Federal Register

10–5–09 Monday
Vol. 74 No. 191 Oct. 5, 2009

Pages 51069–51220

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9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. AMS–CN–09–0027; CN–08–003]

Cotton Research and Promotion Program: Referendum Procedures

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures which the Department of Agriculture (USDA) will use in conducting a referendum considering amendments to the Cotton Research and Promotion Order (7 CFR part 1205) (Order) implementing section 14202 of the Food, Conservation, and Energy Act of 2008, hereinafter the ''2008 Farm Bill.'' USDA is considering amendments to the Order in a separate action. Referenda among cotton producers and cotton importers are required by the Cotton Research and Promotion Act (Act) to implement, amend, continue, or when appropriate to suspend or terminate the Order or any of its provisions. The provisions of this rule would be used for all such referenda.

DATES: *Effective Date:* October 6, 2009.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or e-mail at *shethir.riva@ams.usda.gov.* A copy of this final rule may also be found at: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This final rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than $7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

This final rule establishes the procedures under which cotton producers and importers vote on whether to implement, amend, continue, or when appropriate to suspend or terminate the Order or any of its provisions. This rule would add a new subpart and establish procedures for all such referenda. The subpart covers definitions, voting, instructions, ballots, the referendum report, and confidentiality of information.

USDA will keep cotton producers and importers who are eligible to vote informed throughout the referendum process to ensure that they are aware of and are able to participate. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in a referendum is optional; however, if cotton producers and importers choose to vote, the burden of voting is minimal and necessary to determine whether or not they favor the action to be taken with regards to the Order or any of its provisions.

In accordance with the Office of Management and Budget (OMB) regulation 5 CFR part 1320 that implements the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) the information collection requirements concerning procedures to conduct referenda in connection with the Cotton Research and Promotion Order has been previously approved by OMB and assigned OMB Control Number 0581–0093.

USDA considered electronic voting, but the use of computers is not universal. Conducting the referendum from Farm Service Agency county offices and the USDA, Washington, DC office would be more cost-effective and reliable.

Background

The Act established a national cotton research and promotion program—administered by the Board—that is financed through cotton producer and cotton importer industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of cotton in the marketplace and to establish, maintain, and expand markets for Upland cotton. The program is funded by assessments levied on each bale or bale equivalent of cotton at a rate of $1 per bale with a supplemental assessment not to exceed one percent of the value of lint of each bale.

The 2009 Board is composed of 38 members and 38 alternate members (23

producer and 15 importer members and alternate members) and one consumer advisor. The Act directed the Board to contract with a separate organization to conduct the research and promotion projects. The Board contracts with Cotton Incorporated (CI) to conduct the Program. CI uses assessment dollars to advance the quality of and demand for cotton fiber through its operating divisions: (1) Global Product Marketing, (2) Consumer Marketing, (3) Agricultural Research and (4) Textile Research, and (5) Strategic Planning.

This final rule would establish procedures which the USDA will use in conducting referenda under the Act. USDA is proposing amendments to the Order to implement section 14202 of the 2008 Farm Bill (*see* Secretary's Decision published in the same issue of the **Federal Register**). Referendum procedures would need to be in place prior for the industry to vote and consider these amendments. Referenda among cotton producers and cotton importers are required by the Act to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions.

A proposed rule with a request for comments was published in the **Federal Register** on June 4, 2009 (74 FR 26810), with a 10-day comment period. AMS received two comments, one from a cotton growers association and one from a national cotton industry organization. Both comments were in general agreement of the proposed referendum procedures and offered the same suggested changes to the sections 1205.202 and 1205.203.

The commenters recommended correction of duplicative language in section 1205.202 and a reversal of paragraph titles in section 1205.203(a) and (b). Both of these changes have merit and the appropriate changes are made in this action.

The commenters also offered changes for section 1205.203(a) to clarify language concerning eligibility requirements, especially those concerning the specified timeframe needed to import Upland cotton in order for an importer to be eligible to vote in a referendum. The commenters believed that the proposed language was not complete and offered two alternatives to revise the provision. Proposed section 1205.203(a) provided general eligibility requirements that (1) each person who was engaged in the production of Upland cotton during the representative period; and (2) each person who is an importer of Upland cotton and imported Upland cotton during the representative period were eligible to vote. Upon review of this language, these comments have merit. We have revised the provision to include the more appropriate language presented in order to make clear the applicable general eligibility requirements. Finally, the commenters noted that the definition of importer was not limited by a designated period. We are amending for clarity the definition of importer to include the appropriate timeframe.

In addition, USDA has included a clarifying change to the language of section 1205.204 concerning producers who grow Upland cotton in more than one county and identification of their voting office.

Pursuant to 5 U.S.C. 553, it is found and determined good cause that good cause exists for not postponing the effective date of the rule until 30 days after publication in the **Federal Register** in order to conduct a referendum considering amendments implementing section 14202 of the 2008 Farm Bill (Pub. L. 110–246) and to conform to the timeline contained in that section as closely as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 2. Part 1205 is amended by adding a new Subpart, consisting of §§ 1205.200 through 1205.210, to read as follows:

Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

Sec.

1205.200 General.
1205.201 Definitions.
1205.202 Agencies through which a referendum shall be conducted.
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1205.209 Confidential Information.
1205.210 Additional instructions and forms.

Subpart—Referendum Procedures

§ 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Pub. L. 89–502, as amended).

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

(c) *Agricultural Marketing Service* also referred to as ''AMS'' means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

(f) *Department* means the U.S. Department of Agriculture.

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as ''DAFO.''

(h) *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

(i)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton, and

(2) the term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the

farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

(n) *Secretary* means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may be hereafter be delegated, the authority to act in the Secretary's stead.

(o) *State* means each of the 50 states.

(p) *United States* means 50 states of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as ''CBP.''

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) Agricultural Marketing Service. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to announce the dates, places, or methods of voting, and other pertinent information, and

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided,* That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided,* That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of cotton in the voters share of cotton imported from each such importer entity: Provided, that only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency.* Except for the functions specified in paragraph (a) of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum. Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

§ 1205.203 Voting eligibility.

(a) *General eligibility requirements.* The following persons shall be eligible to vote in an announced referendum—

(1) each person who was engaged in the production of Upland cotton during the representative period; and

(2) each person who is an importer of Upland cotton and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton.

(b) *Special eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

§ 1205.204 Voting.

(a) *Place of voting.* The FSA county office serving the county in which the producer's farm is located shall be the producer's polling place. For a person not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA county office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location. The U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The FSA county office shall establish a register of known eligible producer voters prior to the referendum. AMS shall establish a register of known eligible importer voters prior to the referendum and provide the list to FAS.

(c) *Voting.* (1) For Upland producers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from FSA county offices or through the Internet during the voting period. A completed and signed CN–100 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate FSA county office. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*. Upon request by Upland producers, ballots shall be mailed by FSA county offices.

(2) For cotton importers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from USDA, FSA in Washington, D.C. or through the Internet during the voting period. In addition, before the referendum, USDA shall mail a request form to each known, eligible, cotton importer. A completed and signed CN–100 and supporting documentation of CBP Form 7501, must be returned USDA, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*.

(d) Returning ballot to polling place. Each person to whom a ballot is issued by Internet, mail, facsimile, or in-person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) In the case of the mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by FSA county office or a representative of FSA, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by FSA for producers and importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the FSA offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the FSA county office for producer ballots or an FSA representative for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The county office or FSA representative shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them.

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if:

(1) It is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or

(2) It does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the FSA county office and the importer ballot may be challenged by the representative of FSA. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the FSA county office or representative of FSA as to the

eligibility of the voter to vote in the referendum.

§ 1205.206 Reporting results of referendum.

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

§ 1205.207 Challenge of correctness of county summary of ballots.

The FSA state offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided,* That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records.

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

§ 1205.209 Confidential information.

(a) The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1205.210 Additional instructions and forms.

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Dated: September 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–23831 Filed 10–2–09; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1212

RIN 2590–AA19

Post-Employment Restriction for Senior Examiners

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that sets forth a one-year post-employment restriction for senior examiners of FHFA pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which provides that each examiner of FHFA shall be subject to the same disclosures, prohibitions, obligations, and penalties applicable to examiners employed by the Federal Reserve Banks.

DATES: The final regulation is effective November 4, 2009.

FOR FURTHER INFORMATION CONTACT: Janice A. Kullman, Assistant General Counsel, telephone (202) 414–8970 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulation, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under 12 U.S.C 4511.

II. Proposed Rulemaking

Section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108–458 (Dec. 17, 2004), in amending section 10 of the Federal Deposit Insurance Act, established a post-employment restriction for senior examiners of the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.[2] In response, the Board of Governors of the Federal Reserve System (Federal Reserve) and the other financial regulators issued regulations on November 17, 2005, to reflect the new post-employment restriction.

The Safety and Soundness Act provides that each examiner of FHFA ''shall be subject to the same disclosures, prohibitions, obligations and penalties as are applicable to examiners employed by the Federal Reserve Banks.'' 12 U.S.C. 4517(e). In light of that provision, FHFA published a proposed Post-Employment Restriction for Senior Examiners regulation for public comment in the **Federal Register**, 74 FR 27470 (June 10, 2009). The proposed regulation set forth

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

[2] 12 U.S.C. 1820(k).

a post-employment restriction that is essentially the same as the restriction in the post-employment regulation of the Federal Reserve at 12 CFR part 264a. The Federal Reserve relies on section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for the penalty enforcement section of its regulation. The proposed regulation relied on similar provisions in section 1376 and 1377 of the Safety and Soundness Act (12 U.S.C. 4636 and 4636a, respectively). Specifically, the regulation, as proposed, prohibited a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant of a regulated entity or the Office of Finance for one year after leaving the employment of FHFA if he or she has examined the regulated entity or the Office of Finance for two or more months during the last 12 months of employment at FHFA.

III. Final Rulemaking

In response to the request for public comment, FHFA received one comment from a member of the public. The comment recommended that that the one-year post-employment restriction period be expanded to five years. It also recommended that the post-employment restriction be expanded to include employment in any related industry, not just the regulated entity that the senior examiner inspects, supervises, or examines.

FHFA has considered this comment and has determined not to expand the post-employment restriction as recommended. Expansion of the restriction would make the FHFA post-employment restriction inconsistent with that of the Federal Reserve. Further, FHFA believes that the recommended expansion of the restriction is not needed to ensure public trust in the impartiality and objectivity of FHFA's actions. Therefore, the proposed regulation is adopted as a final regulation without change.

IV. Section-by-Section Analysis

The following is a section-by-section analysis of the regulation.

Subpart A

Subpart A is reserved. FHFA intends to cross-reference the Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency when such standards are published.

Subpart B—Post-Employment Restriction for Senior Examiners

Section 1212.1 Purpose and Scope

Section 1212.1 provides that the purpose of subpart B is to set forth special post-employment restrictions for senior examiners. These restrictions are in addition to the post-employment restriction for FHFA employees under section 12 U.S.C. 4523, which is restated in 5 CFR part 9001. The post-employment restriction applicable to FHFA employees under 12 U.S.C. 4523 provides that officers and employees of FHFA who are compensated at a certain salary level are not permitted to accept compensation from the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation for a period of two years after leaving FHFA.

Section 1212.2 Definitions

This section sets forth definitions applicable to subpart B.

Consultant is defined as a person who works directly on matters for, or on behalf of, a regulated entity, or the Office of Finance.

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

Employee is defined as an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* is defined as a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

Office of Finance is defined as the Office of Finance of the Federal Home Loan Bank System.

Regulated entity is defined as the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, or any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act is defined as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Senior examiner is defined as an FHFA employee who has been:

- Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;
- Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and
- Assigned responsibilities for examining, inspecting, and supervising the regulated entity or the Office of Finance that—
  - Represents a substantial portion of the employee's assigned responsibilities; and
  - Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

To be considered a ''senior examiner,'' an employee must meet each of the criteria listed above. Thus, an examiner who spends a substantial portion of his or her time conducting or leading a targeted examination, but who does not have broad and lead responsibility for the overall examination program with respect to a regulated entity or the Office of Finance is not a ''senior examiner'' with respect to that regulated entity or the Office of Finance. An examiner who divides his or her time across a portfolio of regulatory entities, each of which does not represent a substantial portion of the examiner's responsibilities, also is not a ''senior examiner.'' Such an examiner is not likely to develop the type and degree of relationship with any one regulated entity or the Office of Finance that the post-employment restriction is designed to address. FHFA believes that an examiner has continuing responsibility for a regulated entity or the Office of Finance only when the examiner's responsibilities for the regulated entity or the Office of Finance are expected to continue for a period of time that enables the examiner to develop a meaningful, dedicated, and sustained relationship with the regulated entity or the Office of Finance. FHFA believes that such a period of time is at least two months.

To help examiners comply with the post-employment restrictions, the designated agency ethics official (DAEO) or the alternate DAEO will notify examiners in writing if they are subject to either the one-year post-employment restriction or the two-year post-employment restriction under 12 U.S.C. 4523, or both. The DAEO or alternate DAEO will also provide examiners information about how to conform to one or both of the restrictions.

The examiner-in-charge (EIC) of a Bank or the Office of Finance will be subject to the one-year post-employment restriction from working at the Bank or Office of Finance for which he or she served as EIC, but not necessarily other

Banks which he or she may examine. In addition, the portfolio managers, who each generally oversee four Banks, will be subject to the one-year post-employment restriction for each Bank they oversee. These two groups of employees are responsible for establishing the scope of annual exams and assigning the composite rating for the Banks and therefore meet the definition of senior examiner. There may be rare instances of other examiners who meet the definition, but an examiner supervising one aspect of safety and soundness for all the Banks does not fall into the definition of the term ''senior examiner.'' Such a subject matter examiner does not have substantial enough contacts with any one particular bank to warrant a post employment restriction. FHFA estimates that approximately 15 examiners who serve as EICs and portfolio managers for the Banks and the Office of Finance are ''senior examiners'' for the purposes of this regulation.

Examiners who examine the Enterprises are subject to the two-year post employment restriction set forth in 12 U.S.C. 4523 if they earn a certain salary, as is every FHFA employee. This two-year post-employment restriction subsumes the one-year post-employment restriction with respect to accepting employment at the Enterprises because any examiner who is a ''senior examiner'' is already precluded from accepting employment from an Enterprise because of his or her salary level. While there are currently approximately 30 examiners whose salary is below the threshold that triggers the two-year post-employment restriction, those examiners do not have broad and lead responsibility for examining a regulated entity or the Office of Finance and therefore do not meet the definition of ''senior examiner.'' FHFA believes that any examiner of an Enterprise who is a ''senior examiner'' is also subject to the two-year post-employment restriction under 12 U.S.C. 4523.

Section 1212.3 Post-employment restriction for senior examiners

Section 1212.3 prohibits a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant of a regulated entity or the Office of Finance for one year after leaving the employment of FHFA if he or she has examined the regulated entity or the Office of Finance for two or more months during the last 12 months of employment at FHFA.

A person is a consultant for purposes of the one-year post-employment restriction if such person ''directly works on matters for, or on behalf of'' the relevant regulated entity or the Office of Finance. This provision means that a former senior examiner who joins a consulting or other firm or is self-employed as a consultant may not, during the one-year post-employment period, participate in any work that the firm is conducting for a regulated entity or the Office of Finance that the former senior examiner is prohibited from doing directly. The former senior examiner does not, however, violate the post-employment restrictions by joining a firm that performs work for such a regulated entity or the Office of Finance as long as the former senior examiner does not personally participate in any such work.

The post-employment restriction does not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before the effective date of subpart B of this part.

Section 1212.4 Waiver

Section 1212.4 allows the Director, at the written request of a former senior examiner, to waive in writing, application of the one-year post-employment restriction, on a case-by-case basis, if the Director determines that granting the waiver does not affect the integrity of the supervisory program of FHFA. FHFA expects that waivers will be granted only in special circumstances.

Section 1212.5 Penalties

Section 1212.5 requires FHFA to seek one or both of the following penalties against a former senior examiner who violates the one-year post-employment restriction:

(1) An order removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the regulated entity or the Office of Finance for a period of up to five years, and prohibiting the individual from participating in the conduct of the affairs of any regulated entity or the Office of Finance for a period of up to five years; or (2) a civil money penalty of not more than $250,000.

The former senior examiner against whom FHFA seeks to impose these penalties has the procedural rights set forth in 12 U.S.C. 4636 and 4636a, as applicable, and any implementing regulations issued by FHFA.

Regulatory Impacts

Paperwork Reduction Act

The regulation 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.*).

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 does 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 regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to employees and officers and former employees and officers of FHFA, who are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1212

Administrative practice and procedure, Conflicts of interest, Ethics.

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526 and 4517(e), FHFA amends 12 CFR Chapter XII by adding part 1212 to Subchapter A to read as follows:

PART 1212—POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

Sec.
1212.1 Purpose and scope.
1212.2 Definitions.
1212.3 Post-employment restriction for senior examiners.
1212.4 Waiver.
1212.5 Penalties.

Authority: 12 U.S.C. 4526, 12 U.S.C. 4517(e).

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

§ 1212.1 Purpose and scope.

This subpart sets forth a one-year post-employment restriction applicable to senior examiners of the Federal Housing Finance Agency (FHFA). This restriction is in addition to the post-employment restriction applicable to

employees of FHFA under 12 U.S.C. 4523.

§ 1212.2 Definitions.

For purposes of subpart B of this part, the term:

Consultant means a person who works directly on matters for, or on behalf of, a regulated entity or the Office of Finance.

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

Employee means an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* means a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System, or any successor thereto.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Senior examiner means an employee of FHFA who has been:

(1) Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;

(2) Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and

(3) Assigned responsibilities for examining, inspecting and supervising the regulated entity or the Office of Finance that—

(i) Represents a substantial portion of the employee's assigned responsibilities; and

(ii) Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

§ 1212.3 Post-employment restriction for senior examiners.

(a) *Prohibition.* An employee of FHFA who serves as the senior examiner of a regulated entity or the Office of Finance for two or more months during the last 12 months of his or her employment with FHFA may not, within one year after leaving the employment of FHFA, knowingly accept compensation as an employee, officer, director, or consultant from a regulated entity or the Office of Finance unless the Director grants a waiver pursuant to § 1212.4.

(b) *Effective date.* The post-employment restriction in paragraph (a) of this section shall not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before November 4, 2009.

§ 1212.4 Waiver.

At the written request of a senior examiner or former senior examiner, the Director may waive the post-employment restriction in § 1212.3 if he or she certifies, in writing, and on a case-by-case basis, that granting a waiver of such restriction does not affect the integrity of the supervisory program of FHFA.

§ 1212.5 Penalties.

(a) *General.* A senior examiner who, after leaving the employment of FHFA, violates the restriction set forth in § 1212.3 shall be subject to one or both of the following penalties—

(1) An order:

(i) Removing the individual from office at the regulated entity or the Office of Finance or prohibiting the individual from further participation in the affairs of the relevant regulated entity or the Office of Finance for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any regulated entity or the Office of Finance for a period of up to five years; and/or

(2) A civil money penalty of not more than $250,000.

(b) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) *Procedural rights.* The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.

Dated: September 26, 2009.

Edward J. DeMarco,

Acting Director.

[FR Doc. E9–23807 Filed 10–2–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–0490; Airspace Docket No. 09–AWP–3]

RIN 2120–AA66

Establishment of Restricted Area R–2502A; Fort Irwin, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a restricted area (R–2502A) at Fort Irwin, CA, as part of a Department of the Army initiative at the National Training Center (NTC). The NTC is being expanded to meet the critical need of the Army for additional training land and airspace suitable for maneuvering large numbers of military personnel and equipment. Additionally, the Silver military operation area (MOA) in the vicinity of the NTC Complex has been modified as part of this initiative. Unlike restricted areas, which are designated under Title 14 Code of Federal Regulations (14 CFR) part 73, MOAs are not rulemaking airspace actions. However, since the R–2502A will infringe on the Silver MOA, the FAA is including a description of the Silver MOA change in this rule. The MOA change described here was published in the National Flight Data Digest (NFDD). The Army requested these airspace changes to provide the additional special use airspace (SUA) above the expanded ground maneuver area to facilitate realistic combat training at the NTC.

DATES: *Effective Date:* 0901 UTC, December 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish

Restricted Area R–2502A, Fort Irwin, CA (74 FR 33382). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received during the comment period.

Section 73.25 of 14 CFR Part 73 was republished in FAA Order 7400.8R, dated February 5, 2009.

Military Operation Area (MOA)

Restricted areas are regulatory airspace designations, under Title 14 Code of Federal Regulations (CFR) part 73, which are established to confine or segregate activities considered hazardous to non-participating aircraft. A MOA is a non-rulemaking type of SUA established to separate or segregate certain non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR), and to identify for visual flight rules (VFR) pilots where those activities are conducted. IFR aircraft may be routed through an active MOA only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA, but are advised to exercise caution while doing so.

Unlike restricted areas, which are designated through rulemaking procedures, MOAs are non-rulemaking airspace areas that are established administratively and published in the National Flight Data Digest. Normally MOA actions are not published in a NPRM, but instead, are advertised for public comment through a non-rule circular that is distributed by an FAA Service Center office to aviation interests in the affected area. However, when a non-rulemaking action is connected to a rulemaking action, FAA procedures allow for the non-rulemaking action to be included in the Rule. In such cases, the NPRM replaces the non-rule circularization requirement. Because the change to the Silver MOA North was necessary, due to the establishment of the restricted area, the MOA was modified to exclude the airspace contained in R–2502A.

MOA Change

Silver MOA North, CA

Boundaries. Beginning at lat. 35°39′00″ N., long. 115°53′03″ W.; to lat. 35°24′30″ N., long. 115°53′03″ W.; to lat. 35°06′50″ N., long. 116°20′00″ W.; to lat. 35°04′30″ N., long. 116°29′00″ W.; to lat. 35°07′00″ N., long. 116°34′03″ W.; to point of beginning. Excluding the airspace below 3,000 feet AGL within a 3NM radius of the town of Baker, CA (lat. 35°16′00″ N. long. 116°04′33″ W.) and R2502A.

The Rule

The FAA is amending Title 14 CFR part 73 to establish Restricted Area R–2502A at Fort Irwin, CA. The U.S. Army has requested this restricted area because the existing special use airspace does not include the airspace above the expanded land maneuver area created to support the NTC. This action will ensure a safe training environment, isolated from the public, for military air and ground maneuvers from the surface to the upper limits of restricted airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at Fort Irwin, CA.

