteria governing changes made under § 50.46a, as well as the existing deterministic criteria in the

substantive technical requirements in Part 50 and the criteria utilized in determining the acceptability of plant changes. The updating period specified in the rule is also comparable to other NRC requirements governing updating and reporting of safety information, e.g., §§ 50.59, 50.71(e).

If the assessment of the cumulative effect of changes made under the rule demonstrates that the acceptance criteria in § 50.46a(f)(2) are not met, § 50.46a(g)(2) would require the licensee to develop steps and a schedule to bring the facility design and operation back into compliance with the acceptance criteria. These actions may include (but are not limited to) corrections to the risk analyses to demonstrate compliance, implementation of facility changes to offset adverse changes in risk, or reversal of changes previously made under the provisions of § 50.46a(f). The NRC believes that this requirement provides appropriate flexibility for the licensee to determine the actions necessary to ensure continued compliance with the § 50.46a(f) acceptance criteria, and is consistent with the concept of performance-based regulation.

5. Do not operate the plant for more than a total of fourteen days in any 12 month period in an operating configuration that has not been demonstrated to meet the ECCS acceptance criteria for breaks larger than the TBS.

As previously discussed in the supplementary information of this document, the NRC has included restrictions in the revised proposed rule on plant operation in configurations where licensees have not demonstrated that LOCAs larger than the TBS will be mitigated. The initial proposed rule (November 2005) would have completely prohibited at-power operation in any configuration without the demonstrated ability to mitigate a beyond-TBS LOCA. The revised proposed rule would restrict operation in such a configuration to not exceed fourteen days in any twelve month period. The NRC believes it is unlikely that licensees will experience circumstances where they would consider operating in such a condition for more than fourteen days, but has concluded that the establishing a limit on the allowable time is necessary to support the defense-in-depth philosophy. Even though the LOCA frequencies on which the TBS is founded indicate that the expected frequency of breaks larger than the TBS is low, the restriction is needed because there are large uncertainties associated with these frequency estimates. The

Commission concluded that the consequences of a challenge to the facility from an unmitigated break larger than the TBS are severe enough to warrant some confidence that the break could be mitigated. Thus the revised proposed rule will limit the allowed time period for operation in an unanalyzed condition to fourteen days in any twelve month period to ensure that mitigation capability is maintained except for occasional brief periods long enough to perform online maintenance of mitigation structures, systems and components.

G. Reporting Requirements

1. ECCS Analysis Reporting Requirements

Section 50.46a(g)(1) sets forth reporting requirements with respect to changes or errors in LOCA evaluation models. For each change to or error discovered in an ECCS evaluation model or analysis method or in the application of such a model that affects the calculated results, the licensee shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the NRC at least annually as specified in § 50.4. If the change or error is significant, the licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46a requirements. The 30 day period ensures sufficient time for the licensee to complete its evaluation and explanation of the changes and determine the course of action necessary to address compliance issues. For breaks smaller than the TBS a significant change is one which results in a calculated peak fuel cladding temperature different by more than 50 degrees Fahrenheit from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50 degrees Fahrenheit. This requirement is the same as in § 50.46. The NRC will also apply these reporting criteria to LOCAs involving pipe breaks larger than the TBS unless a specific alternative is proposed by a licensee and is approved by the NRC.

2. Risk Assessment Reporting Requirements

Section 50.46a(g)(2) would set forth reporting requirements with respect to the PRA maintenance and upgrading that would be required by § 50.46a(d)(4).

When updating and upgrading the PRA, § 50.46a(g)(2) would require the licensee to report changes to the NRC within 60 days if the acceptance criteria in §§ 50.46a(f)(2)(ii) or (f)(2)(iii) (for new reactors) are exceeded. This provision would also require the report to include a schedule for implementation of any corrective actions necessary to bring plant operation or design back into compliance with the acceptance criteria. The 60-day period would ensure sufficient time for the licensee to complete its evaluation and explanation of the changes and determine the course of action necessary to address adverse changes in risk, while not unduly delaying the report to the NRC and thereby delaying NRC oversight. The NRC believes it should be informed of the licensee's implementation schedule so the NRC can ensure that the licensee takes corrective action on a timely basis, consistent with the safety significance of the change.

Section 50.46a(g)(3) would require periodic reports of changes that required a risk-informed evaluation under § 50.46a(d)(3) and were implemented without prior NRC approval under paragraph (f)(1) of this section. This process is comparable in many respects to the § 50.59 process which requires similar reports.

H. Documentation Requirements

Section 50.46a(h) of the revised proposed rule would require that licensees maintain records sufficient to demonstrate compliance with § 50.46a requirements. When making plant changes under § 50.46a(f) and when updating its PRA and/or other risk assessments, licensees would be required to document the bases for concluding that the acceptance criteria in §§ 50.46a(f)(1) and (f)(2) are satisfied and that they continue to be satisfied throughout the operating lifetime of the facility. Licensees are also required under Part II of Appendix K to Part 50 to document the bases of evaluation models used to perform ECCS calculations. Licensees would also be required to document the time spent in an operating configuration not demonstrated to meet the ECCS acceptance criteria in § 50.46a(c)(3) to demonstrate compliance with the fourteen days in any twelve month period limit in paragraph (d)(5) of this section. This documentation could be reviewed during NRC inspections and/or audits to ensure that the risk criteria in § 50.46a(f) would be satisfied.

I. Submittal and Review of Applications

1. Initial Application for Implementing Alternative § 50.46a Requirements

When a licensee first applies to adopt the alternative § 50.46a requirements, that licensee must submit an application under § 50.90 for NRC review and approval of a license amendment request. The initial application must contain the information as specified in §§ 50.46a(c)(1)(i) through (v). This includes information related to the applicability to the facility of the NUREG-1829 and NUREG-1903 results; information identifying the ECCS analysis methods to be used; information describing the licensee's risk-informed evaluation process; information describing the licensee's proposed process for making risk-informed changes without prior NRC approval (if the licensee is seeking approval of such a process); and information describing non safety equipment to be credited for compliance with the ECCS acceptance criteria in § 50.46a(e). A licensee's initial change from its existing ECCS analysis need not be reviewed by the licensee under the provisions of § 50.59. Because the rule requires NRC review and approval of the initial license amendment application for compliance with the alternative § 50.46a requirements, there is no purpose served by also requiring licensees to perform a § 50.59 evaluation, because § 50.59 is a process to determine the need for prior NRC approval of a change to a facility or its procedures as described in the FSAR. After the § 50.46a evaluation models and initial ECCS LOCA analyses are established by approval of the license amendment implementing § 50.46a, subsequent changes to ECCS analyses would be controlled by the existing process in § 50.59 (which provides criteria for determining which changes are within the licensee's authority) and the requirements in § 50.46a(g) for reporting when changes to evaluation models and analysis methods (whether from correction of errors or changes) is significant.

The initial application may request one or more facility changes. The initial application may also include a request for NRC approval of a process for evaluating the acceptability of future changes enabled by § 50.46a using the provisions in paragraph (f)(1) of this section. If approval of a process for evaluating future changes is requested, the application must include the information described in § 50.46a(c)(1)(iv). Otherwise, this information would not need to be submitted in the initial application.

2. Subsequent Applications for Plant Changes Under § 50.46a

After NRC approval of a licensee's initial license amendment application addressing ECCS analyses and the risk-informed evaluation processes, licensees may submit individual license amendment applications for plant changes under § 50.90. These individual license amendment applications must contain:

- a. The information required by § 50.90;
- b. Information from the risk-informed evaluation demonstrating that the risk criteria, defense-in-depth criteria, safety margins, and performance monitoring criteria in §§ 50.46a(f)(2) and (f)(3) are met;
- c. Information demonstrating that the ECCS acceptance criteria in §§ 50.46a(e)(3) and (e)(4) are met; and
- d. Information demonstrating that the proposed change will not increase the LOCA frequency of the facility by an amount that would invalidate the applicability to the facility of the generic NUREG-1829 and NUREG-1903 reports.

After reviewing the individual plant change license amendment application, the NRC may approve the change if it complies with the above criteria and all other applicable NRC regulations, including requirements for plant physical security. The NRC would evaluate potential impacts of the proposed change on facility security to ensure that the change does not significantly reduce the "built-in capability" of the plant to resist security threats, thus ensuring that the change is not inimical to the common defense and security and provides adequate protection to public health and safety.

Licensees who have not submitted a request for NRC approval of a process for evaluating the acceptability of future changes enabled by § 50.46a using the provisions in paragraph (f)(1) of that section may do so at any time by submitting the information described in paragraph (c)(1)(iv).

J. Applicability to New Reactor Designs

As previously discussed under NRC Topic 1, the NRC has evaluated public comments and agrees with commenters who stated that there are no technical reasons which prevent the revised proposed § 50.46a regulations from being applied to new light water reactor designs that are similar in nature (with respect to design and expected LOCA pipe break frequency) to current operating reactors.

1. Similarity of New Reactor Designs to Existing Reactor Designs

There are several new LWR designs for which the NRC expects that the frequency of large LOCAs could be as low as it is at current LWRs. Thus, it could be appropriate to allow applicants to apply the § 50.46a requirements to these future designs. Accordingly, the revised proposed rule has been modified to apply to new LWR reactor designs; *i.e.* facilities other than those which are currently licensed to operate. Applicants for design certification or combined licenses, holders of combined licenses under 10 CFR part 52, or future licensees of operating light-water reactors who wish to apply § 50.46a must submit an analysis for NRC approval demonstrating why it would be appropriate to apply the alternative ECCS requirements and what the appropriate transition break size (TBS) would be in order for the new design to meet the intent of the § 50.46a rule.