Environmental Review

The FAA has determined that the Environmental Assessment (EA) prepared by the Department of Army associated with the proposed project, is adequate for adoption in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' Paragraph 404d. The FAA has independently evaluated the information contained in the EA and takes full responsibility for the scope and content that addresses FAA actions. Further, the FAA has issued its own Finding of No Significant Impact (FONSI). The FAA's Adoption of Environmental Assessment and FONSI are combined into a single document dated August 1, 2008. A copy of the Adoption of Environmental Assessment and FONSI document has been inserted into the official docket for this rulemaking.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2502A Fort Irwin, CA [New]

Boundaries. Beginning at lat. 35°25′48″ N., long. 116°18′48″ W.; to lat. 35°25′30″ N., long. 116°09′46″ W.; to lat. 35°23′15″ N., long. 116°09′47″ W.; to lat. 35°06′54″ N., long. 116°30′17″ W.; to lat. 35°07′00″ N., long. 116°34′03″ W.; to lat. 35°18′45″ N., long. 116°18′48″ W. to point of beginning.

Designated altitudes. Surface to 16,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Hi-Desert TRACON, Edwards, CA.

Using agency. Commander, Fort Irwin, CA.

* * * * *

Issued in Washington, DC, on September 28, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–23879 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0857]

Drawbridge Operating Regulations; Victoria Barge Canal, Bloomington, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad (UPRR) Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The deviation is necessary to allow for joint replacement on the draw span. This deviation provides for the bridge to remain closed to navigation for 8 consecutive hours on October 19 and 20, 2009, from 8 a.m. to 4 p.m. each day.

DATES: This deviation is effective from 8 a.m. on Monday, October 19, 2009 until 4 p.m. on Tuesday, October 20, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0857 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0857 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Victoria County Navigation District has requested a temporary deviation from the operating schedule of the UPRR Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels. This deviation allows the draw span of the bridge to remain closed to navigation for 8 consecutive hours between 8 a.m. and 4 p.m. each day on October 19 and 20, 2009. Navigation on the waterway consists mainly of tugs with tows. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position. No alternate routes are available. The closures are necessary to allow for rail joint replacement on the bridge. As this work is proposed during hurricane season, the work may be postponed and rescheduled, should any tropical storms or hurricanes enter or develop in the Gulf of Mexico. The Coast Guard has coordinated the closures with the commercial users of the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 21, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–23874 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2009–62; Order No. 296]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6) to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective October 5, 2009 and is applicable beginning September 4, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 44880 (August 31, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service requests to add a new Inbound Direct Entry (IDE) contract to the Inbound Direct Entry Contracts with Foreign Postal Administrations product established in Docket No. MC2008–6.[1] In its filing, the Postal Service also requests to have the instant contract designated as the new baseline agreement for purposes of determining the functional equivalence of future IDE contracts. *Id.* at 2. For the reasons discussed below, the Commission approves the addition of the instant contract to the Competitive Product List as a new product, Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (referred to hereinafter as IDE 1).

II. Background

On August 21, 2009, the Postal Service filed a notice pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5 announcing that it has entered into an Inbound Direct Entry (IDE) contract with New Zealand Post Limited (NZP), the public postal operator of New Zealand. It states that the NZP agreement is functionally equivalent to previously established IDE contracts filed in Docket Nos. CP2008–14, CP2008–15 and CP2009–41. *Id.* at 1. The IDE product allows the Postal Service to provide foreign postal administrations with the ability to ship sacks of parcels that are pre-labeled for direct entry into the Postal Service's mailstream in exchange for applicable domestic postage plus a sack handling fee. The core of the service is the sack handling and entry as domestic mail.

The Postal Service also publicly filed a redacted version of the contract, an application for non-public treatment of supporting materials, a certified statement required by 39 CFR 3015(c)(2), a redacted version of the Governors' Decision that authorizes IDE contracts, and a redacted version of the supporting financial information. The contract and supporting financial information were filed under seal.

The Notice states that the instant contract is functionally equivalent to the IDE contracts previously submitted, fits within the Mail Classification Schedule (MCS) language included in Attachment A to Governors' Decision No. 08–6, and should be included within the IDE contracts product. *Id.* at 2. In Order No. 105, the Commission approved the individual IDE contracts in Docket No. MC2008–6 as functionally equivalent and added the contracts to the Competitive Product List as one product under the IDE classification.[2]

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[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, August 21, 2009 (Notice).

[2] *See* Docket Nos. MC2008–6, CP2008–14 and CP2008–15, Order Concerning Prices Under Inbound Direct Entry Contracts With Certain

The Postal Service includes by reference its arguments regarding the functional equivalence to the IDE contracts as indicated in Docket Nos. CP2008–14 and CP2008–15, with three noted exceptions. Notice at 3 (footnote omitted). The instant IDE contract, it claims, resembles the contracts in Docket Nos. CP2008–14 and CP2008–15, except as to the provisions on the term, confidentiality, and payment account details. *Id.* at 3–4.

The Postal Service maintains that some materials should remain under seal including certain portions of the contract and certified statement required by 39 CFR 3015.5(c)(2), related financial information, portions of the certified statement which contain costs and pricing, as well as the accompanying analyses that provide prices, terms, conditions, and financial projections. *Id.* at 2–3.

The Postal Service will notify the customer of the effective date of the contact within 30 days after receiving all regulatory approvals. The contract term is 1 year from the effective date, but will be renewed automatically until terminated by the parties.

In Order No. 289, the Commission gave notice of this docket, appointed a Public Representative, and provided the public with an opportunity to comment.[3]

III. Comments

Comments were filed by the Public Representative.[4] No other interested persons submitted comments. The Public Representative states that ''[e]ach pertinent element of 39 U.S.C. 3632, 3622, and 3642 appears to be met by this contract.'' *Id.* at 1. He also notes that each element of 39 U.S.C. 3633(a) appears to be met by this additional IDE contract. *Id.* at 5. The pricing, in light of supporting documentation filed under seal, appears adequate and compliant.[5] *Id.* The Public Representative concludes that the contract appears to be functionally equivalent to the other contracts within the IDE contract product (MC2008–6) classification, and the contract contains pricing incentives and other provisions beneficial to both the Postal Service and the general public.[6] Without opposing the proposal to treat the NZP agreement as a new baseline, he does question why a functionally equivalent agreement should create a new baseline. *Id.* at 4. He underscores that the MCS must retain precision to preclude erosion of accountability and transparency. *Id.* As a safeguard, he proposes that the Postal Service outline in its future notices of any functionally equivalent agreement material distinctions and similarities. *Id.*

IV. Commission Analysis

The three main issues in this proceeding are whether the agreement satisfies 39 U.S.C. 3633, and the interrelated issue of whether the instant contract is functionally equivalent with previously filed IDE contracts; and whether it should be classified as a baseline for future IDE contracts.[7] In reaching its conclusions, the Commission has reviewed the Notice, the agreement and the financial analyses provided under seal, and the Public Representative's comments.

Statutory requirements. The Postal Service contends that the instant agreement and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. It asserts that Governors' Decision No. 08–6 supporting this agreement establishes a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. It further states that the previously proposed IDE MCS language requires each contract to cover its attributable costs. *Id.* at 3.

During the review of the Postal Service's financial supporting documentation, the Commission found discrepancies between (a) the supporting financial material, and (b) the contract rate provisions. The financial supporting documentation uses rates in effect prior to the May 11, 2009 increase in prices for market dominant products.[8] The contract, however, contains the rates currently in effect. Additionally, the contract is based on Priority Mail commercial rates; however, the financial supporting documentation uses Priority Mail retail rates. These discrepancies did not adversely affect cost coverage for the contract. The Commission found these same discrepancies in Docket No. CP2009–41 and highlighted them in Order No. 248.[9]

Based on the data submitted and its analysis, the Commission finds that the agreement should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed agreement indicates that it comports with the provisions applicable to rates for competitive products.

Functional equivalence/baseline treatment. The Postal Service asserts that the instant contract is functionally equivalent to the IDE contracts filed previously because it shares similar cost and market characteristics, and therefore the contract should be classified as a single product. Notice at 3. The Postal Service notes, however, that the instant contract includes provisions not contained in the earlier IDE contracts. *Id.* These differences include: (1) Renewal can result automatically, without the parties' mutual agreement; (2) confidentiality duties that comport with the Commission's new confidentiality rules, and are governed in the text of the agreement rather than under an annex; and (3) the payment methods that are comparable to the terms in Docket No. CP2008–15, but not other prior IDE contracts.[10] *Id.* at 4.

The Postal Service also requests that the instant contract be considered a new baseline for future functional equivalent comparisons ''[b]ecause future IDE Contracts are likely to resemble this contract in form and substance. Notice at 2. The Postal Service also explains

Foreign Postal Administrations, September 4, 2008, at 8 (Order No. 105).

[3] PRC Order No. 289, Notice and Order Concerning Filing of Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, August 25, 2009 (Order No. 289).

[4] Public Representative Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contract to the Competitive Products List, September 3, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contract to the Competitive Product List, September 3, 2009. The motion is granted.

[5] The Public Representative determines that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2. He affirms that his review of the materials filed under seal indicates that the instant contract complies with the pricing formula for IDE contracts.

[6] *Id.* at 1 and 3. He also concurs that the agreement appears to satisfy costing requirements, but seeks clarity in the process. *Id.* at 4–5, *citing* 39 CFR 3020.13(b)(3).

[7] Previously, the Commission found the Inbound Direct Contracts product to be properly classified as a competitive product. *See* Order No. 105 at 7; *see also* 36 U.S.C. 3642(d).

[8] *See* Docket No. R2009–2, Order Approving Revisions in Amended Notice of Market Dominant Price Adjustment, April 9, 2009. The Postal Service filed rates to become effective May 11, 2009.

[9] Docket No. CP2009–41, Order Concerning Filing of Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, July 15, 2009 (Order No. 248).

[10] The present contract differs from Docket No. CP2008–14, which did not use the Centralized Trust Account payment method, and Docket No. CP2009–41, which included an annex based on foreign financial regulatory requirements.

that the text of the earlier IDE contracts contain different extension terms, confidentiality, and payment account detail provisions, and it intends to incorporate the new provisions into subsequent IDE contracts. Thus, it expects ''future IDE Contracts to resemble the instant contract more closely than those in Docket Nos. CP2008–14 and CP2008–15.'' *Id.* at 4.

In lieu of ruling on the functional equivalence of the instant contract to those previously filed, the Commission concludes, for reasons of accountability and transparency as suggested by the Public Representative, that the more appropriate outcome is to add the instant contract to the Competitive Product List as a new product, IDE 1. In approving the initial IDE contract, it was the Commission's expectation that it would be followed by additional IDE contracts that may exhibit sufficient variation from the initial contract to warrant being classified as a new product, *e.g.,* IDE 2, IDE 3, etc. Given the Postal Service's intent to use the instant contract as a template for future IDE contracts and that it contains provisions not included in the earlier IDE contracts, the Commission will label the instant contract as a new product, IDE 1. To the extent that future IDE contracts with foreign posts are (substantially) based on the instant contract, the Postal Service may seek to have them classified as functionally equivalent. To the extent that such future contracts differ substantially, the Postal Service should file a request, pursuant to 39 CFR 3020.1 *et seq.,* to add a new product to the Competitive Product List.[11]

Following the current practice, the Postal Service shall identify all significant differences between any new IDE contract and the IDE 1 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. In addition, and consistent with the current practice, a redacted copy of Governors' Decision No. 08–6 should be included in the new filing.

V. Ordering Paragraphs

It is ordered:

1. A new subcategory titled ''Inbound Direct Entry Contracts with Foreign Postal Administrations'' shall be created under the Inbound International category appearing in the Competitive Product list. This subcategory will include all individual Inbound Direct Entry Contracts with Foreign Postal Administrations products.

2. The existing product titled ''Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)'' shall appear under the subcategory Inbound Direct Entry Contracts with Foreign Postal Administrations until each of the individual contracts within this product has expired.

3. The IDE contract filed in Docket No. CP2009–62 is added to the Competitive Product List as a new product, ''Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6, CP2009–62)'' and shall appear under the subcategory Inbound Direct Entry Contracts with Foreign Postal Administrations.

4. The Postal Service shall notify the Commission of the scheduled effective date and termination date and update the Commission if the contract terminates at an earlier date.

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Judith M. Grady,

Acting Secretary.

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

PART 3020—PRODUCT LISTS

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

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

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

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

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
  - [Reserved for Product Description]
- Bulk Letters/Postcards
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Parcels
  - [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
  - [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
- Carrier Route
  - [Reserved for Product Description]
- Letters
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]

Periodicals

[Reserved for Class Description]
- Within County Periodicals

[11] As the Commission recently noted in Order No. 290, '[f]uture requests to implement a new baseline agreement should be filed as an MC docket since it will result in adding a new product to the product list and may result in removing a product from the product list.'' Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)

International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

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

[FR Doc. E9–23895 Filed 10–2–09; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8097]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022,

prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Farmville, Town of, Prince Edward and Cumberland Counties.	510118	November 9, 1973, Emerg; September 1, 1978, Reg; October 2, 2009, Susp.	Oct. 2, 2009	Oct. 2, 2009.
Prince Edward County, Unincorporated Areas.	510239	April 11, 1974, Emerg; September 1, 1978, Reg; October 2, 2009, Susp.	.....do*	do.
Region IV				
North Carolina:				
Brevard, City of, Transylvania County ..	370231	January 17, 1974, Emerg; September 29, 1978, Reg; October 2, 2009, Susp.	.....do	do.
Rosman, Town of, Transylvania County	375358	December 30, 1971, Emerg; June 2, 1972, Reg; October 2, 2009, Susp.	.....do	do.
Transylvania County, Unincorporated Areas.	370230	January 21, 1974, Emerg; January 2, 1980, Reg; October 2, 2009, Susp.	.....do	do.
Region V				
Wisconsin:				
Delavan, City of, Walworth County	550463	October 18, 1974, Emerg; September 1, 1983, Reg; October 2, 2009, Susp.	.....do	do.
East Troy, Village of, Walworth County	550464	December 12, 1975, Emerg; December 1, 1982, Reg; October 2, 2009, Susp.	.....do	do.
Fontana-on-Geneva Lake, Village of, Walworth County.	550592	NA, Emerg; March 23, 2006, Reg; October 2, 2009, Susp.	.....do	do.
Mukwonago, Village of, Walworth and Waukesha Counties.	550485	February 18, 1975, Emerg; July 5, 1982, Reg; October 2, 2009, Susp.	.....do	do.
Walworth County, Unincorporated Areas	550462	June 10, 1975, Emerg; August 15, 1983, Reg; October 2, 2009, Susp.	.....do	do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 22, 2009.

Edward L. Connor,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–23960 Filed 10–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. FTA–2007–0011]

RIN 2132–AA95

Bus Testing; Phase-In of Brake Performance and Emissions Testing, and Program Updates

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Transit Administration's (FTA's) bus testing regulation to incorporate brake performance and emissions tests into FTA's bus testing program to comply with statutory changes. To improve the program, this final rule also republishes the existing regulation to incorporate several updates that will enhance the program's value and respond to changes in the bus manufacturing industry and to bring it into conformity with statutory language.

DATES: This rule is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: For technical information, Marcel Belanger, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–0725, *marcel.belanger@dot.gov*. For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–0675, *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2008, the Federal Transit Administration (FTA) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (73 FR 56781) that discussed proposals to incorporate brake performance and emissions tests into FTA's bus testing program as required by 49 U.S.C. Section 5318, as amended by the Safe, Accountable, Flexible, Equitable Transportation Efficiency Act: a Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). These changes required by statute included a brake performance test procedure and an emissions test procedure.

The NPRM also sought comments on a number of other proposed ways to update the regulation to improve the functioning of the program, enhance its value, and clarify possible ambiguities in the existing regulation. These proposed changes, which were not required by statute, but were intended to improve the program, addressed issues related to: (1) The determination of service life category; (2) testing of buses that exceed weight limits when fully loaded; (3) clarification of FTA's ''Family of Vehicles'' policy; (4) separate reporting of third-party chassis test results; and, (5) the inclusion of an FTA evaluation or recommendation of bus models in bus testing reports.

Comments Received

FTA received a total of five comments—one from a major industry trade association consisting of more than 1,500 public and private members, one from a large public transit agency, a third from a manufacturer trade association representing almost 700 companies making motor vehicle components, the fourth from a manufacturer of large heavy-duty transit buses, and the fifth from an engineering consulting firm that provides consulting and test equipment for heavy-duty vehicles and brake systems.

Section-by-Section Analysis of Specific Comments

1. Brake Performance Test Procedure

FTA proposed that a test bus would be subjected to a series of brake stops from 20, 30, 40, and 45 mph on a high-friction surface; from 20 mph on a low-friction surface; and up to 45 mph on a split-coefficient surface. The parking brake would be evaluated facing uphill and downhill on a ramp with a 20 percent grade. FTA also sought comments on whether, and, if so, how, the maintainability and noise tests should be modified to capture useful data related to the brake system and whether any such changes should be done within the regulation itself or through non-regulatory testing protocols and procedures.

FTA proposed to incorporate the brake performance test within the existing performance test category, as specified by SAFETEA–LU. The proposed test procedure specified that all brake performance tests would be performed with the bus loaded to gross vehicle weight, for which a definition would be provided in the revised 49 CFR Section 665.5.

A. Comments Received

FTA received comments on the proposed braking performance test from all respondents. Most of the comments received pertained to details of the sub-regulatory test procedures that would be used to conduct the braking performance test; for example, recommending that FTA measure brake system temperatures by the installation of thermocouples in the brake linings rather than the proposed use of a non-contacting digital thermometer.

A few comments referred to differences between the draft FTA test procedures and the procedures specified in Federal Motor Vehicle Safety Standard (FMVSS) 121. For example, FTA's proposed test procedure assumes that the brakes would be adequately burnished following completion of the gross-vehicle-weight portion of the structural durability test, while FMVSS 121 specifies a detailed brake burnishing procedure. Another comment noted that some buses may not be able to climb the 20 percent slope parking brake testing hill or may not be able to clear the hill's transition ramps, and questioned what the testing options would be in such situations. This commenter also asked who would be responsible if a bus is damaged on the brake testing slope.

B. FTA Response

Since the regulation is only intended to outline the tests that would be performed in general terms, specific details of the sub-regulatory test procedures are not appropriate to address in the regulation itself. Instead, FTA will consider each of the comments received as we work with the facility operator to finalize the brake testing procedures.

With regard to consistency between FMVSS 121 certification and the bus testing program, FTA reiterates that its bus testing program is not a certification test. Rather, its purpose is to provide data that can facilitate grantees' comparisons of various transit bus models and provide indications of whether the contemplated bus model is suitable for a grantee's intended application. Therefore, it is not necessary for the bus testing program to replicate the test procedures in FMVSS 121. FTA believes that the operation on the test track and occasional operation on roadways between the Altoona Bus Testing Center and the Test Track Facility in State College should be adequate to produce a realistic real-world level of brake burnishing prior to conducting the brake performance tests. However, because this aspect of the test procedure will not be established by regulation, FTA will work with the bus testing facility operator to verify that its proposed burnishing procedure is adequate, or add additional steps to the procedure if that is determined to be necessary.

With regard to the concerns that buses may have difficulty navigating the test slope, the slope was designed to replicate conditions that could be encountered in a transit bus environment, so most if not all buses should be able to negotiate it without difficulty. In rare cases where clearance is inadequate, the operator can likely devise a workaround, perhaps such as filling in the concave transition at the bottom of the slope with temporary ramps or gravel. In the unlikely event that a bus has inadequate torque at the driving wheels to climb the 20 percent slope, then potential customers will likely want to know that limitation. If a bus is unable to navigate the ascent in order to complete the brake test, a bus could be assisted into position using a tow truck.

The operator has existing procedures in place to address damages that may occur to buses at the testing facility. These procedures will apply to any damages that may occur on the brake testing slope.

2. Emissions Test Procedure

FTA proposed a draft emissions test procedure based on 40 CFR part 86—''Emissions Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines; Gaseous and Particulate Exhaust Test Procedures'' and 40 CFR part 1065—''Engine Testing Procedures,'' as well as the Society of Automotive Engineers

(SAE) Recommended Practice, SAE J2711.

FTA proposed using an emissions testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power. FTA proposed measuring the emissions of exhaust constituents regulated by the United States Environmental Protection Agency (EPA) for transit buses, plus carbon dioxide (CO_2) and methane (CH_4), as the bus is operated over industry-standard driving cycles specified in the test procedure. FTA proposed that mileage accumulated by a bus while operating on the dynamometer during emissions testing would be counted toward the ''other'' miles that must be accumulated during durability testing. Under the proposed test procedure, the dynamometer would be set to simulate curb weight plus one-half of the fully seated load for the particular bus being tested. This approach would be consistent with the above-cited industry standard emissions measurement protocols and will facilitate direct comparisons with emissions measurements collected outside the bus testing program. FTA also sought comments on the merits of performing the emissions tests with the chassis dynamometer set to simulate gross vehicle weight, which would generally be expected to represent the ''worst case'' for emissions, seated load weight, which may result in emissions measurements closer to a typical case (and which would be consistent with the Performance and Fuel Economy tests, which are currently performed at seated load weight), or a different weight. FTA also sought comments on whether, and if so, how, the maintainability test should be modified to capture useful data related to the emissions control system and whether any such changes should be made within the regulation itself or in non-regulatory testing policies and procedures administered by the testing facility. FTA proposed to add the emissions test as a separate, eighth, test category.

A. Comments Received

The transit operator and the transit industry association both suggested that FTA test emissions at gross vehicle weight in order to shed light on the ''worst case'' emissions that might be produced by a bus model. These commenters also recommended that FTA measure emissions at a bus's tailpipe rather than at its engine. The bus manufacturer suggested that FTA's emissions testing procedure should be consistent with other accepted methodologies in order to facilitate comparisons with other sources of emissions data.

B. FTA Response

FTA considered testing emissions at gross vehicle weight, but decided to test buses at curb weight plus one-half of the seated load weight in order to achieve greater consistency with industry-standard methods for emissions testing. FTA initially proposed to, and still intends to, measure bus emissions at the tailpipe exit rather than at the engine exhaust ports. Any confusion regarding the measurement site probably arose from the NPRM's proposed new definition of ''Engine-Out Emissions,'' which will not be used in the final rule, and, therefore, has been removed.

3. Applicability and Phase-In

FTA proposed that the date on which a bus testing contract was signed would determine the applicability of the brake performance and emissions tests. Models whose testing contracts were signed before the effective date of this regulation and that continue to be produced without major changes in any structure or systems would not be required to return to the Bus Testing Center to undergo brake performance and emissions testing. Buses for which full or partial testing contracts are signed on or after the effective date of this regulation would be subject to brake performance and emissions testing (in addition to the other testing requirements).

FTA also sought comments on whether the emissions test should apply to all vehicles subject to FTA's bus testing regulation or whether any classes of buses should be exempted. In addition, we asked for comments on whether the emissions testing program should begin on the effective date of this rule for all bus types subject to testing or whether the emissions test requirement should be gradually phased-in for various classes of bus (*e.g.,* small or large buses), similar to the phase-in process used in the initial start-up of FTA's bus testing program.

A. Comments Received

The large transit operator agreed with FTA's proposal that emissions testing should begin on the effective date of the final rule, and any new buses should be required to meet the regulations in effect at the time of manufacture. The bus manufacturer stated that a single-stage bus manufacturer certifying to FMVSS 121 should not be required to undergo additional testing, and adding additional performance tests not consistent with FMVSS 121 could raise suspicions of non-compliance without adding to safety or reliability. The bus manufacturer also expressed concerns that partial testing evaluations could subject a bus model to an undue number of additional tests, particularly when it may impact bus delivery schedules.

B. FTA Response

Because none of the commenters directly responded to FTA's inquiries whether a categorical exemption for certain classes of vehicles and whether a gradual phase-in period was necessary, FTA will proceed with the plan outlined in the NPRM: Every bus model for which a full or partial bus testing contract is signed after the effective date of this final rule will be subject to brake performance and emissions testing, without a phase-in period or exemptions for specific categories of vehicles.

With regard to the suggestion that certification with FMVSS 121 exempt a vehicle from additional brake testing, FTA believes that a simple certification of compliance with FMVSS 121 does not exempt a vehicle from the braking test. Although aware that every vehicle operating on public roads must certify compliance with FMVSS, Congress nevertheless mandated that FTA establish the bus testing program, specifically adding a braking performance test, while giving FTA no statutory authority to exempt vehicles that certified compliance with FMVSS 121 or any other FMVSS requirement. Moreover, FTA's bus testing program consists of actual tests, while FMVSS compliance is met by the signing of a certificate of compliance.

FTA does not believe that the addition of braking performance and emissions testing will unduly delay delivery schedules. Under the existing regulation a bus subject to testing as a new model bus or as a modified model bus must be physically delivered to Altoona and must spend a predictable number of days at the testing facility. The addition of braking and emissions testing would add a maximum of 24 working hours to the time presently required at the test facility. When contrasted to the 60 or more days a heavy-duty model bus would spend at the test facility for a full test, an additional three business days would not significantly delay delivery schedules and perhaps could even be accounted for in a manufacturer's proposed delivery schedule.

4. Partial Testing

Under the current rule, partial testing is permitted when a previously-tested bus model undergoes changes in configuration or components that are

expected to produce significantly different data from that previously obtained at the Bus Testing Facility. These partial testing determinations are made on a case-by-case basis, using criteria set forth in the June 28, 1992, final rule that established partial testing (57 FR 33394). FTA sought comment on changes that could trigger partial testing for the brake performance and emissions tests.

A. Comments Received

The only commenter, a large bus manufacturer, did not address FTA's request for substantive comments. This commenter only stated that FTA needed to implement a policy that would provide faster responses to partial testing determinations.

B. FTA Response

Without substantive input from commenters, FTA will continue to make requests for partial testing determinations on a case-by-case basis. To provide additional guidance to purchasers, manufacturers, and vendors, FTA has posted its partial testing guidelines on its bus testing Web site. Manufacturers seeking formal letters of determination must wait for FTA to conduct its case-by-case analysis.

5. Reporting Procedures

FTA sought comment on how to better present data collected from the brake performance and emissions tests in the bus testing reports as well as in the bus testing database. FTA also welcomed comments on how to present more effectively the data from any of the eight test categories.

A. Comments Received

None of the commenters provided comment on this request.

B. FTA Response

FTA will continue using the standard test report procedure, adding braking performance and emissions as additional categories to the test reports. FTA may make changes to the test report format and/or emphasis in the future in order to present bus testing data more clearly and effectively.

Other Changes

6. Service Life Category

FTA sought comments on whether it should maintain its current requirement of allowing manufacturers to determine the useful life category in which their buses would be tested. In addition, FTA asked for comment on whether it should continue to expect grantees to evaluate the bus testing reports carefully to assess whether the bus will in fact adequately meet its service life requirements.

FTA also sought comments on alternative policies for determining the service life category in which a particular bus model would be tested, such as (1) redefining the characteristics of buses in each service life category, and if that approach is taken, what those characteristics should be; (2) requiring manufacturers to request an official determination from FTA of a vehicle's service life category; or (3) providing guidance on the standard useful life based on type of construction but allowing manufacturers to test and sell in higher service life categories if they post a ''durability assurance'' bond or similar instrument.

A. Comments Received

All three commenters on this subject supported the retention of the current FTA requirement. The manufacturer of large buses stated that it is the purchaser's responsibility to review the test report and determine whether the vehicle is adequate to meet their needs. The trade association and transit operator also supported this approach and added that manufacturers should provide proof to the operator that the bus will meet the standards of the higher service life category. The transit operator proposed additional language that would provide the customer a ''durability assurance bond'' or similar instrument that would cover the vehicle's advertised useful standard life.

B. FTA Response

Based on the response from commenters, FTA does not believe that altering the current procedures is warranted. Although manufacturers may continue to select the appropriate service life category for testing, FTA believes that well-informed purchasers are the best safeguard—to that point, bus purchasers are advised to seek adequate assurances from the vendor in the form of extended warranties or contractual assurances that the vehicle will meet its advertised service life.

7. Buses That Exceed Weight Limits When Fully Loaded

In the NPRM, FTA made note of the fact that a number of buses tested at the Bus Testing Center have not been tested in their fully loaded condition (*i.e.,* with all seats and standee positions occupied), since doing so would have caused their actual weight to exceed either their gross vehicle weight ratings (GVWR) or a front or rear gross axle weight rating (GAWR).

FTA noted that the test data might not reflect the actual performance of these buses in real-life service, where operators frequently allow all seats and aisles to be filled without regard to the GVWR or GAWR to avoid leaving passengers behind at a stop. FTA sought comments on the following three approaches for addressing these situations:

1. Require that any tests specified in the test procedures be performed at gross vehicle weight (GVW) on the test track (which is not a public roadway) with all seats and standee positions ballasted, and require any tests specified in the test procedures be performed at seated load weight (SLW) on the test track with all seats ballasted. Although the bus would be overloaded, the test data may be more representative of the conditions the bus will face in actual service. This approach would help to ''flag'' buses that are not adequately able to withstand the rigors of transit service.

2. Continue the current practice of deleting ballast until the bus is within its GVWR/GAWR, but place a more prominent notice in the bus testing report stating that the bus will exceed its maximum GVWR/GAWR with all passenger positions occupied, and alert readers that the test data may not be representative of the vehicle's actual in-service durability.

3. Decline to test a bus that exceeds its GAWR or GVWR when loaded to full capacity.

A. Comments Received

Three commenters—the large industry trade association, the large transit agency, and the large bus manufacturer—supported continuing with the current practice outlined under Option 2, noting its practicability. The transit operator suggested testing a vehicle at its GVW on the test track, regardless of the vehicle's GVWR. The manufacturers' association supported Option 3, proposing that FTA decline to test any vehicle that exceeded its GVWR.

FTA also received unsolicited suggestions from two commenters, recommending that FTA increase the simulated ballast weight from the currently-used 150 pounds per passenger cited in the new definitions of ''gross vehicle weight'' and ''seated load weight'' proposed in the NPRM, to 170 pounds per passenger to reflect the increasing average weight of Americans over the last several decades.

B. FTA Response

FTA finds that declining to test a vehicle whose GVW exceeds its GVWR is impractical, noting that the entire purposes of the bus testing program is to carry out the legislative mission of

verifying that the bus can withstand the rigors of regular transit service. Similarly, testing a bus up to its GVWR but no higher, despite the inability to embark the equivalent of a full complement of passengers, is unrealistic and contrary to the intent of Congress in establishing the program. Buses frequently fill every available seat during rush-hour, and commonly allow ''crush loads'' of standees in the aisle.

Therefore, the final rule will require buses to be ballasted with a fully loaded passenger complement of seated and standee passengers during the gross vehicle weight portion and with all seats filled during the seated load weight portion of the testing. If the vehicle exceeds its GVWR, the bus will be tested in that condition only on the operator's non-public testing facilities unless and until the operator receives an exemption to operate the vehicle on public roads. Data on how a bus performs under full load conditions is essential to the purchaser, to support acquisition decisions, development of preventive maintenance schedules, and budgeting for unscheduled maintenance.

The suggestion to increase the average passenger weight is well taken, and currently, the U.S. Department of Transportation is considering this subject in the context of all modes of transportation: air, surface, and water. It is quite possible the Department will seek to establish higher value for average passenger weight. If so, FTA would initiate a new rulemaking to amend Part 665 accordingly. FTA will consult with the Department on this subject in the very near future.

8. Family of Vehicles

FTA sought comments on whether it would be appropriate to expand its existing ''Family of Vehicles'' policy to the 7-year or higher service life categories. The existing Family of Vehicles policy is limited to buses in the 4-year and 5-year service life categories only, and allows manufacturers that have tested a complete bus built on one third-party chassis to offer closely-related variants (such as different lengths) of that bus body on the same or different (but similar) mass-produced chassis that has been tested at the Bus Testing Center on any similar bus by any bus manufacturer. FTA sought comments on the desirability and ramifications of extending the Family of Vehicles policy to all buses built on third-party chassis

A. Comments Received

The large industry trade association opposed the proposal, stating that the 4- and 5-year buses are used differently than the larger vehicles, and that such a proposal would increase prices without increasing the quality of the vehicles. The large transit agency also recommended that FTA keep its current requirement, noting that the 4- and 5-year buses are not used in standard transit service.

B. FTA Response

Given the lack of support among commenters for the proposed expansion of the concept, FTA is retaining its Family of Vehicles policy for 4- and 5-year buses and will not expand it to include buses used in higher service life categories.

9. Separate Reporting of Third-Part Chassis Test Results

Although Section 5318 directs that buses are to be tested as an integrated system, FTA's Family of Vehicles policy described in the previous paragraphs would be easier to implement and understand if the Bus Testing Center were able to produce separate testing reports for third-party chassis. These reports could be prepared by identifying, separating out, and summarizing only the chassis-related data during tests of buses built on third-party chassis. The Bus Testing Center operator expressed concern that in past experience, a significant number of buses are tested on modified third-party chassis, and these modifications, even if performed in strict compliance with the manufacturer's guidelines, would frustrate comparisons of data on third-party chassis. Therefore, FTA sought comments on the feasibility of preparing separate test reports for third-party chassis that are tested in the course of testing complete buses built on those chassis. FTA also sought comments on any practical considerations that may need to be addressed or difficulties that may be presented, as well as the best ways to separate and report data on third-party chassis. Finally, FTA sought comments on how the costs of this additional reporting would be borne.

A. Comments Received

FTA received two comments on this proposal—one from the large trade association, another from the large transit agency. The transit agency recommended preparation of separate third-party test reports, with costs to be negotiated between the chassis maker and purchasers. The trade association similarly commented that the costs should be negotiated, but did not address whether separate chassis reports are desirable.

B. FTA Response

Because the design, engineering, and manufacturing, and quality control of third-party chassis are the same regardless of the final customer, there may be little differentiation in test data when a particular third-party chassis is used on similar buses built by multiple bus manufacturers. FTA believes that some of the test data obtained from testing a vehicle using a third-party chassis already can be extrapolated to similar buses built on the same chassis through the partial testing process.

The regulation's existing partial testing provisions permit partial testing of previously tested bus models that are subsequently produced with changes in configuration or components, requiring additional testing only where significant changes in data are expected, including changes in chassis components, such as engines, axles, suspensions, and powertrains. Under these partial testing procedures, if a manufacturer of a fully-tested vehicle wants to offer that same vehicle using a different but already-tested third-party chassis, FTA will require only those tests where significant changes in data are expected—expecting that data intrinsic to the chassis can be extrapolated from the previous bus testing report using that chassis. The current process reduces the costs and testing requirements; however, to increase convenience and clarity for bus purchasers, FTA will continue to explore the feasibility of issuing separate test reports for third-party chassis.

10. FTA Evaluation/Recommendation of Bus Models

In response to a number of informal suggestions received in the past that FTA issue ''pass/fail'' determinations for buses in the bus testing reports, FTA sought comments in the NPRM on whether the bus testing reports should include a ''pass/fail'' criterion or a ''recommended/not-recommended'' determination, and if so, how thresholds for such determinations should be established. Alternatively, FTA sought comments on improved ways to enhance the presentation of data in the reports (e.g., by presenting data graphically) so that information for decision-making is more readily apparent and better informs local decision-making.

A. Comments Received

FTA received two comments on this subject—one from a bus manufacturer, and one from an equipment manufacturers association. The bus

manufacturer stated that FTA should not make pass/fail determinations, noting that it should be the customer's prerogative and responsibility. The equipment manufacturer association stated that FTA should establish pass/fail criteria, at least for braking criteria.

B. FTA Response

FTA found the dearth of comments regarding the establishment of pass/fail criteria disappointing, based on pre-rulemaking comments from the presumed beneficiaries of pass/fail criteria, namely, the transit agencies that purchase the vehicles. FTA sought substantive comments on possible criteria and thresholds. In the absence of comments supporting such an approach, FTA will not proceed with establishing pass/fail criteria at this time. FMVSS 121 already includes pass/fail criteria for braking performance, so a separate criterion in the bus testing reports is not necessary and could be confusing.

11. Scope

Paragraph 665.3 is being amended to bring it into statutory conformity. Section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 initially limited applicability of the bus testing program to recipients of FTA funding under the former sections 3, 9, 16(b)(2), and 18 programs. Paragraph 3023(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users amended 49 USC 5318, paragraph (e), to extend the bus testing requirement to all new bus models acquired with funds under 49 USC Chapter 53. The statutory change is not significant, as practically all buses subject to the testing requirements are acquired with funds authorized under one of those four programs.

Regulatory Analyses and Notices

All comments received are available for examination in the docket at *http://www.regulations.gov.* All comments have been fully considered in this final rule.

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5318, as amended by section 3020 of SAFETEA–LU (Pub. L. 109–59).

B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this final action will not have sufficient federalism implications to warrant additional consultation. FTA has also determined that this final action will not preempt any State law or State regulation or affect the States' ability to discharge traditional governmental functions.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. FTA has analyzed this final rule under Executive Order 13175 and believes that this final action will not have substantial, direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal impact statement is not required. FTA received no comments on the NPRM from Indian tribal governments.

D. Regulatory Flexibility Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. FTA certifies that this final rule will not have a significant economic impact on substantial number of small entities.

E. Executive Order 12866 and DOT Regulatory Policies and Procedures

FTA has determined that this action is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Although some of the changes made by this rule are statutorily mandated, FTA anticipates that the direct economic impact of this rulemaking will be minimal and has actively sought to minimize the bus testing burden, including the continued availability of partial testing procedures.

This final rule also clarifies existing regulatory requirements that will not adversely affect, in any material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

F. Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

G. Executive Order 13211: Energy Effects

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001, and determined that this is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not propose any new information collection burdens.

I. Regulation Identifier Number (RIN)

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this

document may be used to cross-reference this action with the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may view the U.S. DOT Privacy Act Statement by visiting *http://docketsinfo.dot.gov/* or at 65 FR 19477 (April 11, 2000).

List of Subjects in 49 CFR Part 665

Buses, Grant programs—transportation, Motor vehicle safety, Public transportation, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Transit Administration revises 49 CFR part 665 to read as follows:

PART 665—BUS TESTING

Subpart A—General

665.1 Purpose.
665.3 Scope.
665.5 Definitions.
665.7 Grantee certification of compliance.

Subpart B—Bus Testing Procedures

665.11 Testing requirements.
665.13 Test report and manufacturer certification.

Subpart C—Operations

665.21 Scheduling.
665.23 Fees.
665.25 Transportation of vehicle.
665.27 Procedures during testing.
Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

Authority: 49 U.S.C. 5318 and 49 CFR 1.51.

Subpart A—General

§ 665.1 Purpose.

An applicant for Federal financial assistance under the Federal Transit Act for the purchase or lease of buses with funds obligated by the FTA shall certify to the FTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

§ 665.3 Scope.

This part shall apply to an entity receiving Federal financial assistance under 49 U.S.C. Chapter 53.

§ 665.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Automotive means that the bus is not continuously dependent on external power or guidance for normal operation. Intermittent use of external power or guidance shall not automatically relieve a bus of its automotive character or requirement for bus testing.

Bus means a rubber-tired automotive vehicle used for the provision of public transportation service by or for a recipient.

Bus model means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

Bus testing facility means the bus testing facility established by the Secretary of Transportation, and includes test track facilities operated in connection with the facility.

Bus testing report, also *full bus testing report,* means a complete test report for a bus model, documenting the results of performing the complete set of bus tests on that bus model.

Curb weight means the weight of the empty, ready-to-operate bus plus driver and fuel.

Emissions means the components of the engine tailpipe exhaust that are regulated by the United States Environmental Protection Agency (EPA), plus carbon dioxide (CO_2) and methane (CH_4).

Emissions control system means the components on a bus whose primary purpose is to minimize regulated emissions before they reach the tailpipe exit. This definition does not include components that contribute to low emissions as a side effect of the manner in which they perform their primary function (*e.g.*, fuel injectors or combustion chambers).

Final acceptance means that a recipient has released the FTA-provided funds to a bus manufacturer or dealer in connection with bus procurement.

Gross weight, also *gross vehicle weight*, means the curb weight of the bus plus passengers simulated by adding 150 pounds of ballast to each seating position and 150 pounds for each standing position (assumed to be each 1.5 square feet of free floor space).

Hybrid means a propulsion system that combines two power sources, at least one of which is capable of capturing, storing, and re-using energy.

Major change in chassis design means, for vehicles manufactured on a third-party chassis, a change in frame structure, material or configuration, or a change in chassis suspension type.

Major change in components means:

(1) For those vehicles that are not manufactured on a third-party chassis, a change in a vehicle's engine, axle, transmission, suspension, or steering components;

(2) For those that are manufactured on a third-party chassis, a change in the vehicle's chassis from one major design to another.

Major change in configuration means a change that is expected to have a significant impact on vehicle handling and stability or structural integrity.

Modified third-party chassis or van means a vehicle that is manufactured from an incomplete, partially assembled third-party chassis or van as provided by an OEM to a small bus manufacturer. This includes vehicles whose chassis structure has been modified to include: a tandem or tag axle; a drop or lowered floor; changes to the GVWR from the OEM rating; or other modifications that are not made in strict conformance with the OEM's modifications guidelines.

New bus model means a bus model that—

(1) Has not been used in public transportation service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or a major change in components.

Operator means the operator of the bus testing facility.

Original equipment manufacturer (OEM) means the original manufacturer of a chassis or van supplied as a complete or incomplete vehicle to a bus manufacturer.

Parking brake means a system that prevents the bus from moving when parked by preventing the wheels from rotating.

Partial testing means the performance of only that subset of the complete set of bus tests in which significantly different data would reasonably be expected compared to the data obtained in previous full testing of the baseline bus model at the bus testing facility.

Partial testing report, also *partial test report*, means a report documenting, for a previously-tested bus model that is produced with major changes, the results of performing only that subset of the complete set of bus tests in which significantly different data would reasonably be expected as a result of the changes made to the bus from the configuration documented in the original full bus testing report. A partial testing report is not valid unless accompanied by the full bus testing report for the corresponding baseline bus configuration.

Public transportation service means the operation of a vehicle that provides

general or special service to the public on a regular and continuing basis.

Recipient means an entity that receives funds under 49 U.S.C. Chapter 53, either directly from FTA or through a State administering agency.

Regenerative braking system means a system that decelerates a bus by recovering its kinetic energy for on-board storage and subsequent use.

Retarder means a system other than the service brakes that slows a bus by dissipating kinetic energy.

Seated load weight means the weight of the bus plus driver, fuel, and seated passengers simulated by adding 150 pounds of ballast to each seating position.

Service brake(s) means the primary system used by the driver during normal operation to reduce the speed of a moving bus and to allow the driver to bring the bus to a controlled stop and hold it there. Service brakes may be supplemented by retarders or by regenerative braking systems.

Small bus manufacturer means a secondary market assembler that acquires a chassis or van from an original equipment manufacturer for subsequent modification or assembly and sale as 5-year/150,000-mile or 4-year/100,000-mile minimum service life vehicle.

Tailpipe emissions means the exhaust constituents actually emitted to the atmosphere at the exit of the vehicle tailpipe or corresponding system.

Third party chassis means a commercially available chassis whose design, manufacturing, and quality control are performed by an entity independent of the bus manufacturer.

Unmodified mass-produced van means a van that is mass-produced, complete and fully assembled as provided by an OEM. This shall include vans with raised roofs, and/or wheelchair lifts, or ramps that are installed by the OEM, or by a party other than the OEM provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

Unmodified third-party chassis means a third-party chassis that either has not been modified, or has been modified in strict conformance with the OEM's modification guidelines.

§ 665.7 Grantee certification of compliance.

(a) In each application to FTA for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by the FTA, the recipient shall certify that the bus was tested at the bus testing facility. The recipient shall receive the appropriate full bus testing report and any applicable partial testing report(s) before final acceptance of the first vehicle by the recipient.

(b) In dealing with a bus manufacturer or dealer, the recipient shall be responsible for determining whether a vehicle to be acquired requires full testing or partial testing or has already satisfied the requirements of this part.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the bus testing facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in Part 571 of this title; and

(3) Be substantially fabricated and assembled using the techniques, tooling, and materials that will be used in production of subsequent buses of that model.

(b) If the new bus model has not previously been tested at the bus testing facility, then the new bus model shall undergo the full tests requirements for Maintainability, Reliability, Safety, Performance including braking performance, Structural Integrity, Fuel Economy, Noise, and Emissions;

(c) If the new bus model has not previously been tested at the bus testing facility and is being produced on a third-party chassis that has been previously tested on another bus model at the bus testing facility, then the new bus model may undergo partial testing requirements;

(d) If the new bus model has previously been tested at the bus testing facility, but is subsequently manufactured with a major change in chassis or components, then the new bus model may undergo partial testing.

(e) The following vehicle types shall be tested:

(1) Large-size, heavy-duty transit buses (approximately 35′–40′ in length, as well as articulated buses) with a minimum service life of 12 years or 500,000 miles;

(2) Medium-size, heavy-duty transit buses (approximately 30′ in length) with a minimum service life of ten years or 350,000 miles;

(3) Medium-size, medium duty transit buses (approximately 30′ in length) with a minimum service life of seven years or 200,000 miles;

(4) Medium-size, light duty transit buses (approximately 25′–35′ in length) with a minimum service life of five years or 150,000 miles; and

(5) Other light duty vehicles such as small buses and regular and specialized vans with a minimum service life of four years or 100,000 miles.

(f) Tests performed in a higher service life category (*i.e.,* longer service life) need not be repeated when the same bus model is used in lesser service life applications.

(g) The operator of the bus testing facility shall develop a test plan for the testing of vehicles at the facility. The test plan shall follow the guidelines set forth in the appendix to this part.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide the resulting test report to the entity that submitted the bus for testing.

(b)(1) A manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to a recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a bus testing report has a change that is not a major change under this Part, the manufacturer or dealer shall advise the recipient during the procurement process and shall include a description of the change and the manufacturer's basis for concluding that it is not a major change.

(d) A bus testing report shall be available publicly once the bus manufacturer makes it available during a recipient's procurement process. The operator of the facility shall have copies of all the publicly available reports available for distribution.