In its analysis, the applicant, holder, or licensee must demonstrate that the proposed reactor facility is similar to reactors licensed before the effective date of the rule. In addressing similarity of the proposed design to reactors licensed before the effective date of rule, the applicant, holder, or licensee would need to address design, construction and fabrication, and operational factors that include, but are not limited to:

- (1) The similarity of the piping materials of construction and construction techniques for new reactors to those in the currently operating fleet;
- (2) The similarity of service conditions and operational programs (e.g., in-service inspection and testing, leak detection, quality assurance etc.) for new reactors to those for operating plants;
- (3) The similarity of piping design, e.g. pipe sizes and pipe configuration, for new reactors to those found in operating plants;
- (4) Adherence to existing regulatory requirements, regulatory guidance, and industry programs related to mitigation and control of age-related degradation (e.g., aging management, fatigue monitoring, water chemistry, stress corrosion cracking mitigation *etc.*); and
- (5) Any plant-specific attributes that may increase LOCA frequencies compared to the generic results in NUREG-1829 and NUREG-1903.

The analysis must also include a recommendation for an appropriate TBS and a justification that the recommended TBS is consistent with the technical basis for this proposed rule. For those new reactor designs that

employ design features that effectively increase the break size via opening of specially designed valves to rapidly depressurize the reactor coolant system during any size loss of coolant accident, justification of the relevance of a TBS would also be necessary. The methodology used to determine the proposed TBS should be described in the justification.

Based on information currently available, new reactor designs may have similar piping materials, similar service conditions and operational programs, similar piping designs, and similar mitigation and control of age-related degradation programs to those found in currently operating plants. Therefore, the TBS defined in the proposed rule for currently operating reactors could potentially be applicable to some new reactor designs.

In addition, after obtaining an operating or combined license for a plant with a currently-approved standard design, a licensee could adopt § 50.46a if the design is demonstrated to be similar to the designs of plants licensed before the effective date of the rule (by evaluating the criteria above) and the TBS proposed by the licensee is found acceptable by the NRC.

2. NRC Request for Public Comments on the Use of Large Release Frequency (LRF) as the Risk Acceptance Criteria Metric for New Reactors

Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk Informed Decisions on Plant Specific Changes to the Licensing Basis," was originally issued in July 1998. This RG provides guidance for a multitude of risk-informed applications and improves consistency in regulatory decisions in areas where the results of risk analyses are used to help justify regulatory action. The guide is the foundation for many other risk-informed programs (e.g., inservice testing, inservice inspection of piping) at the agency.

Regulatory Guide 1.174 describes five key principles of the risk-informed, integrated decision making process. In Principle 4—When proposed changes result in an increase in core damage frequency or risk, the increases should be small and consistent with the intent of the Commission's Safety Goal Policy Statement—the regulatory guide presents quantitative guidelines for acceptably small increases in CDF and LERF, as depicted in Figures 3 and 4 of the guide. The magnitude of acceptably small increases varies stepwise with the baseline CDF and LERF. A small increase up to 10^{-5} per reactor year for CDF and 10^{-6} per reactor year for LERF

are normally acceptable until the baseline risk increases to reference values of approximately 10^{-4} per reactor year and 10^{-5} per reactor year for CDF and LERF respectively. Plants with baseline CDF and LERF which exceed the reference values, or with baseline risks that are not known with precision, would normally be limited to very small risk increases of up to 10^{-6} per reactor year and 10^{-7} per reactor year for CDF and LERF, respectively. Before RG 1.174 was issued, the Commission's SRM dated June 26, 1990, prepared in response to SECY-90-016, "Evolutionary Light Water Reactor Certification Issues and their Relationships to Current Regulatory Requirements," established a goal for large release frequency (LRF) of less than 10^{-6} per reactor year for new reactor design certification and licensing. These goals are discussed further in Standard Review Plan (NUREG-0800) Chapter 19, and RG 1.206 "Combined License Applications for Nuclear Power Plants" Section C.I.19.

In light of this difference in the risk metrics used for currently operating reactors (LERF) and new reactors (LRF), the NRC is seeking public comments on whether LRF should be the metric of concern in lieu of LERF for new reactor applicants (or licensees) implementing the § 50.46a alternative ECCS requirements. Because the LRF goal for new reactors is a decade lower than the 10^{-5} per reactor year LERF reference value above which a facility would be limited to very small increases, should the definition of what constitutes "very small increase" and "minimal increase" for LRF (for new reactors) be a full decade lower than those defined for LERF (for existing reactors) or should the definition be based on *relative* change in LRF?

The NRC has previously sought stakeholder input on the issue of risk metrics for new light-water reactors. A memorandum dated February 12, 2009, from R. W. Borchardt, Executive Director for Operations, to the Commissioners, "Alternative Risk Metrics for New Light-Water Reactor Risk-Informed Applications" (Adams Accession No. ML090160008), provides a discussion of the issues. The white paper attached to that memorandum presents a full discussion of the issues and options for applying or modifying the current set of reactor risk metrics to new reactors. The paper discusses the issues posed by the lower risk estimates of new reactors in risk-informed applications, including changes to the licensing basis and the reactor oversight

process, and describes the advantages and disadvantages of each option.

On February 18, 2009, the NRC held a public meeting with stakeholders on the topic of risk metrics for new light-water reactors (see meeting summary; Adams Accession No. ML090570356). Additionally, both the NRC and industry representatives provided a briefing on the topic at the April 3, 2009, meeting of the ACRS.

As discussed in these documents, the NRC is considering several options regarding risk metrics for new reactor risk-informed applications. The options include applying the existing operating reactor acceptance guidelines to new reactors, using new guidelines and thresholds for new reactors, or postponing any significant change to the process and evaluating new reactors on a case-by-case basis for an indeterminate period. As described in the NEI paper, "Risk Metrics for Operating New Reactors" (ML090900674; March 27, 2009), NEI has expressed its preference for applying the existing operating reactor acceptance guidelines to new reactors (which is referred to as Option 1 in the NRC white paper).

As part of the public comment process for this revised proposed rule, public stakeholders are invited to comment on the use of any of the alternative risk metric approaches for determining compliance with the risk acceptance criteria in § 50.46a.

VI. Specific Topics Identified for Public Comment

The NRC seeks specific public comments on three topics. These issues were discussed previously in this document, but are summarized again here to assist commenters.

1. Although the revised proposed rule would permit licensees to make plant changes that result in very small risk increases, the NRC is requesting stakeholder comments on whether the rule should allow plant changes that increase risk at all. Instead of the risk acceptance criteria allowing very small risk increases, should the risk acceptance criteria in final rule require that the net effect of plant changes made under § 50.46a be risk neutral or risk beneficial? The NRC requests stakeholders to provide comments on the use of risk acceptance criteria that would not allow a cumulative increase in risk for plant changes made under § 50.46a. (See Section V.E.4.b of this document.)

2. Because of the difference in the risk acceptance criteria metrics used for currently operating reactors (LERF) and new reactors (LRF), the NRC is seeking public comments on whether LRF

should be the metric of concern in lieu of LERF for new reactor applicants (or licensees) implementing the § 50.46a alternative ECCS requirements. Because the LRF goal for new reactors is a decade lower than the 10^{-5} per reactor year LERF reference value above which a facility would be limited to very small increases, should the definition of what constitutes "very small increase" and "minimal increase" for LRF (for new reactors) be a full decade lower than those defined for LERF (for existing reactors) or should the definition be based on *relative* change in LRF? (See Section V.J of this document.)

3. In § 50.46a(e)(4)(i) of the revised proposed rule the NRC proposes coolable core geometry as a high level performance-based ECCS analysis acceptance criterion for beyond-TBS LOCAs. Applicants would be allowed to justify appropriate metrics to demonstrate coolable geometry or use the current metrics (2200 °F PCT and 17 percent MLO). However, the NRC acknowledges that it would be expensive and time-consuming for industry to develop the necessary experimental and analytical data to justify alternative acceptance criteria as a surrogate for demonstrating coolable geometry. Because of the difficulty in demonstrating alternative metrics, the NRC is requesting stakeholder comments on whether the final § 50.46a rule should retain the coolable geometry criterion for beyond-TBS breaks. Retaining coolable geometry would give licensees the option to demonstrate alternative coolable geometry metrics or use the current metric (2200 °F PCT and 17 percent MLO). If the NRC removed the coolable geometry criterion, the beyond-TBS acceptance criteria would be the same as the acceptance criteria for TBS and smaller breaks (2200 °F PCT and 17 percent MLO). The NRC will evaluate stakeholder comments on this question before deciding which beyond-TBS acceptance criteria to include in the final rule. (See Section V.D.2 of this document.)

VII. Petition for Rulemaking, PRM-50-75

In February 2002, the Nuclear Energy Institute submitted a petition for rulemaking (PRM-50-75) requesting the NRC to revise ECCS requirements by redefining the large break LOCA (ML020630082). Notice of that petition was published in the **Federal Register** for public comment on April 8, 2002 (67 FR 16654). The petition requested the NRC to amend § 50.46 and Appendices A and K of Part 50 to allow licensees to use as an alternative to the double-ended rupture of the largest pipe in the

RCS, a maximum LOCA break size of “up to and including an alternate maximum break size that is approved by the Director of the Office of Nuclear Reactor Regulation.” Seventeen sets of comments were received, mostly from the power reactor industry in favor of granting the petition. A few stakeholders were concerned about potential impacts on defense-in-depth or safety margins if significant changes were made to reactor designs based upon use of a smaller break size. The NRC considered the public comments, evaluated the petition, and published a notice in the **Federal Register** resolving the petition and closing the PRM-50-75 docket. (See 73 FR 66000; November 6, 2008.) The NRC concluded that the issue raised by the petitioner should be considered in the rulemaking process. Documents related to the resolution of PRM-50-75 are available at <http://www.regulations.gov> under docket ID: NRC-2002-0018. The NRC is addressing the issues raised by the petitioner and stakeholders in this rulemaking.

VIII. Section-by-Section Analysis of Changes

A. Section 50.34—Contents of Application; Technical Information

Paragraph (a)(4)(i) of this section would specify that § 50.46a contains alternative ECCS requirements that licensees could choose to apply to reactors whose construction permits were issued before the effective date of the rule. This section also states that applicants for construction permits for facilities which may be issued after the effective date of the rule could also choose to apply the § 50.46a alternative ECCS requirements to preliminary analysis and evaluation of the design if the applicant demonstrates that the facility is similar to the designs of facilities licensed before the effective date of the rule.