(e) The bus testing report is the only information or documentation that shall be made publicly available in connection with any bus model tested at the bus testing facility.

Subpart C—Operations

§ 665.21 Scheduling.

(a) To schedule a bus for testing, a manufacturer shall contact the operator of FTA's bus testing program. Contact information and procedures are available on the operator's bus testing Web site, *http://www.altoonabustest.com.*

(b) Upon contacting the operator, the operator shall provide the manufacturer with the following:

(1) A draft contract for the testing;

(2) A fee schedule; and

(3) The draft test procedures that will be conducted on the vehicle.

(c) The operator shall provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) The operator shall process vehicles for testing in the order in which the contracts are signed.

§ 665.23 Fees.

(a) The operator shall charge fees in accordance with a schedule approved by FTA, which shall include prorated fees for partial testing.

(b) Fees shall be prorated for a vehicle withdrawn from the bus testing facility before the completion of testing.

§ 665.25 Transportation of vehicle.

A manufacturer shall be responsible for transporting its vehicle to and from the bus testing facility at the beginning and completion of the testing at the manufacturer's own risk and expense.

§ 665.27 Procedures during testing.

(a) The operator shall perform all maintenance and repairs on the test vehicle, consistent with the manufacturer's specifications, unless the operator determines that the nature of the maintenance or repair is best performed by the manufacturer under the operator's supervision.

(b) The manufacturer shall be permitted to observe all tests. The manufacturer shall not provide maintenance or service unless requested to do so by the operator.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The eight tests to be performed on each vehicle are required by SAFETEA–LU and are based in part on tests described in the FTA report ''First Article Transit Bus Test Plan,'' which is mentioned in the legislative history of section 317 of STURAA. When appropriate, Society of Automotive Engineers (SAE) test procedures and other procedures accepted by the transit industry will be used. The eight tests are described in general terms in the following paragraphs.

1. Maintainability

The maintainability test should include bus servicing, preventive maintenance, inspection, and repair. It also should include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus's normal life cycle. Much of the maintainability data should be obtained during the bus durability test at the test track. Up to twenty-five percent of the bus life should be simulated and servicing, preventive maintenance, and repair actions should be recorded and reported. These actions should be performed by test facility staff, although manufacturers should be allowed to maintain a representative on site during the testing. Test facility staff may require a manufacturer to provide vehicle servicing or repair, under the supervision of the facility staff. Because the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance should be carried out by the test operator in accordance with the manufacturer's specifications.

The maintainability test report should include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user should be included in the report.

2. Reliability

Reliability should not be a separate test, but should be addressed by recording all bus failures and breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. The detected bus failures, repair time, and the actions required to return the bus to operation should be recorded in the report.

3. Safety

The safety test should consist of a handling and stability test. The handling and stability test should be an obstacle avoidance or double-lane change test performed at the test track. Bus speed should be held constant throughout a given test run. Individual test runs should be made at increasing speeds up to a specified maximum or until the bus can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes should be tested.

4. Performance

The performance test should be performed on the test track and should measure acceleration, maximum speed attained, gradeability, and braking. The bus should be accelerated at full throttle from a full stop to maximum safe speed on the track. The gradeability capabilities should be measured when starting from a full stop on a steep grade, and supplemented by calculating gradeability based on the acceleration data. The functionality and performance of the service, regenerative (if applicable), and parking brake systems should be evaluated at the test track. The test bus should be subjected to a series of brake stops from specified speeds on high, low, and split-friction surfaces. The parking brake should be evaluated with the bus parked facing both up and down a steep grade.

5. Structural Integrity

Two complementary structural integrity tests should be performed. Structural strength and distortion tests should be performed at the Bus Testing Center, and the structural durability test should be performed at the test track.

a. Structural Strength and Distortion Tests

(1) A shakedown of the bus structure should be conducted by loading and unloading the bus with a distributed load equal to 2.5 times the load applied for the gross weight portions of testing. The bus should then be unloaded and inspected for any permanent deformation on the floor or coach structure. This test should be repeated a second time, and should be repeated up to one more time if the permanent deflections vary significantly between the first and second tests.

(2) The bus should be loaded to gross vehicle weight, with one wheel on top of a curb and then in a pothole. This test should be repeated for all four wheels. The test verifies: normal operation of the steering mechanism; and operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test should be conducted in each suspension travel condition.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the curb weight should be applied to the bus towing fixtures (front and rear). The load should be removed and the two eyes and adjoining structure inspected for damages or permanent deformations.

(4) The bus should be towed at curb weight with a heavy wrecker truck for several miles and then inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages and clearance issues due to tire deflating and jacking should be assessed.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands should be assessed.

b. Structural Durability

The structural durability test should be performed on the durability course at the test track, simulating twenty-five percent of the vehicle's normal service life. The bus structure should be inspected regularly during the test, and the mileage and identification of any structural anomalies and failures should be reported in the reliability test.

6. Fuel Economy

The fuel economy test should be conducted using duty cycles that simulate transit service. This test should measure the fuel economy of the bus in miles per gallon or other energy-equivalent units.

The fuel economy test should be designed only to enable FTA recipients to compare the relative fuel economy of buses operating at a consistent loading condition on the same set of typical transit driving cycles. The results of this test are not directly comparable to fuel economy estimates by other agencies, such as the U.S. Environmental Protection Agency (EPA) or for other purposes.

7. Noise

The noise test should measure interior noise and vibration while the bus is idling (or in a comparable operating mode) and driving,

and also should measure the transmission of exterior noise to the interior while the bus is not running. The exterior noise should be measured as the bus is operated past a stationary measurement instrument.

8. Emissions

The emissions test should measure tailpipe emissions of those exhaust constituents regulated by the United States Environmental Protection Agency (EPA) for transit bus emissions, plus carbon dioxide (CO_2) and methane (CH_4), as the bus is operated over specified driving cycles. The emissions test should be conducted using an emissions testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power.

The emissions test is not a certification test, and is designed only to enable FTA recipients to compare the relative emissions of buses operating on the same set of typical transit driving cycles. The results of this test are not directly comparable to emissions measurements obtained by other agencies, such as the EPA, which are used for other purposes.

Peter M. Rogoff,

Administrator.

[FR Doc. E9–23818 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0909101271–91272–01]

RIN 0648–AY23

Fisheries of the Northeastern United States; Black Sea Bass Recreational Fishery; Emergency Rule

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

ACTION: Emergency rule; emergency action; request for comments.

SUMMARY: NMFS is implementing, through this emergency rule, a closure of the recreational black sea bass fishery in the Federal waters of the Exclusive Economic Zone (EEZ) from 3 to 200 nautical miles offshore, north of Cape Hatteras, NC. This action is necessary because the best available information for black sea bass recreational landings indicates that the 2009 recreational harvest limit established for the black sea bass fishery is projected to have been exceeded. NMFS is effecting this closure to mitigate the magnitude of the recreational overage because the established mortality objective for 2009 has been exceeded.

DATES: Effective October 5, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AY23, by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail and hand delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2009 Black Sea Bass Recreational EEZ Closure.''
- *Fax:* (978) 281–9135. Send the fax to the attention of the Sustainable Fisheries Division. Include ''Comments on 2009 Black Sea Bass Recreational EEZ Closure'' prominently on the fax.

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: A final rule to establish the recreational harvest limits for 2009 for the summer flounder, scup, and black sea bass fisheries was published in the **Federal Register** on January 2, 2009 (74 FR 29). The black sea bass recreational harvest limit for 2009 is 1.14 million lb (517 mt). The 2009 recreational management measures for Federal waters are a 12.5-inch (31.75-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31. Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 3 (January-June) indicate that 1,018,878 lb (462 mt) have been landed. Due to time constraints, this amount has not been stratified to exclude southern stock landings that occur south of Cape Hatteras, NC. The total North Carolina landings through Wave 3 are 71,059 lb (32 mt). Therefore, the landings through Wave 3 are at least 947,819 lb (430 mt). This means that between 83 and 89 percent of the 2009 recreational harvest limit had been taken by the end of June. Data for Wave 4 (July-August) are not yet available; however, an average of 27 percent of the annual landings has occurred during Wave 4 in the years 2005–2008. On average, an additional 24 percent of landings have occurred during Wave 5 (September-October) and 4 percent during Wave 6 (November-December) for the same time period. Using these proportions of landings by wave (*i.e.,* Waves 1–3 = 45 percent of annual landings) and applying the information to the actual landings data available through Wave 3 for 2009 would result in approximately 611,000 lb (277 mt) being landed through the end of August (end of Wave 4), with an additional 634,000 lb (288 mt) expected to be landed before the end of the year if the fishery remains open.

Using MRFSS data in a variety of projection scenarios, NMFS, along with independent MRFSS queries made by staff of the Atlantic States Marine Fisheries Commission (Commission) and Mid-Atlantic Fishery Management Council (Council) have concluded that the 2009 recreational harvest limit for black sea bass has been exceeded. Multiple projections utilizing the actual 2009 MRFSS data through Wave 3 and projected landings for the remaining Waves 4–6 have indicated that the potential range of total 2009 landings is from 2.1 to 3.7 million lb (953 to 1,678 mt). This would exceed the 2009 recreational harvest limit by 84 to 225 percent, respectively, if landings are left unchecked until the regulatory closure date of December 31, 2009.

Regardless of the variability in the projection methods utilized, wherein average fish weight and multiple ranges of prior years are included to inform average landings in Waves 4–6 were modified in the different treatments, a substantial portion of the black sea bass recreational fishery clearly occurs during the months of July-October (MRFSS Waves 4 and 5). On average, Waves 4–6 have produced 55 percent of the total coastwide black sea bass landings in the years 2005–2008. Wave 4 MRFSS information for 2009 will not be available until mid-October. However, the best information currently available indicates that the 2009 recreational harvest level has been exceeded and that continued operation of the fishery will result in additional landings above the established harvest level. Even after a closure of the EEZ occurs, additional landings above the established recreational harvest level will occur in state waters, unless all states implement closures of their state-water recreational black sea bass fisheries.

The Commission's Black Sea Bass Management Board (Board) convened on September 8, 2009, to discuss

potential emergency closure of the 2009 recreational fishery, but ultimately voted not to implement an emergency closure at this time. From 2004–2008, approximately 62 percent of black sea bass landings were from the EEZ. The amount of black sea bass harvest in the EEZ varies by state: No black sea bass were landed in the EEZ adjacent to CT, and roughly 10 percent of the MA black sea bass fishery occurred in the adjacent EEZ during the 2004–2008 time frame; conversely, NJ, DE, and MD all had greater than 92 percent of their respective black sea bass landings taken from the EEZ. Had the Board taken action to close state waters, the EEZ would have effectively been closed, as individuals would have been prohibited from transiting state waters in possession of recreationally caught black sea bass from the EEZ.

NMFS is taking temporary emergency action to close the 2009 black sea bass recreational fishery in the EEZ for the remainder of the fishing year for the following reasons: (1) The best available information indicates that the 2009 recreational harvest limit established for the fishery has been greatly exceeded; and (2) the projected overage has already exceeded the recreational fishery mortality objective established for 2009 and the magnitude of the projected overage threatens to exceed the overall mortality objective established at the total landings level (*i.e.,* commercial and recreational sectors combined).

Classification

The Administrator, Northeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

This emergency closure action is being implemented to mitigate the amount of additional landings that will occur above the established 2009 recreational harvest limit. As such, time is of the essence in implementing the closure. NMFS has demonstrated, using recent fishery landings information, that an average of 28 percent of black sea bass landings has occurred in Waves 5 and 6 (September–December) in the last 4 years. By implementing this closure as soon as possible, the amount of the recreational harvest limit overage may be minimized. The FMP contains no pound-for-pound recreational overage repayment mechanism; however, in years following an overage, a greater reduction in the following year's fishery is often required unless the overage is offset by an increase in the recreational harvest limit. *Status quo* landing limits have been proposed by the Council for the 2010 black sea bass fishery. NMFS will review the Council's recommendation for consistency with applicable regulations and statutes before implementing a final landings level, including a recreational harvest limit, at the end of 2009. If NMFS implements the Council's recommended TAL of 2.3 million lb (1,043 mt) for 2010, the magnitude of the projected 2010 overage is such that no recreational fishery may be permitted in the Federal waters of the EEZ for 2010. Hence, promulgation of this closure is time sensitive. It would be contrary to the public interest to delay as such delay would invariably allow additional landings above the recreational harvest limit and require greater 2010 landings reductions and/or ensure that no recreational fishery would occur in 2010.

This emergency action responds to analysis of the most recent MRFSS data through Wave 3. This information was first available in mid-August. Time was needed to conduct analyses for potential landings for the remainder of 2009, as well as to prepare the rulemaking documents. NMFS has developed and implemented this emergency action as expediently as possible.

Waiver of the notice-and-comment rulemaking period will serve the public by allowing for a closure which mitigates the amount of landings that occur above the established recreational harvest limit.

For the same reasons, the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(d)(3) to make this rule effective immediately, thereby waiving the 30-day delayed effective date required by 5 U.S.C. 553(d).

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 29, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit may not possess black sea bass after October 5, 2009, unless this time period is adjusted pursuant to the procedures in § 648.140.

■ 3. In § 648.145, the first sentence of paragraph (a) is revised to read as follows:

§ 648.145 Possession limit.

(a) No person shall possess black sea bass after October 5, 2009, in, or harvested from the EEZ, unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. * * *

* * * * *

[FR Doc. E9–23945 Filed 9–30–09; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 74, No. 191
Monday, October 5, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # AMS–CN–09–0032; CN–08–003]

Cotton Research and Promotion Program: Designation of Cotton-Producing States; Secretary's Decision and Referendum Order on Proposed Amendments to the Cotton Research and Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This is the Secretary's decision concerning amendments to the Cotton Research and Promotion Order (Cotton Order) and provides Upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments would implement section 14202 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that amended the Cotton Research and Promotion Act (Cotton Act.) The 2008 Farm Bill provided that Kansas, Virginia, and Florida be separate states in the definition of ''cotton-producing state'' effective beginning with the 2008 crop of cotton. It has been determined that amendments need to be expedited and therefore a recommended decision is omitted.

DATES: For the purpose of determining producer voter eligibility, the representative production period is the period January 1, 2008, through December 31, 2008. For the purpose of determining importer voter eligibility, the 12-month period during which qualifying imports of cotton must have been made is January 1, 2008, through December 31, 2008.

The referendum will be held during the period October 13, 2009, through November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or email at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 24, 2008, and published in the December 1, 2008, issue of the **Federal Register** (73 FR 72747).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of the public hearing held in Washington, DC, on December 5, 2008. The hearing was held to consider and receive evidence from Upland cotton producers, importers, and other interested parties on the proposed amendments to the Cotton Order (7 CFR part 1205). The hearing was held pursuant to the provisions of the Cotton Act (7 U.S.C. 2101–2118), and the applicable rules of practice and procedure governing research and promotion programs (7 CFR part 1200). The proposed amendments in this decision would: (1) Amend the Cotton Order to incorporate the States of Kansas, Virginia, and Florida into the definition of ''cotton-producing state'' as separate states, (2) amend the definition of ''cotton-producing region'' to list Kansas, Virginia, and Florida as separate states, and (3) make any such changes as may be necessary to the Cotton Order if any of the proposed amendments as adopted, so that all of the Cotton Order's provisions conform to the effectuated amendments. AMS believes that conditions exist that warrant the omission of a recommended decision in this rulemaking proceeding under 7 CFR 1200.13(d) of the Rules of Practice and Procedure with respect to the proposed amendments.

The amendments are proposed by AMS to amend the Cotton Order and to implement section 14202 of the 2008 Farm Bill that amended the Cotton Act. In addition, AMS proposed to amend the definition of cotton-producing region for consistency with the changes to the definition of cotton-producing state. AMS also proposed to make such changes as may be necessary to the Cotton Order to conform to any amendment that may result from the hearing. No conforming changes were determined to be necessary by AMS.

Three witnesses testified at the hearing, and all were in favor of the amendments. One witness represented AMS, one witness represented the Virginia Cotton Growers Association and the National Council, and lastly, one witness represented the Cotton Board.

At the conclusion of the hearing, the Administrative Law Judge set January 14, 2009, as the date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing on the proposed amendments. The Hearing Clerk received six briefs during the briefing period. Briefs were received from the offices of Congressman Allen Boyd, Jr., Florida; Congressman Bob Goodlatte, Virginia; and, Senator Pat Roberts, Kansas. Comments also were received from the Kansas Cotton Association, the Florida Farm Bureau; and, Southern Cotton Growers, Inc. Each of these briefs expressed full support of the prompt implementation of the amendments proposed by AMS. All discussions in briefs pertaining to the amendments proposed in this decision were considered. Two briefs, one from the office of Senator Bill Nelson, Florida; and one from the United States Association of Importers of Textiles and Apparel, were received after the January 14, date and therefore were untimely. Accordingly, they were not considered in this decision.

Proposals in This Decision

AMS proposed these amendments to the Cotton Order for the purpose of implementing changes to the Cotton Act as mandated by section 14202 of the 2008 Farm Bill. Section 14202 modified the Cotton Act by adding States of Kansas, Virginia, and Florida to the definition of ''cotton-producing state'' as separate states effective beginning with the 2008 crop of cotton. A crop year is synonymous with marketing year and 7 CFR 1205.320 of the Cotton Order defines ''marketing year'' as a consecutive 12-month period ending July 31.

AMS proposed to amend section 1205.314 of the Cotton Order to incorporate the States of Kansas, Virginia, and Florida into the definition of cotton-producing state and amend section 1205.319 to reflect the incorporation of the above three states in the definition of cotton-producing region.

Material Issues

The material issues in this decision presented on the record of the hearing are as follows:

1. Whether to amend section 1205.314 to read as follows: Cotton-producing State means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; and Virginia.

2. Whether to amend section 1205.319 to read as follows: ''Cotton-producing region'' means each of the following groups of cotton-producing States: (a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Kansas, Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.

3. Whether to expedite the decision on all of the proposals by omitting the recommended decision and proceeding directly to the Secretary's decision and referendum order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

Material Issue Number 1

Section 1205.314 should be amended to provide that the States of Kansas, Virginia, and Florida be separate states in the definition of ''Cotton-Producing State.'' Section 1205.314 should read as follows: ''Cotton-producing State'' means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; and Virginia.

Section 1205.314 of the Cotton Order currently defines Cotton-Producing State as, ''Cotton-producing State means each of the following States and combination of States: Alabama-Florida; Arizona; Arkansas; California-Nevada; Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas.'' Currently, Kansas is not included in this definition, Virginia is combined as a region with North Carolina, and Florida is combined as a region with Alabama. AMS is proposing to amend the definition so that Kansas is added and Florida and Virginia are separated from their current partner states.

The witness representing AMS testified that the major effect of these changes is that any cotton producer organization, in any cotton-producing state, including the respective States of Kansas, Virginia, and Florida, may request certification from the Secretary pursuant to section 1205.341 of the Order to participate in nominating members and alternate members to represent such State on the Cotton Board pursuant to section 1205.324. The witness also testified that the change would also allow the States of Kansas, Virginia, and Florida, pursuant to section 1205.322(b)(1), to have at least one member, and one additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above 1 million bales during the period specified in the regulations for determining board membership. Further, the AMS witness stated that in determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board, as provided in section 1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as the criteria for determination of such additional members.

The AMS witness cited the U.S. Department of Agriculture's National Agricultural Statistics Service's report entitled *Cotton Ginnings 2007 Summary* (Exhibit 6), which published the total bales produced and ginned (or marketed) by State. In the 2007 marketing year, according to this publication, Florida produced 105,900 Upland cotton 480-pound bales and would be entitled to one member and one alternate. Kansas produced 53,500 Upland cotton 480-pound bales and would be entitled to one member and one alternate. Virginia produced 98,050 480-pound bales and would be entitled to one member and one alternate.

We also note that the *Cotton Ginnings 2007 Summary* shows the bales ginned for: Alabama—409,900 bales and North Carolina—61,600 bales. This demonstrates that those states have significant production of cotton, and having their own Cotton Board seats would not be inappropriate.

The AMS witness stated that if the proposed changes are adopted, a total of three additional members and three alternates would be added to the Cotton Board. The witness said the 2008 Cotton Board was composed of 37 members and 37 alternate members, which are 22 producer and 15 importer members and their respective alternates, and one consumer advisor. Excluding the proposed amendment to the Cotton Order, the 2009 Cotton Board, already calculated, would be 38 members and 38 alternates, which would be 23 producers and 15 importer members and respective alternates. The AMS witness indicated that if current cotton production and cotton imports remain consistent with their 5-year averages, and there are no changes, then just three additional producer members will be added based on the cotton gin for those three states. The total Board membership would be 26 producers and 15 importer members and respective alternates, and one consumer advisor.

The witness appearing on behalf of the Virginia Cotton Growers Association and the National Cotton Council (VCGA/NCC witness) strongly supported the proposed amendments. The witness testified that the amendments to the Cotton Order, which would ultimately provide Kansas, Virginia and Florida individual representation on the Cotton Board, will enhance the Board's ability to carry out its mission. Further, the witness indicated that these states have, and will continue to contribute funds to the Cotton Research and Promotion Program. By providing the three states with individual representation on the Board, the witness stated that it will strengthen their support, enhance communication from these production areas, and better enable the Cotton Board to represent the interests of all cotton-producing areas in the United States. Moreover, the witness said that there is no other national research and promotion program for Upland cotton like the one carried out under the Cotton Act. The new representation on the Board will not overlap or contradict any ongoing promotional activities in any region of the Cotton Belt.

The VCGA/NCC witness stated that the addition of individual representation for Kansas, Virginia and Florida reflects the shift in Upland cotton production over the years. For example the witness said successful completion of the Boll Weevil Eradication Program has led to the resurgence and expansion of cotton in the Southeast, including Virginia and

Florida. In addition, improved transportation, storage and handling, some as a direct result of research conducted under the Cotton Act, has led to Upland cotton production in Kansas. According to the witness, in Virginia and Florida, the total economic activity generated by cotton production and processing exceeds $100 million annually in each state. In Kansas, acreage expanded rapidly, until recently, when prices from competing crops reversed the trend. The witness stated that the three states continue to plant more than 300,000 acres of cotton, employ over 3,000 people, and produce annual cotton crops valued at $100 million annually in each state at the farm gate.

The witness commented that the Cotton Research and Promotion Program funded through producer and importer contributions has been highly successful. Broader representation will facilitate even stronger support and enhance participation by producers. In addition, the witness urged the Secretary to take the necessary action to amend the Cotton Order, as this action will assure that nearly a thousand producers, who account for nearly 5 percent of annual production, will, for the first time, have direct representation and input into the program which they are helping finance. The witness concluded by saying that allowing these states direct representation, the Cotton Board will be better able to carry out its mission and the purpose of the statute, to increase the demand for cotton and cotton products, will be fulfilled.

The witness representing the Cotton Board testified in support of the proposed amendments. The witness indicated that the Cotton Board is ready to comply with the 2008 Farm Bill and any changes to the Cotton Act and Cotton Order that governs the Cotton Research and Promotion Program. In addition, the witness indicated that the Board is prepared to include the states and their representatives into the Cotton Board's system of governance. The witness emphasized that the Cotton Board is organized to administratively support and finance USDA's efforts to amend the Cotton Order and implement the proposed amendments. The witness testified that the Cotton Board believes that providing Kansas, Virginia, and Florida individual representation on the Board would enhance the Board's ability to carry out its mission and fiduciary responsibility, namely, to provide financing for and oversight of the Program. The witness added that producers in these States have and will continue to contribute funds to the Program. By providing them individual representation on the Cotton Board, the witness believes it will strengthen their support, enhance communication from these production areas, and better enable the Cotton Board to represent the interests of all cotton-producing areas in the United States. The Cotton Board witness reiterated the statements made by the VCGA/NCC that the Research and Promotion Program has been highly successful, and that broader representation will facilitate even stronger support and enhanced participation by producers. Moreover, the Cotton Board witness affirmed the VCGA/NCC witness' statement that nearly 1,000 producers, who account for nearly 5 percent of annual production, will, for the first time have direct representation and input into the program which they are helping to finance if the amendments were implemented.

Record evidence supports amending section 1205.314 of the Order to incorporate the States of Kansas, Virginia, and Florida into the definition of ''cotton-producing State'' as separate States as provided in the 2008 Farm Bill.

Material Issue Number 2

Section 1205.319 should be amended to read as follows:

''Cotton-production region'' means each of the following groups of cotton-producing States: (a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Kansas, Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.

The AMS witness testified that AMS is proposing to amend the definition of cotton-producing region in section 1205.319 of the Cotton Order to make it consistent with the change to the definition of cotton-producing state.

''Cotton-producing region'' is currently defined as each of the following groups of cotton-producing states: (a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.''

Accordingly, record evidence supports amending section 1205.319 of the Order to amend the definition of ''cotton-producing region'' to list Kansas, Virginia, and Florida as separate states. This change should make the section consistent with changes made to the definition of ''cotton-producing state'' in section 1205.314 of the Order.

Material Issue Number 3

The AMS witness testified that conditions exist that warrant the omission of a recommended decision in this rulemaking proceeding under 7 CFR 1200.13(d) of the Rules of Practice and Procedure with respect to the proposed amendments. The 2008 Farm Bill provides that this change be made during the 2008 crop of cotton. Omission of the recommended decision would allow the rulemaking to conform to this timeline as closely as possible. Accordingly, in accordance with section 1200.13(d) of the rules of practice and procedure, it is hereby found and determined on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires omission of the recommended decision.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the Cotton Order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as those having annual receipts of no more than $7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

The Cotton Research and Promotion Act of 1966 provides authority to establish the Cotton Board to administer the Cotton Research and Promotion Program. In 2009, the Board is composed of 38 members and 38 alternate members (23 producer and 15 importer members and alternate members) and one consumer advisor. The Board is responsible for carrying out an effective and continuous program of research and promotion in order to strengthen the competitive position of Upland cotton by expanding domestic and foreign markets for cotton, improving fiber quality, and lowering the costs of production. The Program, including U.S. Department of Agriculture administrative costs, is

financed through producer and importer assessments levied on each bale or bale equivalent of cotton at a rate of $1 per bale with a supplemental (currently 5/10ths of one percent) assessment not to exceed 1 percent of the value of lint of each bale. There are approximately 18,000 producers, and approximately 16,000 importers that are subject to the Order. In 2008, the Board collected $64.2 million in assessments ($36.2 million from producers and $28 million from importers).

Interested persons were invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses. The amendments proposed herein would not result in any additional regulatory requirements being imposed on cotton producers and importers. The proposed amendments to the Cotton Order merely reflect the statutory changes needed to implement the 2008 Farm Bill provisions that provided that Kansas, Virginia, and Florida be separate states in the definition of ''cotton-producing state.''

There are no new information collection reports as a result of the proposed amendments. Information collection requirements and recordkeeping provisions contained in 7 CFR part 1205 have been previously approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0581–0093 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Justice Reform

The amendments herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Cotton Act, any person subject to an order may file with the Secretary of Agriculture a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Cotton Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Rulings on Briefs of Interested Persons

Briefs, and the evidence in the record were considered in making the findings and conclusions set forth in this decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this decision, the requests to make such findings or to reach such conclusions are denied.

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Cotton Research and Promotion Order.'' This document has been decided upon the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

Pursuant to the applicable provisions of the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) it is hereby directed that a referendum be conducted among the cotton producers and importers who have been engaged in the production of Upland cotton in the United States or who were engaged in the importation of Upland cotton or cotton-containing products to determine whether such producers or importers favor the amendments of the said annexed Cotton Research and Promotion Order.

The procedure applicable to the referendum shall be the procedure for the conduct of referenda in connection with the Cotton Research and Promotion order (7 CFR part 1205.200) as published in this issue of the **Federal Register**. The referendum period shall be from October 13, 2009, through November 10, 2009, provided that ballots cast prior to October 13, 2009, shall not be invalidated for that reason. For the purpose of determining producer voter eligibility, the representative period is the period January 1, 2008 through December 31, 2008. Producers engaged in the production of the 2008 crop during that period are eligible to vote in the referendum. For the purpose of determining importer voter eligibility, the 12-month period during which qualifying imports of cotton must have been made is January 1, 2008, through December 31, 2008, and imported such products having a value of cotton in excess of the de minimis value per line item entry would also be eligible to vote.

The agent of the Secretary to conduct such referendum is hereby designated to be Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@ams.usda.gov*.

Single copies of the complete text of the proposed amendments to the Cotton Research and Promotion Order may be obtained from any Farm Service Agency county office in cotton-producing counties or from the Agricultural Marketing Service, Cotton and Tobacco Programs, Washington, DC 20250.

It is hereby ordered, That all of this decision, referendum order, and annexed and Cotton Research and Promotion Order be published in the **Federal Register**.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

Dated: September 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Cotton Research and Promotion Program

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the Order; and all of said previous findings and determinations are hereby ratified and affirmed.

Pursuant to the provisions of the Cotton Research and Promotion Act (Cotton Act) (7 U.S.C. 2101–2118), and the applicable rules of practice and procedure effective thereunder (7 CFR part 1200), a public hearing was held in Washington, DC on December 5, 2008, on the proposed amendments to the Cotton Research and Promotion Order (7 CFR part 1205). Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Cotton Order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) All cotton produced and handled in the United States is in the current of interstate or foreign commerce or

directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

The provisions of the amended Order are set forth in full herein.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

2. Revise § 1205.314 to read as follows:

§ 1205.314 Cotton-producing State.

Cotton-producing State means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; Virginia.

3. Revise § 1205.319 to read as follows:

§ 1205.319 Cotton-producing region.

Cotton-producing region means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Kansas, Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

[FR Doc. E9–23778 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0824; Airspace Docket No. 09–AAL–11]

RIN 2120–AA66

Proposed Revision of Colored Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise two Colored Federal Airways, Green 16 (G–16) and Blue 26 (B–26), in Alaska. The FAA is proposing this action in preparation of the eventual decommissioning of the Barter Island (BTI) Non-directional Beacon (NDB) at the Village of Kaktovik, Alaska.

DATES: Comments must be received on or before November 19, 2009.

ADDRESSES: Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2009–0824 and Airspace Docket No. 09–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA–2009–0824 and Airspace Docket No. 09–AAL–11) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0824 and Airspace Docket No. 09–AAL–11.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

The Proposal

The FAA is proposing an amendment to the Title 14, Code of Federal Regulations (14 CFR part 71), that would revise two Colored Federal Airways, G–16 and B–26 by removing the segment to the BTI NDB from each airway description. In a separate action, one Area Navigation (RNAV) route T–228 was revised, and T–73 was established to continue IFR service to Village of Kaktovik, Alaska. The BTI NDB decommissioning proposal was publicly circulated in notice number 06–AAL–49NR. After reviewing public comment, the FAA decided that keeping the NDB was not feasible and that it should be decommissioned.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1)

Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would revise Colored Federal Airways in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

Paragraph 6009(a) Green Federal Airways.

* * * * *

G–16 [Revised]

From Point Lay, AK, NDB; Wainwright Village, AK, NDB; Browerville, AK, NDB; Nuiqsut Village, AK, NDB; to Put River, AK, NDB.

* * * * *

Paragraph 6009(d) Blue Federal Airways.

* * * * *

B–26 [Revised]

From Chena, AK, NDB, to Yukon River, AK, NDB.

* * * * *

Issued in Washington, DC, September 28, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–23884 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 4

[Docket No. FDA–2009–N–0435]

Current Good Manufacturing Practice Requirements for Combination Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of September 23, 2009 (74 FR 48423). The document proposed to codify the current good manufacturing practice requirements applicable to combination products. The document published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–22850, appearing on page 48423, in the **Federal Register** of Wednesday, September 23, 2009, the following corrections are made:

1. On page 48423, in the third column, in the Docket No. heading, ''[Docket No. FDA–2008–D–0409]'' is corrected to read ''[Docket No. FDA–2009–N–0435]''.

2. On page 48423, in the third column, in the **ADDRESSES** section, beginning in the second line, ''[Docket No. FDA–2008–D–0409] (formerly Docket No. 2004D–0431)'' is corrected to read ''[Docket No. FDA–2009–N–0435]''.

Dated: September 28, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–23899 Filed 10–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD75

Special Regulations, Areas of the National Park System, Grand Teton National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to designate certain multi-use pathways in Grand Teton National Park as routes for bicycle use; NPS regulations require issuance of a special regulation to designate routes for bicycle use when it will be off park roads and outside developed areas. Several segments of multi-use pathways have been constructed, or are planned for construction, and are located parallel to and generally within about 50 feet of existing park roads. Moving bicycle traffic off the lanes of motor vehicle travel will reduce real and perceived safety hazards, which will enhance opportunities for non-motorized enjoyment of the park, and encourage the use of alternate transportation by park employees and visitors. In addition, the NPS is proposing revisions to its regulations regarding fishing and boating in certain park waters of Grand Teton National Park to reflect current operating practices and management objectives.

DATES: Comments must be received by December 4, 2009.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD75 (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Grand Teton National Park, P.O. Drawer 170, Moose, WY 83012.
- *Hand Deliver to:* Superintendent's Office, Moose, Wyoming.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Pollock, Management Assistant, Grand Teton National Park, 307–739–3428 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background

Grand Teton National Park is located in northwest Wyoming, and encompasses approximately 310,000 acres. Located just to the south of Yellowstone National Park, Grand Teton is at the heart of the Greater Yellowstone Ecosystem, and includes the iconic mountains of the Teton Range, the broad valley of Jackson Hole, numerous lakes, and a 40-mile segment of the Snake River. The park was originally established in 1929, but at that time included only the mountains and several of the lakes at their base. In 1943, Jackson Hole National Monument was established by presidential proclamation, including much of the valley to the east of the mountains. In 1950, Congress combined the 1929 park and the national monument into the present-day national park, ending the long and controversial period that led up to the park's establishment.

The park supports diverse and abundant populations of wildlife, and is world renowned for its opportunities to view elk, moose, bison, pronghorn, grizzly and black bears, grey wolves, and coyotes. Other species, such as trumpeter swans, bald eagles, and many species of waterfowl and small mammals are also abundant.

Visitors to Grand Teton National Park typically participate in several types of activities, including scenic touring, viewing wildlife, hiking, mountain climbing, fly fishing, float trips, bicycling, and other forms of recreation consistent with enjoyment of the park's resources. The park includes several major developed areas, five campgrounds, almost 200 miles of hiking trails, 140 miles of paved roads, and 70 miles of unpaved roads. Visitation to the park has remained relatively constant over the last decade at approximately 2.5 million recreational visitors, mostly occurring between the months of May and September.

In April 2000, Grand Teton National Park undertook a transportation study to provide basic information regarding transportation issues in the park. The study served as a foundation for the next step in the process, which included the development of a transportation plan that was initiated in September 2001. The *Transportation Plan/Final Environmental Impact Statement* (FEIS) was released in September 2006. A *Record of Decision* (ROD) selecting Alternative 3a was signed on March 12, 2007, and a notice of the decision was published in the **Federal Register** on April 24, 2007 (72 FR 20365). A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement can be found online at *http://www.nps.gov/grte/parkmgmt/tranplan.htm.*

Although the planning effort and ROD addressed a variety of transportation-related issues, a major focus was on the development of a system of multi-use pathways to improve opportunities for non-motorized activities within the park. Bicycling has become increasingly popular in the park, and many visitors and others who commented during the planning process expressed concerns over the risks that are present when bicycles and motor vehicles share the road. Commentors often noted that this was particularly true for families with young children or visitors who are not experienced bicyclists.

Among the issues that were raised during the planning process were the potential effects of the pathway system on the park's wildlife. Although wildlife is abundant and often visible from park roads, it is well documented that animals respond differently to pedestrians and bicyclists than they do to the mere presence of motor vehicles. The potential for reducing the effectiveness of habitat and displacing wildlife from areas located near the pathways was a significant concern for many individuals and organizations that commented during the planning process. Furthermore, in light of the park's abundant wildlife, concerns were raised regarding the potential for surprise encounters between bicyclists and large animals, including grizzly bears.

The ROD sets forth the park's decision for the development of an extended system of multi-use pathways within the park. The system will include 39 miles of pathways between the south park boundary and Colter Bay via the Teton Park Road, as well as a 3-mile segment along the Moose-Wilson Road between the Granite Canyon Entrance and the Laurance S. Rockefeller Preserve. In general, pathways will be constructed within 50 feet of the road, except that the 16-mile segments between North Jenny Lake Junction and Colter Bay and along the Moose-Wilson Road will be constructed in very close proximity to the roads, generally within the existing engineered and previously disturbed road corridors.

The preferred alternative in the final plan/EIS, and subsequently adopted in the ROD, addressed the concerns regarding wildlife through a combination of research and monitoring, construction phasing, and the requirement that certain portions of the pathway system would be constructed within the existing road corridors. Specifically, the ROD includes a significant emphasis on wildlife research and monitoring to provide detailed understanding of the effects of pathway development. Monitoring and research activities were begun in 2007 to provide a pre-construction baseline, and will continue through at least 2009. The phased approach to construction of the pathway system will allow information obtained from the research and monitoring program to be integrated into the design and operation of each subsequent pathway segment. Finally, for those portions of the pathway system between North Jenny Lake Junction and Colter Bay, and along the Moose-Wilson Road, the pathways will be located within the engineered corridor in which the existing roadways are located. Since the road corridors are less frequently used by wildlife than the adjacent habitat, and have generally clear lines of sight, the chances for surprise encounters between bicyclists and wildlife would be reduced to essentially the same level that exists on the road shoulder.

The first phase of pathways was constructed during the summer and fall of 2008. These segments extend from the Dornan's inholding near park headquarters in Moose along the Teton Park Road to the South Jenny Lake area, a distance of approximately 8 miles. Additional segments may be constructed as funds become available.

This proposed rule complies with 36 CFR 4.30, which requires the NPS to designate bicycle routes outside of developed areas through promulgation of a special regulation. That regulation further specifies that such routes may be

designated only upon ''* * * a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.'' The Superintendent has made such a determination and found that the designation of the pathway segment between Moose and South Jenny Lake as a route for bicycle use is consistent with the requirements of 36 CFR 4.30.

The proposed rule would also make several changes to the special regulations for Grand Teton National Park to reflect current operating practices or changes to the park's land status. The proposed rule would close Phelps Lake to the operation of motor boats, consistent with all other backcountry lakes in the park. This change is prompted by the change in land status for the area surrounding the southern half of the lake. Prior to November 2007, these lands were a private inholding within the park known as the JY Ranch, owned by Laurance S. Rockefeller and, subsequent to his death, by his estate. The property functioned as a family guest ranch and retreat for the Rockefeller family since the 1930s, where guests typically engaged in activities such as hiking, horseback riding, and boating on Phelps Lake. The ranch included a boathouse on the lakeshore where motorboats were kept during the summer. The park's special regulations authorized the use of motorboats on Phelps Lake, thereby allowing the JY Ranch to continue a use that had existed prior to the park's establishment. No other motorboat use occurred on the lake since it was inaccessible to park visitors except on foot or horseback.

Before his death, Mr. Rockefeller made a decision to donate the property to the United States for inclusion within Grand Teton National Park. In accordance with Mr. Rockefeller's wishes, all buildings, roads, and other development were removed by his estate, and a system of trails to allow visitors to enjoy the area was constructed. The property was acquired by the United States in November 2007. The proposed rule would remove the now unnecessary provision to allow motorboat use on Phelps Lake.

The proposed rule would remove the provision in § 7.22(b) that allows authorized marine bait dealers, all of which are park concessioners, to keep certain species of fish taken from Jackson Lake and sell them as bait. The NPS determined that provision to be unnecessary and inconsistent with NPS Management Policies 2006 and the practice was discontinued several years ago.

Section-by-Section Analysis

§ 7.22(b) Fishing

The proposed rule would eliminate the provision in paragraph (3) that authorizes marine bait dealers at Jackson Lake to take certain species of fish taken from Jackson Lake or waters that flow into Jackson Lake and sell those fish as bait.

§ 7.22(e) Vessels

The proposed rule would eliminate the reference to Phelps Lake in paragraph (1), thus prohibiting the use of motorboats on that body of water. Motorboats would continue to be allowed on Jackson and Jenny lakes.

§ 7.22(h) Where may I ride a bicycle in Grand Teton National Park?

The proposed rule adds a new paragraph to the special regulations for Grand Teton National Park, designating two segments of existing multi-use pathways as routes for bicycle use. The general regulations for bicycle use in the National Park System require that such designation be accomplished by the promulgation of a special regulation. The proposed rule would designate the segments that were completed in 2008.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This is based on information contained in the report titled ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations Designating Pathways for Multi-Use in Grand Teton National Park,'' which is available for public review at *http://www.regulations.gov.*

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of bicycles and motorboats within Grand Teton National Park. No grants or other forms of monetary supplement are involved.

(4) This rule does not raise novel legal or policy issues. This rule simply implements the Servicewide bicycle regulation regarding bicycle routes in Grand Teton National Park.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report titled, ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations Designating Pathways for Multi-Use in Grand Teton National Park,'' which is available for public review at *http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on information from ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations Designating Pathways for Multi-Use in Grand Teton National Park'' which can be found at *http://www.regulations.gov.* This action does not involve additional construction, fees, or other measures that would increase costs to visitors, businesses, communities, or the Park. Therefore, this action will not impose any costs.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park

lands, and imposes no requirements on other agencies or governments.

Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the justice system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, the National Park Service prepared an Environmental Impact Statement and Record of Decision for the uses contemplated in the proposed rule. A copy of the documents can be obtained by contacting the Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wyoming 83012. The documents are also available online at *http://www.nps.gov/grte/parkmgmt/tranplan.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated the potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Representatives of the eleven tribes affiliated with Grand Teton National Park were consulted during the preparation of the Environmental Impact Statement for the project.

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information: The primary authors of this regulation were Gary Pollock, Management Assistant, Grand Teton National Park, Michael Tiernan, Office of the Solicitor, U.S. Department of the Interior and Philip A. Selleck, Chief, Regulations and Special Park Uses, National Park Service.

Public Participation

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10–137(2001) and D.C. Code 50–2201 (2001).

2. Amend § 7.22 to revise paragraphs (b)(3) and (e)(1) and add a new paragraph (h) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(b) * * *

(3) *Bait:* The use or possession of fish eggs or fish for bait is prohibited, except it shall be permissible to possess or use the following dead, non-game fish for bait on or along the shores of Jackson Lake: Redside shiner, speckled dace, longnose dace, piute sculpin, mottled sculpin, Utah chub, Utah sucker, bluehead sucker, and mountain sucker.

* * * * *

(e) *Vessels.* (1) Motorboats are prohibited on all park waters except Jackson Lake and Jenny Lake. On Jenny Lake, motorboats are restricted to motors not in excess of 7½ horsepower. Additionally, on Jenny Lake, an authorized boating concessioner may operate motorboats under conditions specified by the Superintendent.

* * * * *

(h) *Where may I ride a bicycle in Grand Teton National Park?* (1) You may ride a bicycle on park roads, in parking areas, and upon designated routes established within the park in accordance with § 4.30(a) of this chapter. The following routes are designated for bicycle use:

(i) The paved multi-use pathway between Dornan's and the Teton Park Road.

(ii) The paved multi-use pathway alongside the Teton Park Road between Dornan's Junction and the South Jenny Lake developed area.

(2) The Superintendent may open or close designated bicycle routes, or portions thereof, for bicycle use after taking into consideration the location of wildlife, the amount of snow cover or other environmental conditions, public safety, and other factors, pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter.

Dated: July 20, 2009.

Will Shafroth,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–23946 Filed 10–2–09; 8:45 am]

BILLING CODE 4312–CX–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AM87

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. These proposed changes would improve the readability of the regulations, provide further detail about program policies, and incorporate legislation, policy changes, and a VA Office of the General Counsel legal opinion.

DATES: Comments must be received on or before December 4, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to RIN 2900–AM87 ''Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Faliski, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9527. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Introduction

Veterans and servicemembers with severe disabilities may be eligible under 38 U.S.C. chapter 21 for specially adapted housing (SAH) grants. In administering the SAH program, VA helps these eligible individuals to purchase, construct, or adapt a home that suits the individual's living needs. This document proposes to amend VA's regulations in 38 CFR Part 36, Subpart C, Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing, §§ 36.4400 through 36.4410, which implement the SAH grant program. Because eligibility for SAH grants includes certain disabled servicemembers, the proposed rule would revise the heading of Subpart C to refer to ''Eligible Individuals'' rather than ''Certain Disabled Veterans.''

The proposed amendments are necessary for three reasons. First, VA believes the regulations should be written in a reader-focused style. Second, detailed guidance about program policies and an easy-to-follow organizational structure will help applicants and eligible individuals (and those acting on their behalf) to navigate the program. Third, substantive changes are necessary to incorporate legislation, policy decisions, and a legal decision of VA's Office of the General Counsel. Pursuant to 38 U.S.C. 2101(d), the Secretary may prescribe regulations applicable to the SAH program. In revising these regulations, VA intends that applicants, eligible individuals, other program participants, and other interested parties will be better informed about the legal requirements and Department policies that guide the administration of SAH grants.

II. Regulatory Overview

The following is a section-by-section analysis of VA's proposed rule. We outline briefly for each section the current rule and the proposed rule, as well as the reasons for the changes, noting the objectives and intended effects of the proposed rule. VA welcomes comments on every aspect of its proposal, but is particularly interested in drawing attention to three sections: (1) § 36.4404, in which VA proposes to ease the requirements for satisfying the SAH eligibility criteria; (2) § 36.4405, VA's proposed two-staged approval process intended to reduce eligible individuals' out-of-pocket expenses, thereby increasing the number of eligible individuals who may use the SAH program; and (3) § 36.4406, a more structured process for reimbursing eligible individuals who have expended personal funds toward authorized grant expenses.