Paragraph (a)(4)(ii) would specify that applicants for construction permits for facilities which may be issued after the effective date of the rule who have not demonstrated that the facility is similar to the designs of facilities licensed before the effective date of the rule may not apply the § 50.46a alternative ECCS requirements in the preliminary analysis and evaluation of the design.

Paragraph (b)(4)(i) of this section would specify that applicants for operating licenses for facilities which may be issued before the effective date of the rule could choose to apply the § 50.46a alternative ECCS requirements in the final analysis and evaluation of the design. This section also states that applicants for operating licenses for

facilities which may be issued after the effective date of the rule could also choose to apply the § 50.46a alternative ECCS requirements to final analysis and evaluation of the design if the applicant demonstrates that the facility is similar to the designs of facilities licensed before the effective date of the rule.

Paragraph (b)(4)(ii) would specify that applicants for operating licenses for facilities which may be issued after the effective date of the rule who have not demonstrated that the design is similar to the designs of facilities licensed before the effective date of the rule may not apply the § 50.46a alternative ECCS requirements in the final analysis and evaluation of the design.

B. Section 50.46—Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants

Paragraph (a) of this section would specify that emergency core cooling systems of BWRs and PWRs licensed before the effective date of the rule must be designed under § 50.46 or § 50.46a. Paragraph (a) would also specify that emergency core cooling systems of BWRs and PWRs licensed after the effective date of the rule could also choose to comply with the § 50.46a alternative ECCS requirements if the applicant or licensee demonstrates that the design is similar to the designs of LWR facilities licensed before the effective date of the rule.

C. Existing Section 50.46a—Acceptance Criteria for Reactor Coolant System Venting Systems, Is Administratively Redesignated as Section 50.46b

D. Section 50.46a—Alternative Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Reactors

Paragraph (a) of this section would provide definitions for terms used in other parts of this section. The definition of *evaluation model* in § 50.46a(a)(2) is the same as in § 50.46. The definition of *loss-of-coolant accidents* in § 50.46a(a)(3) is based on the existing definition in § 50.46 but has been modified to indicate that pipe breaks larger than the TBS are beyond design-basis accidents.

The new definitions are:

(1) *Changes enabled by this section*, which means changes to the facility, technical specifications, or procedures that comply with § 50.46a but do not comply with § 50.46;

(4) *Operating configuration*, which is used in § 50.46a(d)(5) to specify plant equipment availability conditions that must be analyzed for conformance with acceptance criteria; and

(5) *Transition break size (TBS)*, which is used to distinguish between requirements applicable to pipe breaks at or below this size from those applicable to pipe breaks above this size.

Paragraph (b) would provide the applicability and scope of the requirements of this section. Proposed § 50.46a would apply to currently licensed light-water nuclear power reactors (licensed before the effective date of the rule). Proposed § 50.46a would also apply to LWRs licensed after the effective date of the rule which have been demonstrated to be similar to the designs of LWR facilities licensed before the effective date of the rule. Its requirements would be in addition to any other requirements applicable to ECCS set forth in 10 CFR 50, with the exception of § 50.46.

Paragraph (c)(1) would specify the contents of initial licensee applications for implementing the alternative ECCS requirements in § 50.46a. Paragraph (c)(1)(i) would require that an application contain a written evaluation demonstrating applicability of the results in NUREG-1829 and NUREG-1903 to the licensee's facility. However, if the facility differs significantly from the facilities analyzed in NUREG-1903, the application must contain a plant specific analysis demonstrating that the risk of seismically-induced LOCAs larger than the TBS is comparable to or less than the seismically-induced LOCA risk associated with the NUREG-1903 results. Paragraph (c)(1)(ii) would require identification of the NRC-approved analysis methods to be used to comply with the ECCS analysis requirements and acceptance criteria in paragraph (e). Paragraph (c)(1)(iii) would require a description of the risk-informed evaluation process used to determine whether proposed changes to the facility meet the requirements for risk-informed evaluations in paragraph (f). Paragraph (c)(1)(iv) would require licensees who wish to make changes enabled by § 50.46a without prior NRC approval to submit a description of the risk-informed evaluation process and the PRA or non-PRA risk-assessment methods to be used to determine the acceptability of such changes. The licensee's process must be capable of demonstrating that all of the acceptance criteria in paragraph (f) will be met for each change. Paragraph (c)(1)(v) would require licensees who wish to adopt the alternative ECCS requirements in § 50.46a to submit a description of all non safety equipment to be relied on to mitigate the consequences of a LOCA larger than the TBS.

Paragraph (c)(2) states that applicants for a construction permit, operating license, design approval, design certification, manufacturing license, or combined license seeking to implement the requirements of this section shall, in addition to the information that would be required by paragraph (c)(1) of this section, submit an analysis demonstrating why the proposed reactor design is similar to the designs of currently operating reactors.

Paragraph (c)(3) specifies the acceptance criteria for approval of applications to comply with § 50.46a. Paragraph (c)(3)(i) would require the evaluation submitted under paragraph (c)(1)(i) to demonstrate that the NUREG-1829 results are applicable to the facility, and the risk of seismically-induced LOCAs larger than the TBS is comparable to or less than the seismically-induced LOCA risk associated with the NUREG-1903 results. Paragraph (c)(3)(ii) would require that the method(s) for demonstrating compliance with the ECCS acceptance criteria in paragraphs (e)(3) and (e)(4) of this section meet the requirements in paragraphs (e)(1) and (e)(2). Paragraph (c)(3)(iii) would require that the risk-informed evaluation process the licensee proposes to use for making changes enabled by this section be adequate for determining whether the acceptance criteria in paragraph (f) of this section have been met. Paragraph (c)(3)(iv) would require that all non safety equipment credited for demonstrating compliance with the ECCS acceptance criteria is identified and listed as such in plant Technical Specifications. Paragraph (c)(3)(v) would require that the reactor design for all applicants other than those holding operating licenses issued before the effective date of the rule be similar to the designs of current operating reactors and the applicant's proposed TBS is consistent with the technical basis for Section 50.46a.

Paragraph (d) specifies the requirements with which licensees would be required to comply during facility operation after implementing § 50.46a.

Paragraph (d)(1) would require that the ECCS models be maintained to comply with the ECCS acceptance criteria in paragraphs (e)(1) and (e)(2) of this section.

Paragraph (d)(2) would require that the licensee maintain leak detection equipment available at the facility and identify, monitor, and quantify leakage to reduce the likelihood of a LOCA larger than the TBS.

Paragraph (d)(3) would require that changes to the facility, technical

specifications, or procedures enabled by § 50.46a be evaluated by a risk-informed evaluation process which demonstrates that acceptance criteria in § 50.46a(f) are met.

Paragraph (d)(4), would require licensees to maintain and upgrade its PRA analyses no less often than once every 2 refueling outages. Maintaining a PRA involves the update of PRA models to reflect facility changes such as plant modifications, procedure changes, or changes in plant performance data. Upgrading a PRA involves incorporating into the PRA models a new methodology or significant changes in scope or capability that impact the significant accident sequences. Risk assessments would be required to continue to meet the quality requirements in §§ 50.46a(f)(4) and (f)(5). Licensees would be required to take action to ensure that facility design and operation continue to be consistent with the risk assessment assumptions used to meet the acceptance criteria in §§ 50.46a(f)(2) or (f)(3). Any necessary changes to the facility caused by maintaining or upgrading risk assessments would not be deemed backfitting.

Paragraph (d)(5) would require licensees to control plant operation to ensure that for LOCAs larger than the TBS, operation in a plant operating configuration not demonstrated to meet the acceptance criteria in paragraph (e)(4) would not exceed a total of fourteen days in any 12 month period.

Paragraph (d)(6) would require licensees to perform an evaluation to determine the effect of all planned facility changes and would prohibit licensees from implementing any facility change that would invalidate the evaluation performed pursuant to § 50.46a(c)(1)(i) demonstrating the applicability to the licensee's facility of the generic results in NUREG-1829 and NUREG-1903.

Paragraph (e) would provide the ECCS evaluation model requirements, analysis requirements, and acceptance criteria for the two LOCA break size regions.

Paragraph (e)(1) would specify model and analysis requirements for breaks smaller than or equal to the TBS. These requirements are the same as the current requirements for LOCA analysis models in existing § 50.46.

Paragraph (e)(2) would specify model and analysis requirements for breaks larger than the TBS. Methods for evaluating ECCS cooling performance for breaks larger than the TBS must be approved by the NRC. However the analysis for breaks larger than the TBS may be performed using more realistic analysis inputs and assumptions than

those required for breaks smaller than or equal to the TBS. Analysis of breaks larger than the TBS need not assume a coincident single failure of mitigation equipment or loss of offsite power. Non-safety grade equipment may also be credited in analyses of breaks larger than the TBS provided that onsite power can be supplied to that equipment in a reasonable time in the event offsite power is lost.

Paragraph (e)(3) would provide ECCS acceptance criteria for LOCAs smaller than or equal to the TBS. The criteria specified would be the same as the current requirements in § 50.46(b).

Paragraph (e)(4) would provide ECCS acceptance criteria for LOCAs larger than the TBS. These acceptance criteria would be based on maintaining a coolable geometry in the core and demonstrating long term cooling capability and are less prescriptive than the criteria presently used for LOCA analysis.

Paragraph (e)(5) would provide that the Director of the Office of Nuclear Reactor Regulation may impose restrictions on reactor operation if ECCS requirements are not met. This paragraph would be added to be consistent with existing § 50.46 which also contains this requirement.

Paragraph (f) would provide requirements for implementing changes to the facility, technical specifications, and procedures under § 50.46a.

Paragraph (f)(1) would specify that licensees may make changes without NRC approval if:

(i) The changes are permitted under § 50.59;

(ii) A risk-informed evaluation process has been submitted by the licensee and reviewed and approved by the NRC under § 50.46a(c)(1)(iv); and

(iii) The change does not invalidate the evaluation performed under § 50.46a(c)(1)(i) of the applicability of the results in NUREG-1829 and NUREG-1903 to the licensee's facility.