Section 36.4400 Authority

Current § 36.4400, ''Applicability,'' states that any references to chapters 21 and 37 of title 38 U.S.C. are deemed where applicable to refer also to the prior corresponding provisions of the law. At the time the current rule was promulgated, Congress had recently consolidated into title 38 all of the laws administered by the then Veterans Administration. Almost 50 years have passed since Congress moved the statutes governing SAH to 38 U.S.C. chapter 21, and VA believes the reference to the former provisions may confuse readers. Therefore, the proposed rule would delete the reference to the former codification of the SAH authorizing statutes. The section's heading would be changed to ''Authority'' to reflect changes in its content. The proposed rule would no longer contain the current rule's applicability provisions. No substantive change is intended by the changes to this section.

Section 36.4401 Definitions

Currently, definitions of eight terms are found in § 36.4401: ''Secretary,'' ''chapter 21,'' ''movable facilities,'' ''necessary land,'' ''special fixtures and necessary adaptations,'' ''housing unit,'' ''remodeling,'' and ''veteran's family.'' The proposed rule would add 16 terms and delete six terms. These changes would: (1) Replace certain terms with more reader-friendly ones; (2) add new terms, providing SAH-specific meanings where everyday usage might require additional clarification; (3) define terminology unique to the SAH program; (4) provide new definitions as a result of both established and proposed VA policies; and (5) delete terms that would be rendered unnecessary by the new rule. The terms would also be reordered to appear in alphabetical order.

First, the definition of ''Housing unit'' would be expanded to make it easier for the general public to understand the rule. The term ''Housing unit,'' which would be defined to include ''any residential unit, including all necessary land, improvements, and appurtenances, together with such movable equipment or special features as are authorized by 38 U.S.C. 1717 and 2101,'' would incorporate the current definitions of ''movable facilities,'' ''necessary land,'' and ''special fixtures and necessary adaptations.''

Second, the proposed rule would expand the list of definitions and provide SAH-specific meanings for some commonly-used words. For example, the term ''reside,'' which would mean ''to occupy (including seasonal occupancy) as one's residence,'' would reflect VA's current policy of allowing seasonal occupancy

under the SAH program. Other new terms include: ''Adapt,'' ''braces,'' ''disability,'' ''eligible individual,'' and ''eligible individual's family.''

Third, a few of the proposed definitions reflect terminology that has developed over time with the SAH program: ''Paraplegic housing grant or PH grant,'' ''adapted housing grant or AH grant,'' and ''temporary residence adaptations grant or TRA grant,'' would mean grants authorized under 38 U.S.C. 2101(a), 2101(b), and 2102A, respectively. ''Specially adapted housing grant'' would be defined to clarify that the term refers collectively to PH, AH, or TRA grants. ''Aggregate amount of assistance available'' would mean the grant amount available to an eligible individual based on the annual adjustments required by 38 U.S.C. 2102(e).

Fourth, the proposed rule would add several definitions that are the result of substantive policy decisions. The term ''ownership interest'' would: (1) Ensure that an eligible individual will not be denied SAH benefits because he or she chooses a less traditional method of property ownership, (2) account for the fact that trends in property ownership vary based on geographic region, and (3) incorporate statutory language expressly permitting the Secretary to provide SAH grants outside the United States. A definition of ''beneficial property interest'' has also been added to facilitate provision of SAH grants outside the United States by accounting for different laws and customs related to property ownership in various countries. The preamble explanation of § 36.4405 describes more fully the effects of this change.

Note: Though not required by this proposed rule, VA recommends that eligible individuals seek professional estate planning advice when determining the type of legal interest that best suits the eligible individual's needs.

Three other new defined terms would be ''construction-related cost,'' ''preconstruction cost,'' and ''reimburse.'' VA believes that these terms are necessary in explaining VA's policy of reimbursing eligible individuals (or, where applicable, their estates) for costs related to the preparation for adaptations and for the actual adaptations. An in-depth explanation of this policy is provided below, in the discussion of § 36.4406.

Finally, the proposed rule would render certain terms unnecessary. Such terms are ''chapter 21,'' ''movable facilities,'' ''necessary land,'' and ''special fixtures and necessary adaptations,'' ''remodeling,'' which would be considered part of the definition of ''adapt,'' and ''veteran's family,'' which would be replaced with ''eligible individual's family.'' Therefore, VA proposes to delete these terms.

Section 36.4402 Grant Types

Chapter 21 of title 38, U.S.C., authorizes the Secretary to provide three types of SAH grants. The PH grant is available to the most severely disabled veterans and servicemembers who meet the criteria set forth in section 2101(a). The monetary cap on PH grants, currently $60,000, is higher than that for the other grants. The AH grant is for severely disabled veterans and servicemembers who satisfy the requirements of section 2101(b). Its statutory cap is currently $12,000. The TRA grant, authorized by Public Laws 109–233 and 110–289, is a grant that allows eligible individuals who temporarily reside in a housing unit owned by a member of the eligible individual's family to receive assistance to adapt that home.

Currently, the regulations do not describe in detail the various SAH grant types. Instead, they cite only the basic information codified at 38 U.S.C. 2101. Moreover, the regulations give few particulars about the various grant types available to eligible individuals, but specifically reference the maximum grant amounts, which are subject to annual adjustments and, thus, easily outdated.

Therefore, under the proposed rule, § 36.4402, ''Grant types,'' would explain the PH grant, AH grant, and TRA grant. More specifically, the section would describe the respective plan options under which an eligible individual may obtain assistance. The statute provides formulas for calculating the amount of grant assistance, based on the type of grant and the nature of the property to be adapted. By outlining these detailed formulas in the regulation, VA would make it easier for the public to understand how VA determines the amount of assistance it is to provide. VA also clarifies its interpretation of 38 U.S.C. 2102(a)(3), which governs the amounts of assistance available for the remodeling of a dwelling acquired prior to the application for SAH assistance. This provision requires the Secretary to pay the greater of (A) the cost to the veteran of such remodeling or (B) 50 percent of the cost to the veteran of such remodeling, plus other costs as prescribed by statute. These other costs may be either 50 percent of the costs of the dwelling and land or the full amount of any unpaid principal loan balance, whichever is less. Since Congress expressly limited 38 U.S.C. 2102(a)(2) and (a)(4) to the smaller of the available sums, but did not impose a similar limitation on option (a)(3). VA has always interpreted Congress's omission as being intentional, meaning the Secretary should pay the greater of the available sums to eligible individuals who choose option (a)(3). This is consistent with the policy of the Specially Adapted Housing program which ''is intended to be of the highest beneficial character and, within reasonable legal bounds, should be liberally construed.'' VAOPGCPREC 13–95. The section would also tie the grant amount to the ''aggregate amount of assistance available'' rather than explicitly mentioning a dollar figure. In addition, the section would clarify the restrictions on duplication of benefits that currently exist in § 36.4402(b)(1) and (b)(2). These restrictions are intended to reflect the limitations imposed by 38 U.S.C. 2104(b) without imposing any additional limitation. Finally, the section would correct the citation of section 1712 by referring instead to 38 U.S.C. 1717.

The proposed changes in § 36.4402 are necessary for three reasons. First, by discussing the specifics of the PH grant, AH grant, and TRA grant plans, the proposed rule would better inform eligible individuals about their SAH options. Second, since the TRA grant was authorized by Public Laws 109–233 (''Veterans' Housing Opportunity and Benefits Improvement Act of 2006'') and 110–289 (''Housing and Economic Recovery Act of 2008''), which were enacted after VA issued the current SAH regulations, the proposed rule would update the SAH regulations to include relevant information about this benefit. Finally, eliminating specific dollar amounts from the regulatory text would allow the Secretary to adjust grant amounts, in accordance with applicable statutory provisions (38 U.S.C. 2102(e)), without amending the regulations. The intended effect of this action is clear, detailed, accurate regulations that will further assist eligible individuals in obtaining their SAH benefits.

Section 36.4403 Subsequent Use

Currently, the SAH regulations do not provide any information about subsequent use of SAH grants. Prior to the enactment of Public Law 109–233 in 2006, an individual could receive only one grant of assistance under the SAH program. Therefore, even if an individual had used only half of the aggregate amount of assistance available, the individual was unable to preserve the balance of assistance in order to reuse the benefit at a later date.

With the enactment of Public Law 109–233, the program was expanded to allow for up to three grant usages per eligible individual, subject to the aggregate amount of assistance available. Accordingly, we are proposing that § 36.4403, ''Subsequent use,'' would describe the restrictions on obtaining more than one SAH grant. The section would discuss the number of times each grant may be used and the aggregate amount of assistance available. Additionally, the section would note that funds from subsequent grant usages may not be used retroactively; in other words, even if the eligible individual has not used the aggregate amount of assistance available, subsequent use funds may not reimburse for costs incurred prior to the enactment of the enabling legislation (June 15, 2006) or prior to the eligible individual's subsequent use grant approval. The intended effect of this action is regulations that are up to date and that will educate applicants and other interested persons about opportunities available through the SAH program.

Section 36.4404 Eligibility for Assistance

38 U.S.C. 2101 sets forth the eligibility requirements for obtaining SAH assistance by dividing such requirements into two categories: (i) Disability requirements and (ii) feasibility and suitability requirements. The former prescribes the medical criteria necessary for eligibility; the latter establishes minimum standards for determining whether the proposed adaptations are consistent with the purpose of the SAH program and the applicant's unique circumstances. Applicants must satisfy the requirements of both statutory categories before being considered eligible to receive a grant of assistance.

Currently, the regulations implementing the eligibility requirements are found at 38 CFR 36.4402. In that section, there is no discussion of the medical disability requirements for SAH eligibility, merely a reference to 38 U.S.C. 2101. Current § 36.4402 details the feasibility and suitability requirements located at 38 U.S.C. 2101(a)(3) and (b)(3), but it also lists the legal property interests, non-discrimination certifications, and flood insurance certifications that are acceptable to VA for the purpose of the SAH program. Although these last three requirements are important aspects of the SAH program, their placement in § 36.4402 may be confusing, as one might infer that such considerations factor into an applicant's eligibility.

Therefore, proposed § 36.4404, ''Eligibility for assistance,'' would revise current § 36.4402 by limiting its scope only to those criteria necessary for SAH eligibility: Disability requirements and feasibility and suitability requirements. In terms of disability requirements, the section would outline the statutory requirements. In terms of feasibility and suitability requirements, this section would outline the requirements set forth for PH grants in 38 U.S.C. 2101(a)(3), for AH grants in section 2101(b)(3), and for TRA grants in section 2102A.

The statutory meaning of PH grant feasibility is that an applicant's medical condition does not prevent him or her from living in the proposed housing unit, in the proposed locality, and that the applicant's present or anticipated income and expenses bear a proper relation to the proposed housing unit. Evidence of such feasibility might include, among other things, doctors' orders and credit reports.

PH grant suitability means that the nature and condition of the proposed housing unit are suitable to the applicant's living needs. In most cases, the proposed rule would simplify the evidence one must submit at this stage by allowing him or her to provide materials as basic as non-scaled drawings and a specific list of the proposed adaptations. Depending on the applicant's condition and the proposed adaptations, however, a determination may require more detailed documentation, such as scaled plans and specifications. Additional aspects of this policy are discussed in the analysis of §§ 36.4405 and 36.4406.

Like the PH grant, the AH grant's feasibility and suitability requirements in this proposed rule mirror the statute. Such requirements are based on residency and can be satisfied by the applicant certifying that he or she resides, and reasonably intends to reside, in the proposed housing unit. If the applicant's residence is not yet constructed, then the applicant must certify that he or she will be residing in, and reasonably intends to be residing in, the housing unit. An applicant may also be eligible for an AH grant if the existing housing unit, or the housing unit to be constructed, is owned by a member of the applicant's family.

Proposed § 36.4404 would also address another important aspect of eligibility. Because ownership interests, non-discrimination certifications, and flood certifications are not part of the eligibility determination, all references to such issues would be moved to other sections, as explained below. This action is necessary for two reasons. First, it is important that the SAH regulations state as clearly as possible which disability conditions make an individual eligible for which grant. Second, it is necessary to state expressly to the public that eligibility cannot be established (and, consequently, neither preconstruction costs nor construction costs may be incurred) until both the disability requirements and the feasibility and suitability requirements have been confirmed and documented. VA has authority to take this action pursuant to 38 U.S.C. 2101 and 2102A. The intended effect of this action is regulations that are up to date and that accurately describe all of the requirements that may make an individual eligible for SAH assistance.

Section 36.4405 Grant Approval

Currently, the regulations provide little information regarding the SAH grant approval process. While regulations are not always the proper medium through which to explain detailed administrative procedures, it is important for applicants, eligible individuals, and other affected members of the public to understand the chronology of the program and what it means to them as far as incurring costs and moving forward with planning and construction. Thus, VA is proposing that the regulations contain details about the meanings, requirements, and implications of the SAH grant approval process.

Under the current grant approval process, SAH agents at field facilities counsel applicants, in accordance with the program's operating manual (*VBA Manual M26–12,* ''Specially Adapted Housing Grant Processing Procedures, Loan Guaranty Operations Regional Office Manual,'' available at *http://www.warms.vba.va.gov/M26_12.html*), at each point in the application process. Changes to the SAH program (specifically, the subsequent use and TRA grant provisions of Public Laws 109–233 and 110–289) have rendered the program complex enough that specific regulatory guidance in the area of grant approval will simplify the process for all participants.

Under proposed § 36.4405, ''Grant approval,'' VA would formalize a two-staged grant approval process. The first stage of the approval process would lead to what proposed § 36.4405(a) calls ''conditional approval,'' at which point the Secretary may authorize certain preconstruction costs. The second stage, as set forth in proposed § 36.4405(b), would culminate in ''final approval,'' and the Secretary's disbursement of the full grant proceeds.

Conditional approval would be the Secretary's authorization for an

applicant to move forward with more detailed planning of adaptations. An application would be approved conditionally on the date the Secretary determines that the individual has met all eligibility requirements, as set forth in proposed § 36.4404, and that the applicant has not exceeded the grant usage and dollar limitations set forth in proposed §§ 36.4402 and 36.4403.

Once an applicant has obtained conditional approval, the Secretary may authorize him or her, in writing, to incur certain preconstruction costs pursuant to § 36.4406. Such preconstruction costs could include architectural services, land surveys, attorneys' fees, and other costs or fees necessary to plan for grant use and would be limited to no more than 20 percent of the eligible individual's grant amount. Conditional approval must be granted before an applicant would be authorized to incur any preconstruction costs. Should an applicant incur preconstruction costs prior to conditional approval, he or she would not be reimbursed for those costs. This is because, pursuant to the authorizing statute, an applicant must be deemed eligible for grant assistance before the Secretary may approve the disbursement of any grant funds.

An applicant who has obtained conditional approval would need to satisfy all requirements of § 36.4405(b) before the Secretary would authorize final approval. One such requirement would be to provide the Secretary scaled plans and specifications for the planned adaptations. The Secretary must determine that the plans and specifications meet the minimum property and design requirements of the SAH program. VA's review of plans at this stage would differ from the feasibility and suitability determination under § 36.4404. Under proposed § 36.4404, plans may be preliminary and need not be scaled, which would allow VA to determine eligibility without requiring a veteran or servicemember to expend personal funds in advance of the grant. The plans and specifications required at this stage, however, would need to be more detailed than those required to determine eligibility, as they would be relied upon during the inspection process and for the release of funds. In other words, at the beginning of this second and final stage, the Secretary already would have determined that the planned adaptations were suitable and feasible for the purposes of eligibility; nevertheless, the Secretary still would need to determine that the adaptations also met minimum property and design requirements before granting final approval and disbursing the remaining grant proceeds.

Another important requirement in this stage is that an applicant who has obtained conditional approval must provide the Secretary evidence of sufficient ownership interest in the proposed housing unit. Though this requirement is not new, it would change substantially from current practice. As stated above, existing title requirements for PH grants, which are found at 38 CFR 36.4402, do not necessarily reflect the vast choices available to an applicant when planning an estate. For instance, a life-estate is a commonly used tool in estate-planning, yet VA's current regulations do not include the life-estate as an acceptable form of title.

Under the proposed rule, an applicant would have more freedom in the type of estate that he or she chooses to obtain. Moreover, since the applicant would already be conditionally approved for a grant at this stage, meaning that the applicant's eligibility status would have been determined, he or she would be authorized to use a portion of the grant proceeds for attorneys' and other legal fees. VA believes that this change will open the door to SAH assistance for a number of veterans and servicemembers who might not otherwise be able to afford the upfront costs associated with the SAH program.

In addition to the proposed new portions of the regulation described above, the final grant approval section would contain the joint ownership provisions, non-discrimination certifications, flood insurance requirements, and geographical limitations in current §§ 36.4402(a)(5), 36.4402(a)(6), 36.4403, and 36.4411, respectively. The current rule on joint ownership would be revised in accordance with the statute in 38 U.S.C. 2102(c), making it clear that an eligible individual's available grant assistance would not be reduced simply because of a shared interest in a property. The non-discrimination and flood insurance provisions would not contain new provisions, but they would be more intuitively located. The provisions relating to geographical limitations would be revised to eliminate specific references to Guam and American Samoa, because they are included within the meaning of the term ''Territories.'' This provision would also incorporate the provisions of Public Law 110–289 expressly permitting the Secretary, in his or her discretion, to provide SAH grants to otherwise eligible individuals residing outside the United States.

The proposed amendments to the SAH grant approval process are necessary to reduce the possible confusion surrounding the process created by current regulations. Since numerous determinations must be made at various points on the SAH timeline, and since certain financial considerations (for example, reimbursements for preconstruction costs) are dependent upon the stage of an applicant's grant approval, it is important that the regulations are clear about exactly how such stages are structured. VA has authority to take this action pursuant to 38 U.S.C. 2101 and 2102A. The intended effect of this action is more detailed regulations that make clear to the public the aspects of and practical differences between conditional approval and final approval of SAH grants.

Section 36.4406 Reimbursement of Costs and Disbursement of Grant Funds

With the exception of current §§ 36.4406 and 36.4410, current regulations provide little information about what costs an eligible individual may incur with SAH grant funds and when these costs may be incurred. Furthermore, since VA is proposing to include in the regulations the two-stage approval process, VA believes that the regulations also should explain more fully what costs may be incurred, when costs will be reimbursed, and when and how grant funds will be disbursed, depending on the status of conditional approval and final approval.

Section 36.4406, ''Reimbursement of costs and disbursement of grant funds,'' would revise and expand upon current § 36.4406 to explain how grant funds will be disbursed, and would set forth specific requirements for incurring and reimbursing certain preconstruction costs. The section would re-emphasize that conditional approval must be obtained in order for an applicant to incur allowable preconstruction costs and that there would be a 20 percent cap on such costs to preserve the remaining grant funds for construction, in the event that final approval is granted.

The section also would substitute the broader framework of ''construction-related costs'' for current § 36.4404's limitations on costs allowable for grant computation. Construction-related costs, as defined under proposed § 36.4401 would mean ''[a]n expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds.'' Since each eligible individual would require different adaptations, VA believes that the broader framework would allow an eligible individual to achieve maximum

use of his or her grant proceeds and adapted property.

In terms of grant disbursement after final approval, proposed § 36.4406 would be similar to current regulations in stating that the Secretary determines the method on a case-by-case basis. Currently, the Secretary generally requires that funds either be deposited into an escrow account so that an escrow agent can disburse funds directly to a contractor or that the funds be disbursed to a mortgage holder to reduce the outstanding principal indebtedness. This practice would remain in effect under the proposed rule.

Finally, proposed § 36.4406 would note that, in the event that an eligible individual dies at some point during the SAH grant timeline, the estate may be reimbursed for authorized preconstruction and construction related costs, but must submit requests for reimbursement that are timely under the proposed rule. Unfortunately, some eligible individuals will die before the adaptations to their housing units are finished. VA's new two-staged process will make it easier for eligible individuals' estates to recover costs where the individual had been determined eligible and had already expended personal funds. At the same time, a limitation on the timeframe in which an eligible individual's estate may seek such reimbursement is necessary. VA believes that one year from the date on which the Loan Guaranty Service becomes aware of the eligible individual's death would provide the estate sufficient time in which to submit the necessary documentation. Under the proposed rule, VA would require that requests for reimbursement be submitted within one year, except when the Secretary determines that equity and good conscience require otherwise.

These actions are necessary in order to clarify what specific preliminary costs may be incurred, to detail the administrative requirements that must be followed in order to be properly reimbursed, and to explain the options regarding grant disbursement. This section takes into account the fact that, to obtain a grant, an eligible individual may have to incur certain reasonable expenses; and that, although SAH grants are made for the benefit of the eligible individual not his or her family, VA has a longstanding administrative practice of making an eligible individual's estate whole. In developing this section, we were also guided by a 1995 legal decision of the VA Office of the General Counsel (VAOPGCPREC 13–95), which held:

The Veterans Benefits Administration (VBA) should issue regulations establishing what constitutes the final approval for granting SAH assistance. These regulations should also provide that VA may authorize a veteran who meets all initial qualifying criteria to incur certain preliminary costs prior to final grant approval. They may also permit VA to reimburse these costs to the estate of a veteran who dies prior to final approval if VA determines it is likely approval would have been given had the veteran lived.

VA has authority to take this action pursuant to 38 U.S.C. 2101(d). The intended effect of this action is more detailed regulations that make clear to the public the costs that may be incurred and the temporal requirements for their reimbursement.

Section 36.4407 Guaranteed and Direct Loans

Section 36.4407, ''Guaranteed and direct loans,'' would revise current § 36.4409 to clarify its requirements. No substantive change to § 36.4409 is intended.

Section 36.4408 Submission of Proof to the Secretary

Proposed § 36.4408, ''Submission of proof to the Secretary,'' would renumber current § 36.4405. The change would be structural only.

Section 36.4409 Delegations of Authority

Proposed § 36.4409, ''Delegations of authority,'' would renumber current § 36.4408. In addition, VA proposes updates to the list of positions with delegated authority to reflect changes in position titles and to add the Deputy Director, Loan Guaranty Service. VA has authority to take this action pursuant to 38 U.S.C. 501, 512, and 2101.

Section 36.4410 Supplementary Administrative Action

Proposed § 36.4410, ''Supplementary administrative action,'' would renumber previous § 36.4407. It would also rephrase current § 36.4407 in a reader-focused style. No substantive change is intended to current § 36.4407.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

Although this document contains provisions constituting collections of information, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection provisions for § 36.4400 *et seq.* are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0031, 2900–0047, 2900–0132, and 2900–0300.

Executive Order 12866

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

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final

regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans.

Lists of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: June 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 (subpart C) as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

2. Revise Subpart C to read as follows:

Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

Sec.
36.4400 Authority.
36.4401 Definitions.
36.4402 Grant types.
36.4403 Subsequent use.
36.4404 Eligibility for assistance.
36.4405 Grant approval.
36.4406 Reimbursement of costs and disbursement of grant funds.
36.4407 Guaranteed and direct loans.
36.4408 Submission of proof to the Secretary.
36.4409 Delegations of authority.
36.4410 Supplementary administrative action.

Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

§ 36.4400 Authority.

The Secretary's authority to provide assistance in acquiring specially adapted housing is set forth in 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101(d))

§ 36.4401 Definitions.

The following definitions of terms apply to this subpart:

Adapt: To make a housing unit suitable to, or fit for, the residential living needs of an eligible individual.

(Authority: 38 U.S.C. 501, 2101)

Adapted housing grant or AH grant: A grant authorized under 38 U.S.C. 2101(b), 2102(b).

(Authority: 38 U.S.C. 501, 2101, 2102)

Aggregate amount of assistance available: The amounts specified at 38 U.S.C. 2102(d) as adjusted in accordance with 38 U.S.C. 2102(e).

(Authority: 38 U.S.C. 501, 2101, 2102)

Beneficial property interest: An interest deemed by the Secretary as one that provides (or will provide) an eligible individual a meaningful right to occupy a housing unit as a residence.

(Authority: 38 U.S.C. 501, 2101)

Braces: Orthopedic appliances, including prosthetic devices, used for support.

(Authority: 38 U.S.C. 501, 2101)

Construction-related cost: An expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds.

(Authority: 38 U.S.C. 501, 2101)

Disability: A compensable physical impairment, as determined by a Department of Veterans Affairs rating decision, that meets the criteria of 38 U.S.C. 2101(a)(2) or (b)(2).

(Authority: 38 U.S.C. 501, 2101)

Eligible individual: For specially adapted housing purposes, a person who has served or is currently serving in the active military, naval, or air service, and who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A)

Eligible individual's family: Persons related to an eligible individual by blood, marriage, or adoption.

(Authority: 38 U.S.C. 501, 2101, 2102A)

Housing unit: Any residential unit, including all necessary land, improvements, and appurtenances, together with such movable equipment or special features as are authorized by 38 U.S.C. 1717 and 2101. For the purposes of this definition, *movable facilities* is defined as such exercising equipment and other aids as may be allowed or required by the Chief Medical Director or designee; *necessary land* is defined as any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality; and *special fixtures and necessary adaptations* is defined as construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.

(Authority: 38 U.S.C. 501, 1717, 2101)

Ownership interest: An undivided property interest that the Secretary determines is a satisfactory:

(1) Fee simple estate;

(2) Life estate;

(3) Functional equivalent of a life estate, such as that created by a valid trust, a long-term lease, or a land installment contract that will convert to a fee simple estate upon satisfaction of the contract's terms and conditions;

(4) Ownership of stock or membership in a cooperative housing corporation entitling the eligible individual to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation;

(5) Lease, under the terms of a valid and enforceable Memorandum of Understanding between a tribal organization and the Secretary; or

(6) Beneficial property interest in a housing unit located outside the United States.

(Authority: 38 U.S.C. 501, 2101, 3762)

Paraplegic housing grant or PH grant: A grant authorized under 38 U.S.C. 2101(a).

(Authority: 38 U.S.C. 501, 2101)

Preconstruction cost: An authorized expense incurred by an eligible individual in anticipation of receiving final approval for a specially adapted housing grant.

(Authority: 38 U.S.C. 501, 2101)

Reimburse: To pay specially adapted housing grant funds directly to an eligible individual (or an eligible individual's estate) for preconstruction costs or for construction-related costs.

(Authority: 38 U.S.C. 501, 2101)

Reside: To occupy (including seasonal occupancy) as one's residence.

(Authority: 38 U.S.C. 501, 2101)

Secretary: The Secretary of the United States Department of Veterans Affairs or any employee or agent authorized in § 36.4409 of this part to act on behalf of the Secretary.

(Authority: 38 U.S.C. 501, 2101)

Specially adapted housing grant: A PH grant, AH grant, or TRA grant made to an eligible individual in accordance with the requirements of 38 U.S.C. chapter 21 and this subpart.

(Authority: 38 U.S.C. 501, 2101)

Temporary residence adaptations grant or TRA grant: A grant, the specific requirements and amount of which are outlined in 38 U.S.C. 2102A and 2102(d).

(Authority: 38 U.S.C. 501, 2101, 2102A)

§ 36.4402 Grant types.

(a) *PH grant.* The PH grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(1) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, not more than 50 percent of the eligible individual's total costs for acquiring the land and constructing the dwelling.

(2) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, not more than the lesser of:

(i) 50 percent of the eligible individual's costs for the land and the construction of the dwelling, or

(ii) 50 percent of the eligible individual's costs for the dwelling, plus the full amount of the unpaid balance, if any, of the cost to the individual of the necessary land.

(3) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual, to conform to the requirements of the eligible individual's disability, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, the greater of:

(i) The eligible individual's costs for making such adaptation(s), or

(ii) 50 percent of the eligible individual's costs for making such adaptation(s), plus the lesser of:

(A) 50 percent of the eligible individual's costs for acquiring the housing unit, or

(B) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(4) Where an eligible individual has already acquired a suitably adapted housing unit, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, the lesser of:

(i) 50 percent of the eligible individual's cost of acquiring such housing unit, or

(ii) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(b) *AH grant.* (1) The AH grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(i) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual or a member of the eligible individual's family;

(ii) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual or a member of the eligible individual's family;

(iii) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual or a member of the eligible individual's family; or

(iv) Where an eligible individual elects to purchase a housing unit that is already adapted to the requirements of the eligible individual's disability.

(2) Regardless of the plan chosen pursuant to paragraph (b)(1) of this section, the Secretary will pay the lesser of:

(i) The actual cost, or, in the case of an eligible individual acquiring a housing unit already adapted with special features, the fair market value, of the adaptations determined by the Secretary to be reasonably necessary, or

(ii) The aggregate amount of assistance available for AH grants.

(c) *TRA grant.* The TRA grant provides monetary assistance for the purpose of adapting a housing unit owned by a member of the eligible individual's family, in which the eligible individual intends to reside temporarily. The Secretary will pay, up to the amounts specified at 38 U.S.C. 2102A(b) for TRA grants, the actual cost of the adaptations.

(d) *Duplication of benefits.* (1) If an individual is determined eligible for a PH grant, he or she may not subsequently receive an AH grant.

(2) If an individual is determined eligible for an AH grant, and becomes eligible for a PH grant, he or she may receive PH grants and TRA grants up to the aggregate amount of assistance available for PH grants. However, any AH or TRA grants received by the individual before he or she was determined eligible for the PH grant will count towards the three grant limit in § 36.4403.

(3) If the Secretary has provided assistance to an eligible individual under 38 U.S.C. 1717, the Secretary will not provide assistance under this subpart that would result in duplicate payments for the same adaptations. However, nothing in this subpart prohibits an eligible individual from utilizing the assistance authorized under 38 U.S.C. 1717 and 38 U.S.C. chapter 21 simultaneously, provided that no duplicate payments result.

(Authority: 38 U.S.C. 2102, 2102A, 2104)

§ 36.4403 Subsequent use.

An eligible individual may receive up to three grants of assistance under 38 U.S.C. chapter 21, subject to the following limitations:

(a) The aggregate amount of assistance available to an eligible individual for PH grant and TRA grant usage will be limited to the aggregate amount of assistance available for PH grants;

(b) The aggregate amount of assistance available to an eligible individual for AH grant and TRA grant usage will be limited to the aggregate amount of assistance available for AH grants;

(c) The TRA grant may only be obtained once and will be counted as one of the three grant usages; and

(d) Funds from subsequent PH grant or AH grant usages may only pay for reimbursing specially adapted housing-related costs incurred on or after June 15, 2006 or the date on which the eligible individual is conditionally approved for subsequent assistance, whichever is later.

(Authority: 38 U.S.C. 2102, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0132.)

§ 36.4404 Eligibility for assistance.

(a) *Disability requirements.* (1) The PH grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Loss, or loss of use, of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(ii) Blindness in both eyes having only light perception, plus loss or loss of use of one lower extremity;

(iii) Loss, or loss of use, of one lower extremity, together with—

(A) Residuals of organic disease or injury; or

(B) The loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(iv) Loss, or loss of use, of both upper extremities so as to preclude use of the arms at or above the elbows; or

(v) Any other injury identified as eligible for assistance under 38 U.S.C. 2101(a).

(2) The AH grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Blindness in both eyes with 5/200 visual acuity or less;

(ii) Anatomical loss, or loss of use, of both hands; or

(iii) Any other injury identified as eligible for assistance under 38 U.S.C. 2101(b).

(3) The TRA grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the conditions described under paragraph (a)(1) of this section for the PH grant or paragraph (a)(2) of this section for the AH grant.

(b) *Feasibility and suitability requirements.* (1) In order for an individual to be eligible for PH grant assistance, the Secretary must determine that:

(i) It is medically feasible for the individual to reside outside of an institutional setting;

(ii) It is medically feasible for the individual to reside in the proposed housing unit and in the proposed locality;

(iii) The nature and condition of the proposed housing unit are suitable for the individual's residential living needs; and

(iv) The cost of the proposed housing unit bears a proper relation to the individual's present and anticipated income and expenses.

(2) In order for an individual to be eligible for AH grant assistance, the Secretary must determine that:

(i) The individual is residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family; or

(ii) If the individual's housing unit is to be constructed or purchased, the individual will be residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family.

(Authority: 38 U.S.C. 501, 2101, 2102, 2102A)

§ 36.4405 Grant approval.

(a) *Conditional approval.* (1) The Secretary may provide written notification to an eligible individual of conditional approval of a specially adapted housing grant if the Secretary has determined that:

(i) Disability requirements have been satisfied pursuant to § 36.4404(a);

(ii) Feasibility and suitability requirements have been satisfied pursuant to § 36.4404(b); and

(iii) The eligible individual has not exceeded the usage and dollar limitations prescribed by §§ 36.4402(d) and 36.4403.

(2) Once conditional approval has been granted, the Secretary may authorize, in writing, an eligible individual to incur certain preconstruction costs pursuant to § 36.4406.

(b) *Final approval.* In order to obtain final approval for a specially adapted housing grant, the Secretary must determine that the following property requirements are met:

(1) *Proposed adaptations.* The plans and specifications of the proposed adaptations demonstrate compliance with minimum property and design requirements of the specially adapted housing program.

(2) *Ownership.*

(i) In the case of PH grants, the eligible individual must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(ii) In the case of AH grants, the eligible individual or a member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(iii) In the case of TRA grants:

(A) A member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit, and

(B) The eligible individual and the member of the eligible individual's family who has or acquires an ownership interest in the housing unit must sign a certification as to the likelihood of the eligible individual's temporary occupancy of such residence.

(iv) If the ownership interest in the housing unit is or will be vested in the eligible individual and another person, the Secretary will not for that reason reduce by percentage of ownership the amount of a specially adapted housing grant. However, to meet the ownership requirement for final approval of a specially adapted housing grant, the eligible individual's ownership interest must be of sufficient quantum and quality, as determined by the Secretary, to ensure the eligible individual's quiet enjoyment of the property.

(3) *Certifications.* The eligible individual must certify, in such form as the Secretary will prescribe, that:

(i) Neither the eligible individual, nor anyone authorized to act for the eligible individual, will refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the housing unit acquired by this benefit, to any person because of race, color, religion, sex, familial status, disability, or national origin;

(ii) The eligible individual, and anyone authorized to act for the eligible individual, recognizes that any restrictive covenant on the housing unit relating to race, color, religion, sex, familial status, disability, or national origin is illegal and void, and any such covenant is specifically disclaimed; and

(iii) The eligible individual, and anyone authorized to act for the eligible individual, understands that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(4) *Flood insurance.* The eligible individual's housing unit, if it is or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, must be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the housing unit or the maximum limit of coverage available for the particular type of housing unit under the National Flood Insurance Act, as amended. The Secretary will not approve any financial assistance for the acquisition or construction of a housing unit located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 38 U.S.C. 501, chapter 21, 42 U.S.C. 4012a, 4106(a)).

(5) *Geographical limits.* Any real property purchased, constructed, or adapted with the proceeds of a specially adapted housing grant must be located:

(i) Within the United States, which, for purposes of 38 U.S.C. chapter 21, includes the several States, Territories, and possessions, including the District of Columbia, and the Commonwealths of Puerto Rico and the Northern Mariana Islands; or,

(ii) If outside the United States, in a country or political subdivision which allows individuals to have or acquire a beneficial property interest, and in which the Secretary, in his or her discretion, has determined that it is reasonably practicable for the Secretary to provide assistance in acquiring specially adapted housing.

(Authority: 38 U.S.C. 2101, 2101A, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031, 2900–0132, and 2900–0300.)

§ 36.4406 Reimbursement of costs and disbursement of grant funds.

(a) After providing conditional approval of a specially adapted housing grant for an eligible individual pursuant to § 36.4405, the Secretary may authorize the incurrence, prior to obtaining final specially adapted housing grant approval, of preconstruction costs of the types and subject to the limits specified in this paragraph.

(1) Preconstruction costs to be incurred may not exceed 20 percent of the eligible individual's aggregate amount of assistance available, unless the individual is authorized by the Secretary in writing to incur specific preconstruction costs in excess of this 20 percent limitation. Preconstruction costs may include the following items:

(i) Architectural services employed for preparation of building plans and specifications.

(ii) Land surveys.

(iii) Attorneys' and other legal fees.

(iv) Other costs or fees necessary to plan for specially adapted housing grant use, as determined by the Secretary.

(2) If the Secretary authorizes final approval, the Secretary will pay out of the specially adapted housing grant the preconstruction costs that the Secretary authorized in advance. If the specially adapted housing grant process is terminated prior to final approval, preconstruction costs incurred that the Secretary authorized in advance will be reimbursed to the eligible individual, or the eligible individual's estate pursuant to paragraph (c) of this section, but will be deducted from the aggregate amount of assistance available and the reimbursement will constitute one of the three permitted grant usages (see § 36.4403).

(b) After final approval, the Secretary will determine a method of disbursement that is appropriate and advisable in the interest of the eligible individual and the Government, and will pay the specially adapted housing grant accordingly. Disbursement of specially adapted housing grant proceeds generally will be made to third parties who have contracted with the veteran, to an escrow agent, or to the eligible individual's lender, as the Secretary deems appropriate. If the Secretary determines that it is appropriate and advisable, the Secretary may disburse specially adapted housing grant funds directly to an eligible individual where the eligible individual has incurred authorized preconstruction or construction-related costs and paid for such authorized costs using personal funds.

(c) Should an eligible individual die before the Secretary disburses the full specially adapted housing grant, the eligible individual's estate must submit to the Secretary all requests for reimbursement within one year of the date the Loan Guaranty Service learns of the eligible individual's death. Except where the Secretary determines that equity and good conscience require otherwise, the Secretary will not reimburse an eligible individual's estate for a request that has not been received by the Department of Veterans Affairs within this timeframe.

(Authority: 38 U.S.C. 2101(d))

§ 36.4407 Guaranteed and direct loans.

(a) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use his or her entitlement to the loan guaranty benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations found in this part.

(b) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use a direct loan under 38 U.S.C. 3711(i), the complete transaction must be in accord with the requirements of § 36.4503 and the loan must be secured by the same housing unit to be purchased, constructed, or adapted with the proceeds of the specially adapted housing grant.

(c) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use the Native American Direct Loan benefit under 38 U.S.C. chapter 37, subchapter V, the eligible individual's ownership interest in the housing unit must comport with the requirements found in §§ 36.4501, 36.4512, and 36.4527 and in the tribal documents approved by the Secretary, which include, but may not be limited to, the Memorandum of Understanding, the residential lease of tribal-owned land, the tribal lending ordinances, and any relevant tribal resolutions.

(Authority: 38 U.S.C. 2101(d), 3711(i), 3762)

§ 36.4408 Submission of proof to the Secretary.

The Secretary may, at any time, require submission of such proof of costs and other matters as the Secretary deems necessary.

(Authority: 38 U.S.C. 501, 2101(d))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031 and 2900–0300.)

§ 36.4409 Delegations of authority.

(a) Each employee of the Department of Veterans Affairs appointed to or lawfully filling any of the following positions is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to assisting eligible individuals in acquiring specially adapted housing:

(1) Under Secretary for Benefits.

(2) Director, Loan Guaranty Service.

(3) Deputy Director, Loan Guaranty Service.

(4) Assistant Director, Loan Policy and Valuation.

(5) Chief, Specially Adapted Housing, Loan Guaranty Service.

(6) Director, VA Medical Center.

(7) Director, VA Regional Office.

(8) Loan Guaranty Officer.

(9) Assistant Loan Guaranty Officer.

(b) Nothing in this section will be construed to authorize the determination of basic eligibility or medical feasibility under § 36.4404(a), (b)(1)(i), or (b)(1)(ii) by any employee designated in this section, except as otherwise authorized.

(Authority: 38 U.S.C. 501, 512, ch. 21)

§ 36.4410 Supplementary administrative action.

Subject to statutory limitations and conditions prescribed in title 38, U.S.C., the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to an eligible individual or a third party contracting or dealing with such eligible individual which might otherwise result.

(Authority: 38 U.S.C. 501, 2101(d))

[FR Doc. E9–23842 Filed 10–2–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 12, and 52

[FAR Case 2008–027; Docket 2009–0030; Sequence 2]

RIN 9000–AL38

Federal Acquisition Regulation; FAR Case 2008–027, Federal Awardee Performance and Integrity Information System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. The Councils have agreed to delay the public comment due date. The comment period is being extended to provide additional time for interested parties to review the proposed FAR changes of FAR Case 2008–027, Federal Awardee Performance and Integrity Information System, to November 5, 2009.

DATES: The comment period for the proposed rule published September 3, 2009, at 74 FR 45579, is extended. Interested parties should submit written comments to the Regulatory Secretariat on or before November 5, 2009, to be considered in formulation of the final rule.

ADDRESSES: Submit comments identified by FAR case 2008–027 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–027'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2008–027. Follow the instructions provided to submit your comments. Please include your name, company name (if any), and ''FAR Case 2008–027'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2008–027 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for further information pertaining to status or publication schedule. Please cite FAR Case 2008–027 (delay of public comment due date).

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 74 FR 45579, September 3, 2009. The comment period is being extended to provide additional time for interested parties to review the proposed FAR changes.

Dated: September 30, 2009

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–23893 Filed 10–2–09; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register

Vol. 74, No. 191

Monday, October 5, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

September 29, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Consumer Focus Groups.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. To assist in fulfilling its public health mission, FSIS needs at times to obtain information from consumers to assess the effectiveness of its consumer protection initiatives and to gain data to support Agency decision-making and policy formulation. Foodborne illness is a significant public health problem in the United States. FSIS is seeking information about the content of public health messages, and methods of delivery of those messages, that will promote safe food handling and preparation practices among consumers. FSIS will use consumer focus groups to determine the perceptions of segments of the general population and at-risk populations regarding relevant food safety messages.

Need and Use of the Information: FSIS will collect information to conduct qualitative research with consumers to (1) assess consumers' understanding of cooking instructions for specific products (*e.g.* uncooked, breaded, boneless poultry products) and (2) collect information on consumers' understanding of existing public health messages (*e.g.,* use a thermometer to check the doneness of meat and poultry). FSIS will use the results of the focus groups to inform the development of labeling policy for meat, poultry, and egg products and to refine, and to decide how to disseminate, public health messages to ensure that they are useful for effecting behavioral changes and reducing foodborne illness.

Description of Respondents: Individuals or households.

Number of Respondents: 400.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 215.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–23870 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 29, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Peer Review Related Forms for the Office of Scientific Quality Review.

OMB Control Number: 0518–0028.

Summary of Collection: The Office of Scientific Quality Review (OSQR) oversees peer review of Agricultural Research Service (ARS) research plans in response to Congressional mandate in the Agricultural Research Extension, and Education Reform Act of 1998 (Pub. L. 105–185, Section 103d). The ARS peer-review panels are scientists who review current scientific research projects.

Need and Use of the Information: ARS will collect the following information: confidentiality agreement, panelist information, peer review of an ARS research project, critique of ARS research project, panelist expense report, and panelist invoice. The information is used to manage the travel and stipend payments to panel reviewers and provide well-organized feedback to ARS' researchers about their projects. If information were not collected, ARS would not meet the administrative or legislative requirements of the Peer Review Process as mandated by Public Law 105–185.

Description of Respondents: Individuals or households.

Number of Respondents: 160.

Frequency of Responses: Reporting: Quarterly; Weekly; Annually.

Total Burden Hours: 3,053.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–23871 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 30, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Veterinary Medicine Loan Repayment Program (VMLRP).

OMB Control Number: 0524–NEW.

Summary of Collection: In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997. This law established a new Veterinary Medicine Loan Repayment Program (VMLRP) (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

Need and Use of the Information: The Cooperative State Research, Education and Extension Service will collect information using the Veterinarian Shortage Situation Nomination form. Applications for the VMLRP will be accepted from eligible veterinarians who agree to serve in one of the designated shortage situations in exchange for the repayment of an amount of the principal and interest of the veterinarian's qualifying educational loans. The nomination form includes a series of questions that will need to be answered before the nomination can be submitted to the peer panelists for their review and recommendations.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 57.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 228.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–23937 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 30, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 2008 Aquaculture Grant Program—Recovery Act.

OMB Control Number: 0560–0262.

Summary of Collection: Section 102(d) of the American Recovery and Reinvestment Act of 2009 (Recovery Act) authorizes $50 million for a 2008 Aquaculture Grant Program (AGP). As required by the Recovery Act, Commodity Credit Corporation (CCC) funds will be used to provide block grants to State Departments of Agriculture that agree to provide AGP assistance to eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year. The Recovery Act requires the States to complete and submit a 2008 AGP Financial Report to CCC.

Need and Use of the Information: States must submit to CCC, a report that describes: (1) The manner in which the State provided assistance; (2) the amounts of assistance provided per species of aquaculture; and (3) the process by which the state determines the levels of assistance to eligible aquaculture producers. The collected information will be used to ensure that an eligible aquaculture producer that receives assistance under AGP is not eligible to receive any other assistance under the supplemental agricultural disaster assistance program established under section 531 of the Federal Crop Insurance Act and section 901 of the Trade Act of 1974 for any losses in 2008 relating to the same species of aquaculture.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 37.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 28.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–23935 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0006]

Notice of Availability of a Bovine Brucellosis Program Concept Paper

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making a concept paper describing a new direction for the bovine brucellosis program available for public review and comment. The cooperative Federal-State-industry effort to eradicate bovine brucellosis from cattle in the United States has made significant progress since the program's inception in 1934. However, unique challenges impede eradication. The concept paper we are making available presents our current thinking about changes we are planning to address these challenges.