Paragraph (f)(2) would state that for plant changes not permitted under paragraph (f)(1), licensees must submit an application for a license amendment under § 50.90. The application must contain:

(i) The information required under § 50.90;

(ii) For reactors licensed before the effective date of the rule, information from the risk-informed evaluation demonstrating that the total increases in core damage frequency and large early release frequency are very small and the overall risk remains small, and that the risk-informed change criteria in paragraph (f)(3) are met;

(iii) For all applicants other than those holding operating licenses issued before the effective date of the rule, information from the risk-informed evaluation demonstrating that the total increases in core damage frequency and large release frequency are very small, the overall risk remains small, and the criteria in paragraph (f)(3) of this section are met;

(iv) An evaluation of the cumulative effect of previous changes that have increased risk but have met the acceptance criteria. If more than one plant change is combined, including plant changes not enabled by § 50.46a, into a group for the purposes of evaluating acceptable risk increases, the evaluation of each individual change shall be performed along with the evaluation of combined changes;

(v) Information demonstrating that the ECCS analysis acceptance criteria in paragraphs (e)(3) and (e)(4) are met; and

(vi) Information demonstrating that the proposed change will not increase the LOCA frequency of the facility (including the frequency of seismically-induced LOCAs) by an amount that would invalidate the applicability to the facility of the generic seismic studies (NUREG-1829, "Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process", March 2008 and NUREG-1903, "Seismic Considerations for the Transition Break Size", February 2008) that support the technical basis for § 50.46a.

Paragraph (f)(3) would specify requirements for all plant changes. Paragraph (f)(3)(i) would require that defense-in-depth is maintained. Paragraph (f)(3)(ii) would require that adequate safety margins are maintained. Paragraph (f)(3)(iii) would require that adequate performance-measurement programs will be implemented. Paragraph (f)(3)(iii) provides criteria on the specific attributes required to meet the performance measurement requirements.

Paragraph (f)(2) does not require use of PRA in assessing risks associated with the proposed changes. To the extent that PRA is used, paragraph (f)(4) of the revised proposed rule would identify specific technical requirements for the risk-informed assessment.

(i) Address initiating events from sources both internal and external to the plant and for all modes of operation, including low power and shutdown modes, that would affect the regulatory decision in a substantial manner;

(ii) Reasonably represent the current configuration and operating practices at the plant;

(iii) Have sufficient technical adequacy (including consideration of

uncertainty) and level of detail to provide confidence that the total risk estimate and the change in total risk estimate adequately reflect the plant and the effect of the proposed change on risk; and

(iv) Be determined, through peer review, to meet industry standards for PRA quality that have been endorsed by NRC.

Paragraph (f)(5) would require that to the extent that risk assessment methods other than PRA are used to develop quantitative or qualitative estimates of changes to risk in the risk-informed evaluation, an integrated, systematic process must be used. All aspects of the analyses must reasonably reflect the current plant configuration and operating practices, and applicable plant and industry operating experience.

Paragraph (g) would provide the requirements for making reports to the NRC.

Paragraph (g)(1) would require reporting of all errors or changes to ECCS analyses at least annually as specified in § 50.4. For significant changes or errors, licensees would be required to report within 30 days including a schedule for reanalysis or other action as needed to show compliance with ECCS requirements. Under paragraph (g)(1)(i), for LOCAs involving pipe breaks equal to or smaller than the TBS, significant changes would be defined as a change in peak cladding temperature of greater than 50 °F. Under paragraph (g)(1)(ii), for LOCAs involving pipe breaks larger than the TBS, a significant change would be defined as one resulting in a significant reduction in the capability to meet the ECCS acceptance criteria in § 50.46a(e)(4).

Paragraph (g)(2) would set forth reporting requirements with respect to the PRA maintenance and upgrading that would be required by § 50.46a(d)(4). When maintaining and upgrading the PRA, § 50.46a(g)(2) would require the licensee to report changes to the NRC within 60 days if the acceptance criteria in §§ 50.46a(f)(2)(ii) or (f)(2)(iii) (for new reactors) are exceeded. This provision would also require the report to include a schedule for implementation of any corrective actions necessary to bring plant operation or design back into compliance with the acceptance criteria.

Paragraph (g)(3) would contain reporting requirements for plant changes made under § 50.46a(f)(1) involving minimal risk. A short description of these changes would be reported every 24 months.

Paragraph (h) would provide documentation requirements for plant

changes. Following implementation of § 50.46a, licensees would be required to maintain records sufficient to demonstrate compliance with the requirements in § 50.46a and § 50.71.

Paragraphs (i) through (l) would be reserved for future use.

Paragraph (m) would provide that changes made by the NRC to the TBS and all changes required to return a facility to compliance with the acceptance criteria after a change in the TBS are not deemed to be backfitting under 10 CFR 50.109.

E. Section 50.109—Backfitting

This section would be modified to provide that changes made by the NRC to the TBS and changes made by licensees to continue to comply with § 50.46a are not deemed to be backfitting under 10 CFR 50.109.

F. Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

Five of the general design criteria contained in Appendix A would be modified to remove the requirement to assume a single failure and a loss-of-offsite power in the systems subject to these criteria for pipe breaks larger than the TBS up to and including the DEGB of the largest RCS pipe for those plants implementing § 50.46a. The specific criteria are: GDC 17, *Electrical power systems*, GDC 35, *Emergency core cooling*, GDC 38, *Containment heat removal*, GDC 41, *Containment atmosphere cleanup*, and GDC 44, *Cooling water systems*. General Design Criterion 50, *Containment design basis*, would also be modified to specify that for plants under § 50.46a, leak tight containment capability should be maintained for "realistically" calculated temperatures and pressures for LOCAs larger than the TBS.

G. Section 52.47—Contents of Applications; Technical Information

Paragraph (a)(4) of this section would be amended to specify the technical information to be submitted in an application for a standard design certification for a nuclear power facility filed separately from the filing of an application for a construction permit or combined license for such a facility.

New paragraph (a)(4)(i) would specify that analyses of emergency core cooling systems and the need for high point vents for standard designs certified after the effective date of the § 50.46a rule must be performed under the requirements of either § 50.46 or § 50.46a (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the standard design is demonstrated to be similar to the

designs of reactors licensed before the effective date of § 50.46a.

New paragraph (a)(4)(ii) would specify that analyses of emergency core cooling systems and the need for high point vents for standard designs certified after the effective date of the § 50.46a rule must be performed under the requirements of § 50.46 (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the standard design is not demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

H. Section 52.79—Contents of Applications; Technical Information in Final Safety Analysis Report

In this section paragraph (a)(5) would be amended to specify the technical information to be submitted in the final safety analysis report for an application for a combined license for a nuclear power facility.

New paragraph (a)(5)(i) would specify that analyses of emergency core cooling systems and the need for high point vents for plants licensed after the effective date of the § 50.46a rule must be performed under the requirements of either § 50.46 or § 50.46a (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

New paragraph (a)(5)(ii) would specify that analyses of emergency core cooling systems and the need for high point vents for plants licensed after the effective date of the § 50.46a rule must be performed under the requirements of § 50.46 (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is not demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

I. Section 52.137—Contents of Applications; Technical Information

Paragraph (a)(4) of this section would be amended to specify the technical information to be submitted in an application for approval of a standard design for a nuclear power facility.

New paragraph (a)(4)(i) would specify that analyses of emergency core cooling systems and the need for high point vents for designs approved after the effective date of the § 50.46a rule must be performed under the requirements of either § 50.46 or § 50.46a (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

New paragraph (a)(4)(ii) would specify that analyses of emergency core cooling systems and the need for high point vents for designs approved after the effective date of the § 50.46a rule must be performed under the requirements of § 50.46 (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is not demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

J. Section 52.157—Contents of Applications; Technical Information in Final Safety Analysis Report

Paragraph (f)(1) of this section would be amended to specify the technical information to be submitted in the final safety analysis report for an application for issuance of a license authorizing manufacture of nuclear power reactors to be installed at sites not identified in the manufacturing license application.

New paragraph (f)(1)(i) would specify that analyses of emergency core cooling systems and the need for high point vents for a license authorizing manufacture of nuclear power reactors issued after the effective date of the § 50.46a rule must be performed under the requirements of either § 50.46 or § 50.46a (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

New paragraph (f)(1)(ii) would specify that analyses of emergency core cooling systems and the need for high point vents for a license authorizing manufacture of nuclear power reactors issued after the effective date of the § 50.46a rule must be performed under the requirements of § 50.46 (for ECCS performance) and § 50.46b (for reactor coolant system high point vents) if the design is not demonstrated to be similar to the designs of reactors licensed before the effective date of § 50.46a.

IX. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), as amended, the NRC is issuing the proposed rule to amend § 50.46, add § 50.46a, redesignate existing § 50.46a as § 50.46b and amend §§ 52.47, 52.79, 52.137, and 52.157 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties, as they apply to regulations in Part 50, are discussed in § 50.111 and as they apply to the regulations in Part 52, are discussed in § 52.303.

X. Compatibility of Agreement State Regulations

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 “NRC.” 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 AEA or the provisions of Title 10 of the Code of Federal Regulations, and 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.

XI. Availability of Documents

Comments and other publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC’s Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC’s Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to pdr@nrc.gov. 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 Public File Area O–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Federal eRulemaking Portal. Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC–2004–0006. Address questions about NRC dockets to Carol Gallagher (301) 415–5905; e-mail Carol.Gallagher@nrc.gov.

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	Web	Err (Adams)
Initial Proposed Rule (70 FR 67598)	X	NRC-2004-0006	ML091060434
NRC Report—Seismic Considerations for the Transition Break Size (December 2006)	X	NRC-2004-0006	ML053470439
Letter from Graham B. Wallis (ACRS) to Dale E. Klein, “Draft Final Rule To Risk-Inform 10 CFR 50.46, ‘Acceptance Criteria For Emergency Core Cooling Systems For Light-Water Nuclear Power Reactors’” (November 16, 2006).	X	X	ML063190465
SECY-07-0082—Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements; 10 CFR 50.46a “Alternative Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,” (May 16, 2007).	X	X	ML070180692
Commission SRM on SECY-07-0082 (August 10, 2007)	X	X	ML072220595
Memorandum from Luis A. Reyes to NRC Commissioners, “Plans And Schedule For The Rulemaking On Risk-Informed Changes To Loss-of-Coolant Accident Technical Requirements (April 1, 2008).	X	X	ML080370355
NUREG-1488—Revised Livermore Seismic Hazard Estimates for Sixty-Nine Nuclear Power Plant Sites East of the Rocky Mountains (April 1994).	X	X	ML052640591
NUREG-1829—Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process (Draft Report; June 2005).	X	X	ML051520574
NUREG-1829—Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process (Final Report; March 2008).	X	X	ML082250436
NUREG-1903—Seismic Considerations for the Transition Break Size (February 2008)	X	X	ML080880140
NRC White Paper—Plant-Specific Applicability of 10 CFR 50.46a Technical Basis (February 2009).	X	X	ML090350757
Memorandum from Arthur T. Howell to William F. Kane, “Degradation of the Davis-Besse Nuclear Power Station Reactor Pressure Vessel Head Lessons-Learned Report”; (September 30, 2002).	X	X	ML022740211
Regulatory Analysis	X	X	ML091050748

XII. Plain Language

The Presidential memorandum dated June 1, 1998, entitled “Plain Language in Government Writing” directed that the Government’s writing be in plain 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 reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

XIII. 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. In this proposed rule, the NRC proposes to use the following Government-unique standard: 10 CFR 50.46a. The NRC notes the ongoing development of voluntary consensus standards on PRAs, such as the ASME/ANS RA-Sa-2009 consensus standard on Probabilistic Risk Assessment for Nuclear Power Plant Applications. The Government standards would allow the use of voluntary consensus standards, but would not require their use. The NRC does not believe that these other standards are sufficient to specify the necessary requirements for licensees

who wish to modify plant ECCS analysis methods and nuclear power reactor designs based on the results of probabilistic risk analysis. The NRC is not aware of any voluntary consensus standard addressing risk-informed ECCS design and consequent changes in a light-water power reactor facility, technical specifications, or procedures that could be used instead of the proposed Government-unique standard. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain how the voluntary consensus standard is comparable and why it should be used instead of the proposed Government-unique standard.

XIV. Finding of No Significant Environmental Impact: Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in Subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

This action stems from the NRC’s ongoing efforts to risk-inform its regulations. If adopted, the proposed

rule would establish a voluntary alternative set of risk-informed requirements for emergency core cooling systems. The alternative requirements are less stringent in the area of large break loss-of-coolant accidents (LOCAs). Using the alternative ECCS requirements will provide some licensees with opportunities to change various aspects of plant design to increase operational flexibility, increase power, or decrease costs. Licensee actions taken under the proposed rule could either decrease the probability of an accident or increase the probability of an accident by a very small amount. Mitigation of LOCAs of all sizes would still be required but with less redundancy and margin for the larger, low probability breaks. Increases in risk, if any, would be required to be very small so that adequate assurance of public health and safety is maintained. When considered together, the net effect of the licensee actions is expected to have an insignificant effect on accident probability.

Thus, the proposed action would not significantly increase the probability or consequences of an accident, when considered in a risk-informed manner. No changes would be made in the types or quantities of radiological effluents that may be released offsite, and there is no significant increase in public radiation exposure because there is no change to facility operations that could create a new or significantly affect a

previously analyzed accident or release path.

With regard to non-radiological impacts, no changes would be made to non-radiological plant effluents and there would be no changes in activities that would adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative would be the no action alternative. The no action alternative, at worst, would result in no changes to current levels of safety, risk, or environmental impact. The no action alternative would also prevent licensees from making certain plant modifications that could be implemented under the proposed rule that could increase plant safety, increase operational flexibility, or decrease costs. The no action alternative would also maintain existing regulatory burdens for which there could be little or no safety, risk, or environmental benefits.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, public stakeholders should note that the NRC is seeking public participation on this assessment. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading of this document.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XV. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements contained in 10 CFR part 50 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements have been submitted to the Office of Management and Budget (OMB) for approval. Existing requirements were approved by the Office of Management and Budget, control number 3150-0011.

Type of submission: Revision.

The title of the information collection: 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities.

The form number if applicable: Not applicable.

How often the collection is required: Annually.

Who will be required or asked to report: Licensees authorized to operate a nuclear power reactor or applicants for standard design certifications, combined licenses, standard design approvals or manufacturing licenses who have been

approved to implement the risk-informed alternative requirements in 10 CFR 50.46a for analyzing the performance of emergency core cooling systems during loss-of-coolant accidents.

An estimate of the number of annual responses: 12.

The estimated number of annual respondents: 6.

An estimate of the total number of hours needed annually to complete the requirement or request: 53,388 hours total, including 48,000 hours for reporting (an average of 8,000 hours per respondent) + 5,388 hours recordkeeping (an average of 898 hours per recordkeeper).

Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to permit applicants for and/or holders of power reactor operating licenses, standard design certifications, combined licenses, standard design approvals or manufacturing licenses to choose to implement a risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). In addition, the proposed rule would establish procedures and criteria for making changes in plant design and procedures based upon the results of the new analyses of ECCS performance during LOCAs. A licensee or applicant choosing to use the provisions of Section 50.46a would be required to submit a license amendment request with the required information, using the existing processes in Section 50.34 and Section 50.90.

The U.S. Nuclear Regulatory Commission 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 proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden 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?

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-1 F21, 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.html> 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 September 9, 2009 to the Records and FOIA/Privacy Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFCOLLECTS.Resource@NRC.gov and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0011), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collection may also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>, docket # NRC-2004-0006. 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. You may also e-mail comments to [Christine J. Kymn@omb.eop.gov](mailto:Christine_J_Kymn@omb.eop.gov) or comment by telephone at (202) 395-4638.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XVI. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section X of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading of this document.

XVII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. 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 (10 CFR 2.810).

XVIII. Backfit Analysis

The NRC has determined that the proposed rule generally does not constitute backfitting as defined in the backfit rule, 10 CFR 50.109(a)(1), and that three provisions of the proposed rule effectively excluding certain actions from the purview of the backfit rule, *viz.*, § 50.109(b)(2); § 50.46a(d)(4), and § 50.46a(m), are appropriate. The basis for each of these determinations follows.

The NRC has determined that the proposed rule does not constitute backfitting because it provides a voluntary alternative to the existing requirements in 10 CFR 50.46 for evaluating the performance of an ECCS for light-water nuclear power plants. A licensee may decide to either comply with the requirements of § 50.46a, or to continue to comply with the existing licensing basis of their plant with respect to ECCS analyses. Therefore, the backfit rule does not require the preparation of a backfit analysis for the proposed rule.

As discussed in Section V.B of this document, the NRC may undertake future rulemaking to revise the TBS based upon re-evaluations of LOCA frequencies occurring after the effective date of a final rule. A proposed amendment to the backfit rule, § 50.109(b)(2), would provide that future changes to the TBS would not be subject to the backfit rule. The NRC has determined that there is no statutory bar to the adoption of such a provision. The NRC also believes that the proposed exclusion of such rulemakings from the backfit rule is appropriate. The NRC intends to revise the TBS in § 50.46a rarely and only if necessary based upon public health and safety and/or common defense and security considerations. The NRC also does not regard the proposed exclusion as allowing the NRC to adopt cost-unjustified changes to the TBS. The NRC prepares a regulatory analysis for each substantive regulatory action which identifies the regulatory objectives of the proposed action, and evaluates the costs and benefits of proposed alternatives for achieving those regulatory objectives. The NRC has also adopted guidelines governing treatment of individual requirements in a regulatory analysis (69 FR 29187; May 21, 2004). The NRC believes that a regulatory analysis performed in accordance with these guidelines will be effective in identifying unjustified regulatory proposals. In addition, this revised proposed rulemaking as applied to licensees who have not yet

transferred to § 50.46a would not constitute backfitting for those licensees, inasmuch as the backfit rule does not protect a future applicant who has no reasonable expectation that requirements will remain static. The policies underlying the backfit rule apply only to licensees who have already received regulatory approval. Accordingly, the NRC concludes that the proposed exclusion in § 50.109(b)(2) of future changes to the TBS from the requirements of the backfit rule is appropriate.

As discussed in Section V.E of this document, § 50.46a(d)(4) would require that a PRA used to demonstrate compliance with the risk acceptance criteria in § 50.46a(f)(1) or (f)(2) be periodically re-evaluated and updated, and that the licensee implement changes to the facility and procedures as necessary to ensure that the acceptance criteria continue to be met. To ensure that such a re-evaluation and updating of the PRA and any necessary changes to a facility and its procedures under § 50.46a(d)(4) are not considered backfitting, § 50.46a(d)(4) would provide that such a re-evaluation, updating, and changes are not deemed to be backfitting. The NRC believes that this exclusion from the backfit rule is appropriate, inasmuch as application of the backfit rule in this context would effectively favor increases in risk. This is because most facility and procedure changes involve an up-front cost to implement a change which must be recovered over the remaining operating life of the facility in order to be considered cost-effective. For example, assume that after a change is implemented, subsequent PRA analyses suggest that the change should be “rescinded” (either the hardware is restored to the original configuration or the new configuration is not credited in design bases analyses) in order to maintain the assumed risk level. The cost/benefit determination of the second, “restoring” change must address the unrecovered cost of the first change and the cost of the second, “restoring” change. In most cases, application of cost/benefit analyses in evaluating the second, “restoring” change would skew the decision-making in favor of accepting the existing plant with the higher risk. Accumulation of these incremental increases in risk does not appear to be an appropriate regulatory approach. Accordingly, the NRC concludes that the backfitting exclusion in § 50.46a(d)(4) is appropriate.

Section 50.46a(m) would provide that if the NRC changes the TBS specified in § 50.46a, licensees who have evaluated

their ECCS under § 50.46a shall undertake additional actions to ensure that the relevant acceptance criteria for ECCS performance are met with the new TBSs, and that these licensee actions are not to be considered backfitting. Consequently, the NRC may require licensees to take action under § 50.46a(m) without consideration of the backfit rule. The NRC has determined that there is no statutory bar to the adoption of this provision, and that the proposed provision represents a justified departure from the principles underlying the backfit rule. First, the NRC’s decision on this matter recognizes that any future rulemaking to alter the TBS will require preparation of a regulatory analysis. As discussed, the regulatory analysis will ordinarily include a cost/benefit analysis addressing whether the costs of the TBS redefinition are justified in view of the benefits attributable to the redefinition. Second, the licensee has substantial flexibility under the proposed rule to determine the actions (reanalysis, procedure and operational changes, design-related changes, or a combination thereof) necessary to demonstrate compliance with the relevant ECCS acceptance criteria. The performance-based approach of the revised proposed rule lends substantial flexibility to the licensee and may tend to reduce the burden associated with changes in the TBS. Accordingly, the NRC concludes that the backfitting exclusion in § 50.46a(m) is appropriate.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

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; and 5 U.S.C. 553; the NRC is proposing

to adopt the following amendments to 10 CFR parts 50 and 52.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.34, paragraphs (a)(4) and (b)(4) are revised to read as follows:

§ 50.34 Contents of application; technical information.

(a) * * *

(4) A preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

(i) Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed under the requirements of either § 50.46 or § 50.46a, and § 50.46b for facilities whose operating licenses

were issued after December 28, 1974, but before [EFFECTIVE DATE OF RULE], and for facilities for which construction permits may be issued after [EFFECTIVE DATE OF RULE] and are demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE].

(ii) Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed under the requirements of § 50.46 and § 50.46b for facilities for which construction permits may be issued after [EFFECTIVE DATE OF RULE] and are not demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE].

* * * * *

(b) * * *

(4) A final analysis and evaluation of the design and performance of structures, systems, and components with the objective stated in paragraph (a)(4) of this section and taking into account any pertinent information developed since the submittal of the preliminary safety analysis report.

(i) Analysis and evaluation of ECCS cooling performance following postulated LOCAs must be performed under the requirements of either § 50.46 or § 50.46a, and § 50.46b for facilities whose operating licenses were issued after December 28, 1974, but before [EFFECTIVE DATE OF RULE], and for facilities whose operating licenses are issued after [EFFECTIVE DATE OF RULE] and are demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE].

(ii) Analysis and evaluation of ECCS cooling performance following postulated LOCAs must be performed under the requirements of §§ 50.46 and 50.46b for facilities whose operating licenses are issued after [EFFECTIVE DATE OF RULE] and are not demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE].

* * * * *

3. In § 50.46, paragraph (a) is amended by adding an introductory paragraph and revising paragraph (a)(1)(i) to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power plants.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with

uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS). The ECCS system must be designed under the requirements of this section or § 50.46a for facilities whose operating licenses were issued before [EFFECTIVE DATE OF RULE]; for facilities whose operating licenses, combined licenses under part 52 of this chapter, or manufacturing licenses under part 52 of this chapter are issued after [EFFECTIVE DATE OF RULE] and are demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE]; and for design approvals and design certifications under part 52 of this chapter issued after [EFFECTIVE DATE OF RULE] that are demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE]. The ECCS system must be designed under the requirements of this section for facilities whose operating licenses, combined licenses under part 52 of this chapter, or manufacturing licenses under part 52 of this chapter are issued after [EFFECTIVE DATE OF RULE] and are not demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE]; and for design approvals and design certifications under part 52 of this chapter that are not demonstrated under § 50.46a(c)(2) to have designs that are similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE].

(1)(i) The ECCS system must be designed so that its calculated cooling performance following postulated LOCAs conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a LOCA. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for,

so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II Required Documentation, sets forth the documentation requirements for each evaluation model. This section does not apply to a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

4. Section 50.46a is redesignated as § 50.46b, and a new § 50.46a is added to read as follows:

§ 50.46a Alternative acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a) *Definitions.* For the purposes of this section:

(1) *Changes enabled by this section* means changes to the facility, technical specifications, and procedures that satisfy the alternative ECCS analysis requirements under this section but do not satisfy the ECCS requirements under 10 CFR 50.46.

(2) *Evaluation model* means the calculational framework for evaluating the behavior of the reactor system during a postulated design-basis loss-of-coolant accident (LOCA). It includes one or more computer programs and all other information necessary for application of the calculational framework to a specific LOCA, such as mathematical models used, assumptions included in the programs, procedure for treating the program input and output information, specification of those portions of analysis not included in computer programs, values of parameters, and all other information necessary to specify the calculational procedure.

(3) *Loss-of-coolant accidents (LOCAs)* means the hypothetical accidents that would result from the loss of reactor coolant, at a rate in excess of the capability of the reactor coolant makeup system, from breaks in pipes in the reactor coolant pressure boundary up to and including a break equivalent in size to the double-ended rupture of the largest pipe in the reactor coolant system. LOCAs involving breaks at or below the transition break size (TBS) are design-basis accidents. LOCAs involving breaks larger than the TBS are beyond design-basis accidents.

(4) *Operating configuration* means those plant characteristics, such as power level, equipment unavailability (including unavailability caused by corrective and preventive maintenance), and equipment capability that affect plant response to a LOCA.

(5) Transition break size (TBS) for reactors licensed before [EFFECTIVE DATE OF RULE] is a break area equal to the cross-sectional flow area of the inside diameter of the largest piping attached to the reactor coolant system for a pressurized water reactor, or the larger of the feedwater line inside containment or the residual heat removal line inside containment for a boiling water reactor. For reactors licensed after [EFFECTIVE DATE OF RULE], the TBS will be determined on a plant-specific basis.

(b) *Applicability and scope.*

(1) The requirements of this section may be applied to each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding whose operating license was issued prior to [EFFECTIVE DATE OF RULE]; to each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding whose operating license, combined license under part 52 of this chapter or manufacturing license under part 52 of this chapter is issued after [EFFECTIVE DATE OF RULE] and whose design is demonstrated under § 50.46a(c)(2) to be similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE]; and to each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding whose design approval or design certification under part 52 of this chapter is demonstrated under § 50.46a(c)(2) to be similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE]. The requirements of this section do not apply to a reactor for which the certification required under § 50.82(a)(1) has been submitted.

(2) The requirements of this section are in addition to any other requirements applicable to ECCS set forth in this part, with the exception of § 50.46. The criteria set forth in paragraphs (e)(3) and (e)(4) of this section, with cooling performance calculated in accordance with an acceptable evaluation model or analysis method under paragraphs (e)(1) and (e)(2) of this section, are in implementation of the general requirements with respect to ECCS cooling performance design set forth in this part, including in particular Criterion 35 of Appendix A to this part.

(c) *Application.* (1) A licensee of a facility seeking to implement this section shall submit an application for

a license amendment under § 50.90 that contains the following information:

(i) A written evaluation demonstrating applicability of the results in NUREG-1829, "Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process"; March 2008 and NUREG-1903, "Seismic Considerations for the Transition Break Size"; February 2008" to the licensee's facility. As part of this evaluation, the application must contain a plant specific analysis demonstrating that the risk of seismically-induced LOCAs larger than the TBS is comparable to or less than the seismically-induced LOCA risk associated with the NUREG-1903 results.

(ii) Identification of the approved analysis method(s) for demonstrating compliance with the ECCS criteria in paragraph (e) of this section.

(iii) A description of the risk-informed evaluation process used in evaluating whether proposed changes to the facility meet the requirements in paragraph (f) of this section.

(iv) A licensee who wishes to make changes enabled by this section without prior NRC review and approval must submit for NRC approval a process to be used for evaluating the acceptability of these changes; including:

(A) A description of the approach, methods, and decisionmaking process to be used for evaluating compliance with the acceptance criteria in paragraphs (f)(1), (f)(2), and (f)(3) of this section, and

(B) A description of the licensee's PRA model and non-PRA risk assessment methods to be used for demonstrating compliance with paragraphs (f)(4) and (f)(5) of this section.

(v) A description of non safety equipment that is credited for demonstrating compliance with the ECCS acceptance criteria in paragraph (e) of this section.

(2) An applicant for a construction permit, operating license, design approval, design certification, manufacturing license, or combined license seeking to implement the requirements of this section shall, in addition to the information required by paragraph (c)(1) of this section, submit an analysis demonstrating why the proposed reactor design is similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE] such that the provisions of this section may properly apply. The analysis must also include a recommendation for an appropriate TBS and a justification that the recommended TBS is consistent with the technical basis for this section.

(3) Acceptance criteria. The NRC may approve an application to use this section if:

(i) The evaluation submitted under paragraph (c)(1)(i) of this section demonstrates that the NUREG-1829 results are applicable to the facility, and the risk of seismically-induced LOCAs larger than the TBS is comparable to or less than the seismically-induced LOCA risk associated with the NUREG-1903 results;

(ii) The method(s) for demonstrating compliance with the ECCS acceptance criteria in paragraphs (e)(3) and (e)(4) of this section meet the requirements in paragraphs (e)(1) and (e)(2) of this section;

(iii) The risk-informed evaluation process the licensee proposes to use for making changes enabled by this section is adequate for determining whether the acceptance criteria in paragraph (f) of this section have been met; and

(iv) Non safety equipment that is credited for demonstrating compliance with the ECCS acceptance criteria in paragraph (e) of this section is identified in plant Technical Specifications.

(v) For all applicants other than those holding operating licenses issued before [EFFECTIVE DATE OF RULE], the proposed reactor design is similar to the designs of reactors licensed before [EFFECTIVE DATE OF RULE] and the applicant's proposed TBS is consistent with the technical basis of this section.

(d) *Requirements during operation.* A licensee whose application under paragraph (c) of this section is approved by the NRC shall comply with the following requirements as long as the facility is subject to the requirements in this section until the licensee submits the certifications required by § 50.82(a):

(1) The licensee shall maintain ECCS model(s) and/or analysis method(s) meeting the requirements in paragraphs (e)(1) and (e)(2) of this section;

(2) The licensee shall have leak detection systems available at the facility and shall implement actions as necessary to identify, monitor and quantify leakage to ensure that adverse safety consequences do not result from primary pressure boundary leakage from piping and components that are larger than the transition break size.

(3) A change enabled by this section must, in addition to meeting other applicable NRC requirements, be evaluated by a risk-informed evaluation demonstrating that the acceptance criteria in paragraph (f) of this section are met.

(4) The licensee shall periodically maintain and upgrade, as necessary, its risk assessments to meet the requirements in paragraph (f)(4) and

(f)(5) of this section. The maintenance and upgrading shall be consistent with NRC-endorsed consensus standards on PRA and must be completed in a timely manner, but no less often than once every two refueling outages. Based upon a re-evaluation of the risk assessments after the periodic maintenance and upgrading are completed, the licensee shall take appropriate action to ensure that the acceptance criteria in paragraphs (f)(2) or (f)(3) of this section, as applicable, are met. The PRA maintenance and upgrading required by this section, and any necessary changes to the facility, technical specifications and procedures as a result of this re-evaluation, shall not be deemed to be backfitting under any provision of this chapter.

(5) For LOCAs larger than the TBS, operation in a plant operating configuration not demonstrated to meet the acceptance criteria in paragraph (e)(4) of this section may not exceed a total of fourteen days in any 12 month period.

(6) The licensee shall perform an evaluation to determine the effect of all planned facility changes and shall not implement any facility change that would invalidate the evaluation performed pursuant to § 50.46a(c)(1)(i) demonstrating the applicability to the licensee's facility of the generic results in NUREG-1829 and NUREG-1903.

(e) *ECCS Performance.* Each nuclear power reactor subject to this section must be provided with an ECCS that must be designed so that its calculated cooling performance following postulated LOCAs conforms to the criteria set forth in this section. The evaluation models for LOCAs must meet the criteria in this paragraph, and must be approved for use by the NRC. Appendix K, Part II, to 10 CFR Part 50, sets forth the documentation requirements for evaluation models.

(1) *ECCS evaluation for LOCAs involving breaks at or below the TBS.* ECCS cooling performance at or below the TBS must be calculated in accordance with an evaluation model that meets the requirements of either section I to Appendix K of this part, or the following requirements, and must demonstrate that the acceptance criteria in paragraph (e)(3) of this section are satisfied. The evaluation model must be used for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs involving breaks at or below the TBS are analyzed. The evaluation model must include sufficient supporting justification to show that the analytical technique

realistically describes the behavior of the reactor system during a LOCA. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (e)(3) of this section, there is a high level of probability that the criteria would not be exceeded.

(2) *ECCS analyses for LOCAs involving breaks larger than the TBS.* ECCS cooling performance for LOCAs involving breaks larger than the TBS must be calculated in accordance with an evaluation model that meets the requirements of either section I to Appendix K of this part, or the following requirements, and must demonstrate that the acceptance criteria in paragraph (e)(4) of this section are satisfied. The evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a LOCA. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (e)(4) of this section, there is a high level of probability that the criteria would not be exceeded. The evaluation model must be used for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs larger than the TBS up to the double-ended rupture of the largest pipe in the reactor coolant system are analyzed. These calculations may take credit for the availability of offsite power and do not require the assumption of a single failure. Realistic initial conditions and availability of safety-related or non safety-related equipment may be assumed if supported by plant-specific data or analysis, and provided that onsite power can be readily provided through simple manual actions to equipment that is credited in the analysis.

(3) *Acceptance criteria for LOCAs involving breaks at or below the TBS.* The following acceptance criteria must be used in determining the acceptability of ECCS cooling performance:

(i) *Peak cladding temperature.* The calculated maximum fuel element

cladding temperature must not exceed 2200 °F.

(ii) *Maximum cladding oxidation.* The calculated total oxidation of the cladding must not at any location exceed 0.17 times the total cladding thickness before oxidation. As used in this paragraph, total oxidation means the total thickness of cladding metal that would be locally converted to oxide if all the oxygen absorbed by and reacted with the cladding locally were converted to stoichiometric zirconium dioxide. If cladding rupture is calculated to occur, the inside surfaces of the cladding must be included in the oxidation, beginning at the calculated time of rupture. Cladding thickness before oxidation means the radial distance from inside to outside the cladding, after any calculated rupture or swelling has occurred but before significant oxidation. Where the calculated conditions of transient pressure and temperature lead to a prediction of cladding swelling, with or without cladding rupture, the unoxidized cladding thickness must be defined as the cladding cross-sectional area, taken at a horizontal plane at the elevation of the rupture, if it occurs, or at the elevation of the highest cladding temperature if no rupture is calculated to occur, divided by the average circumference at that elevation. For ruptured cladding the circumference does not include the rupture opening.

(iii) *Maximum hydrogen generation.* The calculated total amount of hydrogen generated from the chemical reaction of the cladding with water or steam must not exceed 0.01 times the hypothetical amount that would be generated if all of the metal in the cladding cylinders surrounding the fuel, excluding the cladding surrounding the plenum volume, were to react.

(iv) *Coolable geometry.* Calculated changes in core geometry must be such that the core remains amenable to cooling.

(v) *Long term cooling.* After any calculated successful initial operation of the ECCS, the calculated core temperature must be maintained at an acceptably low value and decay heat must be removed for the extended period of time required by the long-lived radioactivity remaining in the core.

(4) *Acceptance criteria for LOCAs involving breaks larger than the TBS.* The following acceptance criteria must be used in determining the acceptability of ECCS cooling performance:

(i) *Coolable geometry.* Calculated changes in core geometry must be such that the core remains amenable to cooling.

(ii) *Long term cooling.* After any calculated successful initial operation of the ECCS, the calculated core temperature must be maintained at an acceptably low value and decay heat must be removed for the extended period of time required by the long-lived radioactivity remaining in the core.

(5) *Imposition of restrictions.* The Director of the Office of Nuclear Reactor Regulation may impose restrictions on reactor operation if it is found that the evaluations of ECCS cooling performance submitted are not consistent with paragraph (e) of this section.

(f) *Changes to facility, technical specifications, or procedures.* A licensee who wishes to make changes to the facility or procedures or to the technical specifications enabled by this rule shall perform a risk-informed evaluation.

(1) The licensee may make such changes without prior NRC approval if:

(i) The change is permitted under § 50.59,

(ii) The risk informed evaluation process described in paragraph (c)(1)(iii) of this section demonstrates that any increases in the estimated risk are minimal compared to the overall plant risk profile, and the criteria in paragraph (f)(3) of this section are met, and

(iii) The change does not invalidate the evaluation performed pursuant to paragraph (c)(1)(i) of the applicability of the results in NUREG-1829 and NUREG-1903 to the licensee's facility.

(2) For implementing changes which are not permitted under paragraph (f)(1) of this section, the licensee must submit an application for license amendment under § 50.90. The application must contain:

(i) The information required under § 50.90;

(ii) For applicants whose operating licenses were issued before [EFFECTIVE DATE OF RULE], information from the risk-informed evaluation demonstrating that the total increases in core damage frequency and large early release frequency are very small and the overall risk remains small, and the criteria in paragraph (f)(3) of this section are met;

(iii) For applicants whose operating licenses were not issued before [EFFECTIVE DATE OF RULE], information from the risk-informed evaluation demonstrating that the total increases in core damage frequency and large release frequency are very small and the overall risk remains small, and the criteria in paragraph (f)(3) of this section are met;

(iv) If previous changes have been made under § 50.46a, information from

the risk-informed evaluation on the cumulative effect on risk of the proposed change and all previous changes made under this section. If more than one plant change is combined; including plant changes not enabled by this section, into a group for the purposes of evaluating acceptable risk increases; the evaluation of each individual change shall be performed along with the evaluation of combined changes; and

(v) Information demonstrating that the criteria in paragraphs (e)(3) and (e)(4) of this section are met.

(vi) Information demonstrating that the proposed change will not increase the LOCA frequency of the facility (including the frequency of seismically-induced LOCAs) by an amount that would invalidate the applicability to the facility of the generic studies (NUREG-1829, "Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process", March 2008 and NUREG-1903, "Seismic Considerations for the Transition Break Size", February 2008") that support the technical basis for this section.

(3) All changes enabled by this rule must meet the following criteria:

(i) Adequate defense in depth is maintained;

(ii) Adequate safety margins are retained to account for uncertainties; and

(iii) Adequate performance-measurement programs are implemented to ensure the risk-informed evaluation continues to reflect actual plant design and operation. These programs shall be designed to detect degradation of the system, structure or component before plant safety is compromised, provide feedback of information and timely corrective actions, and monitor systems, structures or components at a level commensurate with their safety significance.

(4) *Requirements for risk assessment—PRA.* Whenever a PRA is used in the risk-informed evaluation, the PRA must, with respect to the area of evaluation which is the subject of the PRA:

(i) Address initiating events from sources both internal and external to the plant and for all modes of operation, including low power and shutdown modes, that would affect the regulatory decision in a substantial manner;

(ii) Reasonably represent the current configuration and operating practices at the plant;

(iii) Have sufficient technical adequacy (including consideration of uncertainty) and level of detail to provide confidence that the total risk estimate and the change in total risk

estimate adequately reflect the plant and the effect of the proposed change on risk; and

(iv) Be determined, through peer review, to meet industry standards for PRA quality that have been endorsed by the NRC.

(5) *Requirements for risk assessment other than PRA.* Whenever risk assessment methods other than PRAs are used to develop quantitative or qualitative estimates of changes to risk in the risk-informed evaluation, an integrated, systematic process must be used. All aspects of the analyses must reasonably reflect the current plant configuration and operating practices, and applicable plant and industry operating experience.

(g) *Reporting.* (1) Each licensee shall estimate the effect of any change to or error in evaluation models or analysis methods or in the application of such models or methods to determine if the change or error is significant. For each change to or error discovered in an ECCS evaluation model or analysis method or in the application of such a model that affects the calculated results, the licensee shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4. If the change or error is significant, the licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46a requirements. This schedule may be developed using an integrated scheduling system previously approved for the facility by the NRC. For those facilities not using an NRC-approved integrated scheduling system, a schedule will be established by the NRC staff within 60 days of receipt of the proposed schedule. Any change or error correction that results in a calculated ECCS performance that does not conform to the criteria set forth in paragraphs (e)(3) or (e)(4) of this section is a reportable event as described in §§ 50.55(e), 50.72 and 50.73. The licensee shall propose immediate steps to demonstrate compliance or bring plant design or operation into compliance with § 50.46a requirements. For the purpose of this paragraph, a significant change or error is:

(i) For LOCAs involving pipe breaks at or below the TBS, one which results either in a calculated peak fuel cladding temperature different by more than 50 °F from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of

the absolute magnitudes of the respective temperature changes is greater than 50 °F; or

(ii) For LOCAs involving pipe breaks larger than the TBS, one which results in a significant reduction in the capability to meet the requirements of paragraph (e)(4) of this section.

(2) As part of the PRA maintenance and upgrading under paragraph (d)(4) of this section, the licensee shall report to the NRC if the re-evaluation results in exceeding the acceptance criteria in paragraphs (f)(1) or (f)(2) of this section, as applicable. The report must be filed with the NRC no more than 60 days after completing the PRA re-evaluation. The report must describe and explain the changes in the PRA modeling, plant design, or plant operation that led to the increase(s) in risk, and must include a description of and implementation schedule for any corrective actions required under paragraph (d)(4) of this section.

(3) Every 24 months, the licensee shall submit, as specified in § 50.4, a short description of each change involving minimal changes in risk made under paragraph (f)(1) of this section after the last report and a brief summary of the basis for the licensee's determination pursuant to § 50.46a(f)(2)(vi) that the change does not invalidate the applicability evaluation made under § 50.46a(c)(1)(i).

(h) *Documentation.* Following implementation of the § 50.46a requirements, the licensee shall maintain records sufficient to demonstrate compliance with the requirements in this section in accordance with § 50.71.

(i) through (l)—[RESERVED]

(m) *Changes to TBS.* If the NRC increases the TBS specified in this section applicable to a licensee's nuclear power plant, each licensee subject to this section shall perform the evaluations required by paragraphs (e)(1) and (e)(2) of this section and reconfirm compliance with the acceptance criteria in paragraphs (e)(3) and (e)(4) of this section. If the licensee cannot demonstrate compliance with the acceptance criteria, then the licensee shall change its facility, technical specifications or procedures so that the acceptance criteria are met. The evaluation required by this paragraph, and any necessary changes to the facility, technical specifications or procedures as the result of this evaluation, must not be deemed to be backfitting under any provision of this chapter.

5. In § 50.109, paragraph (b) is revised to read as follows:

§ 50.109 Backfitting.

* * * * *

(b) Paragraph (a)(3) of this section shall not apply to:

(1) Backfits imposed prior to October 21, 1985; and

(2) Any changes made to the TBS specified in § 50.46a or as otherwise applied to a licensee.

* * * * *

6. In Appendix A to 10 CFR Part 50, under the heading, "CRITERIA," Criterion 17, 35, 38, 41, 44, and 50 are revised to read as follows:

APPENDIX A TO PART 50—GENERAL DESIGN CRITERIA FOR NUCLEAR POWER PLANTS

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CRITERIA

* * * * *

Criterion 17—Electrical power systems. An on-site electric power system and an offsite electric power system shall be provided to permit functioning of structures, systems, and components important to safety. The safety function for each system (assuming the other system is not functioning) shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The onsite electric power supplies, including the batteries, and the onsite electrical distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure, except for loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a, where a single failure of the onsite power supplies and electrical distribution system need not be assumed for plants under § 50.46a. For those pipe breaks only, neither a single failure nor the unavailability of offsite power need be assumed.

Electric power from the transmission network to the onsite electric distribution system shall be supplied by two physically independent circuits (not necessarily on separate rights of way) designed and located so as to minimize to the extent practical the likelihood of their simultaneous failure under operating and postulated accident conditions. A switchyard common to both circuits is acceptable. Each of these circuits shall be designed to be available in sufficient time following a loss of all onsite alternating current power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. One of these circuits shall be designed to be available within a few seconds following a LOCA to assure that core cooling, containment integrity, and other vital safety functions are maintained.

Provisions shall be included to minimize the probability of losing electric power from any of the remaining supplies as a result of, or coincident with, the loss of power generated by the nuclear power unit, the loss of power from the transmission network, or the loss of power from the onsite electric power supplies.

* * * * *

Criterion 35—Emergency core cooling. A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts.

Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a. For those pipe breaks only, neither a single failure nor the unavailability of offsite power need be assumed.

* * * * *

Criterion 38—Containment heat removal. A system to remove heat from the reactor containment shall be provided. The system safety function shall be to reduce rapidly, consistent with the functioning of other associated systems, the containment pressure and temperature following any LOCA and maintain them at acceptably low levels.

Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a. For those pipe breaks only, neither a single failure nor the unavailability of offsite power need be assumed.

* * * * *

Criterion 41—Containment atmosphere cleanup. Systems to control fission products, hydrogen, oxygen, and other substances which may be released into the reactor containment shall be provided as necessary to reduce, consistent with the functioning of other associated systems, the concentration and quality of fission products released to the environment following postulated accidents, and to control the concentration of hydrogen or oxygen and other substances in the containment atmosphere following postulated accidents to assure that containment integrity is maintained.

Each system shall have suitable redundancy in components and features, and

suitable interconnections, leak detection, isolation, and containment capabilities to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) its safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a. For those pipe breaks only, neither a single failure nor the unavailability of offsite power need be assumed.

* * * * *

Criterion 44—Cooling water. A system to transfer heat from structures, systems, and components important to safety, to an ultimate heat sink shall be provided. The system safety function shall be to transfer the combined heat load of these structures, systems, and components under normal operating and accident conditions.

Suitable redundancy in components and features, and suitable interconnections, leak detection, and isolation capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a. For those pipe breaks only, neither a single failure nor the unavailability of offsite power need be assumed.

* * * * *

Criterion 50—Containment design basis. The reactor containment structure, including access openings, penetrations, and the containment heat removal system shall be designed so that the containment structure and its internal compartments can accommodate, without exceeding the design leakage rate and with sufficient margin, the calculated pressure and temperature conditions resulting from any loss-of-coolant accident. This margin shall reflect consideration of (1) the effects of potential energy sources which have not been included in the determination of the peak conditions, such as energy in steam generators and as required by § 50.44 energy from metal-water and other chemical reactions that may result from degradation but not total failure of emergency core cooling functioning, (2) the limited experience and experimental data available for defining accident phenomena and containment responses, and (3) the conservatism of the calculational model and input parameters.

For licensees voluntarily choosing to comply with § 50.46a, the structural and leak tight integrity of the reactor containment structure, including access openings, penetrations, and its internal compartments, shall be maintained for realistically calculated pressure and temperature conditions resulting from any loss of coolant accident larger than the transition break size.

* * * * *

PART 52—LICENSES, CERTIFICATIONS AND APPROVALS FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

8. In § 52.47, paragraph (a)(4) is revised to read as follows:

§ 52.47 Contents of applications; technical information

(a) * * *

(4) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

(i) Analysis and evaluation of emergency core cooling system (ECCS) cooling performance and the need for high-point vents following postulated loss-of-coolant accidents may be performed under the requirements of either § 50.46 or § 50.46a and § 50.46b of this chapter for designs certified after [EFFECTIVE DATE OF RULE] and demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE], or

(ii) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of §§ 50.46 and 50.46b of this chapter for designs that are not demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE].

* * * * *

9. In § 52.79, paragraph (a)(5) is revised to read as follows:

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) * * *

(5) An analysis and evaluation of the design and performance of structures, systems, and components with the

objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

(i) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of either § 50.46 or § 50.46a and § 50.46b of this chapter for facilities licensed after [EFFECTIVE DATE OF RULE] and demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE], or

(ii) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of §§ 50.46 and 50.46b of this chapter for facilities licensed after [EFFECTIVE DATE OF RULE] and not demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE].

* * * * *

10. In § 52.137, paragraph (a)(4) is revised to read as follows:

§ 52.137 Contents of applications; technical information.

(a) * * *

(4) An analysis and evaluation of the design and performance of SSCs with

the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of SSCs provided for the prevention of accidents and the mitigation of the consequences of accidents.

(i) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of either § 50.46 or § 50.46a and § 50.46b of this chapter for designs approved after [EFFECTIVE DATE OF RULE] and demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE], or

(ii) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of §§ 50.46 and 50.46b of this chapter for designs that are not demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE].

* * * * *

11. In § 52.157, paragraph (f)(1) is revised to read as follows:

§ 52.157 Contents of applications; technical information in final safety analysis report.

(f) * * *

(1) An analysis and evaluation of the design and performance of structures, systems, and components with the

objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

(i) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of either § 50.46 or § 50.46a and § 50.46b of this chapter for facilities licensed after [EFFECTIVE DATE OF RULE] and demonstrated under § 50.46a(c)(2) to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE], or

(ii) Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed under the requirements of §§ 50.46 and 50.46b of this chapter for facilities licensed after [EFFECTIVE DATE OF RULE] and not demonstrated under § 50.46a(c)(2) of this chapter to be similar to reactor designs licensed before [EFFECTIVE DATE OF RULE].

* * * * *

Dated at Rockville, Maryland, this 6th day of July 2009.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E9-18547 Filed 8-7-09; 8:45 am]

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Federal Register

**Monday,
August 10, 2009**

Part III

The President

**Memorandum of August 6, 2009—
Assignment of Function Under Section
601 of the American Recovery and
Reinvestment Act of 2009**

Federal Register

Presidential Documents

Vol. 74, No. 152

Monday, August 10, 2009

Title 3—

Memorandum of August 6, 2009

The President

Assignment of Function Under Section 601 of the American Recovery and Reinvestment Act of 2009

Memorandum for the Secretary of Homeland Security

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 601, title VI, Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 6, 2009

[FR Doc. E9-19281

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S. 1513/P.L. 111-43

To provide for an additional temporary extension of

programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (July 31, 2009; 123 Stat. 1965)

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