DATES: We will consider all comments that we receive on or before December 4, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0006* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0006.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Lee Ann Thomas, Director, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78, currently provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The current State classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

This document announces the availability of a concept paper for a new direction for the bovine brucellosis program. Bovine brucellosis has significant animal health, public health, and international trade consequences. The cooperative Federal-State-industry effort to eradicate this disease from cattle in the United States has made significant progress since the program's inception in 1934. However, unique challenges impede eradication. This concept paper presents the current thinking of the Animal and Plant Health Inspection Service's Veterinary Services (VS) program about changes we are planning to address these challenges.

The concept paper provides an action plan that:

1. Effectively demonstrates the disease-free status of the United States through a national status-based program supported by a national surveillance strategy;
2. Enhances efforts to mitigate disease transmission from wildlife;
3. Enhances disease response and control measures;
4. Modernizes the regulatory framework to allow VS to address risks quickly and sensibly; and
5. Implements a risk-based disease management area concept.

The bovine brucellosis concept paper may be viewed on the Internet at the Regulations.gov Web site (see **ADDRESSES** above for instructions on accessing Regulations.gov). You may request paper copies of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document when requesting copies. The document is also available for review in our reading room (information on the location and hours of the reading room

is listed under the heading **ADDRESSES** at the beginning of this notice).

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–23947 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0073]

Notice of Availability of a Bovine Tuberculosis Program Concept Paper

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making a concept paper describing a new direction for the bovine tuberculosis program available for public review and comment. The cooperative Federal-State-industry effort to eradicate bovine tuberculosis from cattle in the United States has made significant progress since the program's inception in 1917. However, several challenges impede eradication. The concept paper we are making available presents our current thinking about changes we are considering for the bovine tuberculosis to address these challenges.

DATES: We will consider all comments that we receive on or before December 4, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0073* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0073.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Alecia Naugle, National Tuberculosis Program Coordinator, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (TB) is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine TB can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, bovine TB caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine TB in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle, bison, and captive cervids for bovine TB, define the Federal bovine TB status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle, bison, and captive cervids leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

This document announces the availability of a concept paper, ''A New Approach for Managing Bovine Tuberculosis: Veterinary Services' Proposed Action Plan.'' Bovine TB has significant animal health, public health, and international trade consequences. The cooperative Federal-State-industry effort to eradicate this disease from cattle in the United States has made significant progress since the program's inception in 1917. However, several challenges impede eradication. This concept paper presents the current thinking of the APHIS' Veterinary Services (VS) about changes we are considering for the TB program to address these challenges.

The concept paper provides an action plan that:

1. Enhances efforts to mitigate disease transmission from wildlife and imported animals;
2. Enhances bovine TB surveillance through a comprehensive national surveillance plan and accelerated development of new diagnostic tests;
3. Expands disease management options and control strategies;
4. Modernizes the regulatory framework to allow VS to better focus resources; and
5. Transitions the bovine TB program from a State classification system to a science-based zoning approach.

The bovine TB concept paper may be viewed on the Internet at the Regulations.gov Web site (see **ADDRESSES** above for instructions on accessing *Regulations.gov*). You may request paper copies of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document when requesting copies. The document is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–23948 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Continental Divide National Scenic Trail Comprehensive Plan; FSM 2350

AGENCY: Forest Service, USDA.

ACTION: Notice of final amendments to comprehensive plan and final directives.

SUMMARY: The Forest Service is amending the Continental Divide National Scenic Trail (CDNST) Comprehensive Plan and internal agency directives at Forest Service Manual (FSM) 2350. The CDNST Comprehensive Plan provides overall direction for the development, management, and use of the CDNST. FSM 2350 guides policy, development, and management of the CDNST on National Forest System lands. This notice discusses the changes to the CDNST Comprehensive Plan, responds to comments received from the public, and makes final changes to FSM 2350.

DATES: *Effective Date:* The amendments to the CDNST Comprehensive Plan and the implementing directives at FSM 2350 are effective November 4, 2009.

FOR FURTHER INFORMATION CONTACT: Greg Warren, CDNST National Administrator, (303) 275–5054, *gwarren@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

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1. Background
2. Public Comments and Responses
3. Regulatory Certifications
4. Final Amendments to the CDNST Comprehensive Plan
5. Final Amendments to FSM 2350

1. Background

History and Administration of the CDNST

The CDNST was established by the National Parks and Recreation Act of 1978 (Pub. L. No. 95–625, 92 Stat. 3467), which amended the National Trails System Act of 1968 (16 U.S.C. 1241–1251). The National Parks and Recreation Act:

- Established the CDNST between the Montana-Canada and New Mexico-Mexico borders;
- Provided for administation of the CDNST by the Secretary of Agriculture, in consultation with the Secretary of the Interior;
- Despite the general prohibition on motor vehicle use by the public on National Scenic Trails (16 U.S.C. 1246(c)), provided for motor vehicle use on road segments of the CDNST in accordance with applicable regulations (16 U.S.C. 1244(a)(5)); and
- Described management of recreation and other uses along the CDNST so as not to interfere with the nature and purposes for which the CDNST was established (16 U.S.C. 1246(c)).

The Chief of the Forest Service adopted the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement on August 5, 1981 (40 FR 150) pursuant to the National Trails System Act (16 U.S.C. 1244(b)).

The National Trails System Act requires the Secretary of Agriculture, in consultation with other affected Federal agencies, the governors of affected states, and the relevant advisory council established pursuant to the Act, to prepare a comprehensive plan for the management and use of the CDNST (16 U.S.C. 1244(f)). The Forest Service goal in 1981 for the CDNST Comprehensive Plan was to provide a uniform trail management program reflecting the purposes of the CDNST while providing for use and protection of the natural and cultural resources along the CDNST. The Chief of the Forest Service approved the Comprehensive Plan for the CDNST in 1985.

The CDNST crosses Federal lands administered by the United States Department of Agriculture, Forest Service, and the United States Department of the Interior, Bureau of Land Management, and National Park Service. The Regional Forester of the Rocky Mountain Region is the lead Forest Service official for coordinating matters concerning the study, planning, and operation of the CDNST (FSM 2353.04).

Federal interagency trail programs generally are coordinated through an interagency memorandum of understanding (MOU) governing the National Trails System (06–SU–11132424–196). Programs specific to the CDNST are developed and coordinated through the CDNST Interagency Leadership Council (Council), consisting of Regional Foresters for the Forest Service, State Directors for the Bureau of Land Management, and a Regional Director for the National Park Service. The Council provides leadership and oversight to complete and sustain the CDNST and ensures consistent, coordinated, and effective programs for the CDNST.

The Nature and Purposes of the CDNST

A 1997 memorandum from the Deputy Chief of the Forest Service to Regional Foresters states:

> As the CDNST is further developed, it is expected that the trail will eventually be relocated off of roads for its entire length.

The memorandum further states:

> It is the intent of the Forest Service that the CDNST will be for non-motorized recreation. * * * Allowing motorized use on these newly constructed trail segments would substantially interfere with the nature and purpose of the CDNST.

This memorandum clarifies the Forest Service's intent with respect to motor vehicle use on newly constructed CDNST trail segments. In addition, this memorandum identifies the importance of understanding the nature and purposes of the CDNST in establishing direction governing its development and management.

In 2004, the Council adopted the following guiding principles for the CDNST:

> Complete the Trail to connect people and communities to the Continental Divide by providing scenic, high-quality, primitive hiking and horseback riding experiences, while preserving the significant natural, historic, and cultural resources along the Trail.

In 2005, the three participating Federal agencies executed an interagency MOU (05–MU–11020000–071) to address CDNST programs and management consistent with the 2004 guiding principles for the CDNST. The cooperative work under the MOU led to development of these amendments.

These final amendments and directives revise the nature and purposes of the CDNST to track those identified in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement. The CDNST Study Report states:

> The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses. * * * One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized. * * * The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high quality recreation experience while maintaining a constant respect for the natural environment. * * * The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails.

The amended CDNST Comprehensive Plan and its implementing directives will more accurately reflect the nature and purposes of the CDNST and the requirements of the National Trails System Act (16 U.S.C. 1244(f)). As work on the CDNST progresses, further revisions to the CDNST Comprehensive Plan may be required. For additional information on CDNST programs, visit *http://www.fs.fed.us/cdt*.

2. Public Comments and Responses

On June 12, 2007, the Forest Service published in the **Federal Register** for public notice and comment the proposed amendments to the 1985 CDNST Comprehensive Plan and accompanying Forest Service directives (72 FR 112). The 60-day public comment period was extended for 60 days (72 FR 148).

The Forest Service received over 8,000 letters or electronic mail in response to the proposed amendments and directives. The respondents fell into the following categories:

Motor vehicle organizations: 7.

Mountain biking organizations: 5.

National scenic trail organizations: 6.

Recreation or conservation organizations: 10.

City, county, and elected officials: 2.

Unaffiliated, unique response: approximately 800.

Other (principally mountain biking enthusiasts, who submitted comments in the form of the same electronic mail): approximately 7,200.

Many respondents supported the proposed amendments and directives. Most respondents were concerned about access for motor vehicles and bicycles.

Nature and Purposes Statement; Proposed FSM 2353.42, Paragraph 4 (Final Amendments to the CDNST Comprehensive Plan, All Chapters; FSM 2353.42, in the Final Directives)

Comments. One respondent believed that the 1985 CDNST Comprehensive Plan had to remain unchanged to preserve its integrity for current and future issues.

Another respondent observed that the proposed nature and purposes statement for the CDNST appeared to derive, appropriately, from a number of sources, including section 3(a)(2) of the National Trails System Act, the 1976 CDNST Study Report, and the 1977 CDNST Final Environmental Impact Statement.

Some respondents requested modification of the proposed nature and purposes statement to provide for high-quality scenic, bicycling, and motorized opportunities, as well as high-quality scenic, primitive hiking and horseback riding opportunities. Other respondents stated that activities such as cross-country skiing and snowshoeing should be considered comparable to hiking with respect to the nature and purposes of the CDNST.

Several respondents claimed that the nature and purposes of the CDNST were modified by a 1983 amendment of the National Trails System Act to include other uses, such as bicycling.

Another respondent stated that the proposed nature and purposes statement omitted part of the policy statement for National Scenic Trails from the National Trails System Act, specifically, the policy that National Scenic Trails are to provide for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources.

Another respondent recommended removing the phrase ''non-motorized'' from the statement on the grounds that the word ''primitive'' is sufficient to provide for a quiet, nature-based experience for hikers and equestrians. Other respondents wanted the word ''primitive'' removed on the grounds that it was ambiguous.

Another respondent noted that the proposed amendments to the CDNST Comprehensive Plan and FSM 2350 should apply to the extent applicable to provisions that were not specifically referenced. Therefore, this respondent believed that the amended CDNST Comprehensive Plan and directives should state that the amendments to the plan and directives supersede any other provisions of the plan and directives to the extent of any inconsistency.

Response: The amendments to the 1985 CDNST Comprehensive Plan and corresponding directives are to ensure that the nature and purposes of the CDNST track those in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement, which were prepared pursuant to the National Trails System Act (16 U.S.C. 1244(b)). The 1976 CDNST Study Report states:

> The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses. * * * One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized. * * * The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high-quality recreation experience while maintaining a constant respect for the natural environment. * * * The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails.

Thus, the 1976 CDNST Study Report states that the primary purpose of the CDNST is to provide a high-quality recreation experience for hiking and horseback riding.

Consistent with the National Trails System Act, the 1976 CDNST Study Report, and the 1977 CDNST Final Environmental Impact Statement, the amended CDNST Comprehensive Plan states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. The amended CDNST Comprehensive Plan and final directives implementing the amendments to the CDNST Comprehensive Plan on National Forest System lands provide that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5); FSM 2353.44b, para. 8, in the final directives). The amendments to the CDNST Comprehensive Plan and directives ensure consistency with the nature and purposes of the CDNST in the context of right-of-way acquisition, land management planning, scenery management, recreation resource management, motor vehicle use, trail and facility standards, and carrying capacity.

The 1983 amendment to the National Trails System Act, which added 16 U.S.C. 1246(j), does not modify the nature and purposes of the CDNST. The added subsection simply lists uses and vehicles that may be permitted on National Trails generally.

The National Trails System Act states that all National Scenic Trails must be so located to provide for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources (16 U.S.C. 1242(a)(2)). This requirement is reflected in the nature and purposes statement in the amended CDNST Comprehensive Plan, which states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. Where possible, the CDNST will be located in primitive or semi-primitive non-motorized settings, which will further contribute to providing for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources in the areas traversed by the CDNST (FSM 2353.44b, para. 8, in the final directives).

The Forest Service has removed the words ''non-motorized'' and

''recreational'' from the nature and purposes statement for the CDNST, as these words were redundant. ''High-quality scenic, primitive hiking and horseback riding'' are non-motorized recreation opportunities. The Agency has not removed the word ''primitive'' from the nature and purposes statement, as it is not redundant and is not ambiguous. It means ''of or relating to an earliest or original stage or state.'' Webster's II New Riverside University Dictionary 934 (1984). Preferred recreation settings, including primitive or semi-primitive non-motorized categories, are delineated in the Forest Service's Recreation Opportunity Spectrum system (FSM 2311.1) and described in the CDNST Comprehensive Plan, Chapter IV(B)(5).

The amendments to the 1985 CDNST Comprehensive Plan apply throughout the document to the extent applicable, not just to the provisions that are specifically referenced in the amendments. The Forest Service agrees that this intent should be expressly stated. Therefore, the Agency has added the following statement to the amendments:

> To the extent there is any inconsistency between the foregoing revisions and any other provisions in the 1985 CDNST Comprehensive Plan, the foregoing revisions control.

Land Management Planning; Proposed FSM 2353.43, Paragraph 1 (FSM 2353.44b, Paragraph 1, in the Final Directives)

Comments: Some respondents requested that land management plans include standards as well as guidelines for the CDNST, as is the case with the Appalachian National Scenic Trail, to ensure that the CDNST is protected in accordance with requirements of the National Trails System Act.

One respondent supported identifying management areas for the CDNST. Another respondent requested clarification on delineating CDNST management areas in wilderness. Another respondent requested that management areas extend one-quarter mile from either side of the CDNST.

Response: The Agency has revised proposed FSM 2353.43, para.1 (FSM 2353.44b, para. 1, in the final directives) to provide for adopting standards and guidelines in land management plans for administrative units traversed by the CDNST and to clarify the guidance for delineating a management area. Specifically, the final directives provide that, except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293), these land management plans must prescribe desired conditions, objectives, standards, and guidelines for the CDNST corridor by establishing a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features (FSH 1909.12),

With regard to management areas for National Trails, H.R. Rep. No 90–1631 on the National Trails System Act states:

> The rights-of-way for the trails will be of sufficient width to protect natural, scenic, cultural, and historic features along the trails and to provide needed public use facilities. The rights-of-way will be located to avoid established uses that are incompatible with the protection of a trail in its natural condition and its use for outdoor recreation.

1968 U.S. Code Cong.& Admin. News 3855, 3863–3864, 3867.

Further, Executive Order (E.O.) 13195 states:

> Federal agencies will * * * protect, connect, promote, and assist trails of all types * * *. This will be accomplished by * * * protecting the trail corridors associated with National Scenic Trails * * * to the degree necessary to ensure that the values for which [the] trail was established remain intact.

To give local managers discretion to address site-specific conditions, the final directives do not prescribe minimum widths for the CDNST corridor. Rather, consistent with the legislative history for the National Trails System Act and E.O. 13195, FSM 2353.44b, para. 1a, in the final directives states that the land management plan for administrative units through which the CDNST traverses must, except where the CDNST is located in a wilderness area and is governed by wilderness management prescriptions, establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features (FSH 1909.12). FSM 2353.44b, para. 2b, in the final directives contains the same requirement for CDNST unit plans, provided that this requirement is not already met in the applicable land management plan or wilderness management prescriptions.

CDNST Unit Plans; Proposed FSM 2353.43, Paragraph 2 (FSM 2353.44b, Paragraph 2, in the Final Directives)

Comments: Respondents were mostly supportive of requiring development of unit plans to meet the site-specific requirements of the National Trails System Act. However, some respondents expressed concerns about requiring site-specific analysis at the level of an administrative unit for mountain biking on the CDNST. These respondents believed that this analysis would be time-consuming and burdensome and should instead be conducted at the regional level. Some respondents proposed including a definition for ''carrying capacity'' or using different terminology for that term, such as ''type and volume of use.''

Response: The provisions of the final directives governing unit plans establish guidance for site-specific planning for the CDNST consistent with the National Trails System Act, the 1976 CDNST Study Report, and the 1977 Final Environmental Impact Statement. Decisions regarding whether to allow certain types of uses on the CDNST will be best decided through land management planning and appropriate environmental analysis.

Section 5(f)(1) of the National Trails System Act (16 U.S.C. 1244(f)(1)) requires carrying capacity to be established for the CDNST. The Agency is removing the definition for ''carrying capacity'' from the 1985 CDNST Comprehensive Plan and replacing it with a statement that provides for using the Limits of Acceptable Change (described in Forest Service General Technical Report INT–GTR–371 and other publications) or a similar system to establish carrying capacity, consistent with the nature and purposes of the CDNST and the applicable land management plan (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(9); FSM 2353.44b, para. 2f, in the final directives).

Monitoring; New FSM 2353.44b, Paragraphs 1c, 2g, and 3,in the Final Directives

Comments: Respondents requested an increased emphasis on monitoring conditions on the CDNST.

Response: The Agency has added several provisions on monitoring in the final directives. FSM 2353.44b, para. 1c, requires that the land management plan for an administrative unit through which the CDNST passes establish a monitoring program to evaluate the condition of the CDNST in the management area. FSM 2353.44b, para. 2g, requires each unit plan for the CDNST to establish monitoring programs to evaluate the site-specific conditions of the CDNST. FSM 2353.44b, para. 3, requires that implementation of a CDNST unit plan be monitored by establishing a program to evaluate and report on the overall condition of the segment of the CDNST that traverses that unit as related to the nature and purposes of the CDNST. Monitoring will ensure that the ROS for the primary uses of the CDNST allows for high-quality recreational experiences.

Scenery Management; Proposed FSM 2353.43, Paragraph 3, and FSM 2353.44, Paragraph 1 (Final Amendments to the CDNST Comprehensive Plan, Chapter IV(B)(4); FSM 2353.44b, Paragraph 7, in the Final Directives)

Comments: Respondents supported the direction on scenery management in the proposed directives, but suggested more emphasis on middle ground and background scenic quality. Other respondents wanted the proposed directives to address restoration of degraded ecosystems.

Response: For scenery management purposes, the CDNST is categorized as a concern level 1 route, with a scenic integrity objective as high or very high. The Forest Service's Scenery Management System (SMS) (FSM 2382.1; *Landscape Aesthetics: A Handbook for Scenery Management*, Agricultural Handbook 701, 1995, *http://www.fs.fed.us/cdt*) and the Visual Management System (VMS) in Bureau of Land Management Manual 8400 sufficiently address middle ground and background scenic quality. Therefore, additional scenery management direction in the final plan amendments and directives is unnecessary. The scenery and visual management objectives in the SMS and VMS provide for a high degree of protection and restoration of natural resources within the CDNST corridor.

Recreation Opportunity Spectrum; Proposed FSM 2353.43, Paragraph 4, and FSM 2353.44, Paragraph 2 (Final Amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5); FSM 2353.44b, Paragraph 8, in the Final Directives)

Comments: Respondents supported using the Recreation Opportunity Spectrum (ROS) in managing the CDNST. However, some respondents wanted the entire CDNST corridor to reflect primitive or semi-primitive conditions.

One respondent stated that where a segment of the CDNST must be located in an ROS setting that is not primitive or semi-primitive, management guidelines for that segment should include as a long-term goal changing the setting to primitive or semi-primitive.

Other respondents wanted the amended CDNST Comprehensive Plan and implementing directives to provide that when any new segment of the CDNST is classified as non-motorized in an area that has historically been motorized a replacement trail should be classified as motorized.

Some respondents suggested that the CDNST Comprehensive Plan and implementing directives state that motorized use is incompatible with the nature and purposes of the CDNST.

Response: The CDNST Comprehensive Plan amendments and implementing directives is to encourage location of the CDNST in primitive or semi-primitive non-motorized areas, which will maximize the recreation potential of the areas along the CDNST. Management objectives for the setting and uses of the CDNST corridor will be further prescribed through land management planning to address desired future conditions. CDNST segments will be developed and managed according to ROS objectives prescribed through land management planning, guided by the amended CDNST Comprehensive Plan. The CDNST is a concern level 1 route with a scenic integrity objective of high or very high (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(4); FSM 2353.44b, para. 7), which will help ensure that the ROS setting in the CDNST corridor will be maintained or improved.

To address recreation needs and opportunities for all trail users, CDNST plans typically will be prepared in conjunction with travel management or similar site-specific plans. For clarity, the Agency has added a provision in the amended CDNST Comprehensive Plan, Chapter IV(B)(5), and in FSM 2353.44b, para. 8, of the final directives listing the recreation activities that are compatible with the nature and purposes of the CDNST, per the 1976 CDNST Study Report.

Consistent with the National Trails System Act, the 1976 CDNST Study Report, and the 1977 CDNST Environmental Impact Statement, motor vehicle use is prohibited on the CDNST, other than in accordance with Chapter IV(B)(6) of the amended CDNST Comprehensive Plan and FSM 2353.44b, para. 11, in the final directives.

Constructing Segments of the CDNST; Proposed FSM 2353.43, Paragraph 5 (Removed From the Amended CDNST Comprehensive Plan and Final Directives)

Comments: Several respondents expressed concern that the direction in proposed FSM 2353.43, para. 5, to limit construction of CDNST segments could affect the ability to select the optimum location for the CDNST and could adversely affect motor vehicle use. Another respondent requested that the CDNST be located on existing trails where they are adequate to meet the needs of the CDNST. Respondents also stated that the proposed amendments and directives should not diminish the ability to establish side and connecting trails for the CDNST.

Response: The Agency has removed the direction regarding construction of CDNST segments from the amended CDNST Comprehensive Plan and final directives, since issues concerning development of the CDNST can be appropriately addressed through environmental analysis associated with land and resource management plans and site-specific plans.

Motor Vehicle Use; Proposed FSM 2353.43, Paragraph 6; Management of Motor Vehicle Use That May Be Allowed; Proposed FSM 2353.44, Paragraph 4; Management of Motor Vehicle Use That Shall Be Allowed; Proposed FSM 2353.44, Paragraph 5 (Final Amendments to the CDNST Comprehensive Plan, Chapter IV(B)(6); Consolidated into FSM 2353.44b, Paragraph 11, in the Final Directives)

Comments: One respondent stated that the separate provisions in the proposed directives governing motor vehicle use that ''may be allowed'' versus motor vehicle use that ''shall be allowed'' were confusing, particularly since both provisions contained similar prerequisites for allowing motor vehicle use.

One respondent stated that the National Trails System Act prohibits the use of motor vehicles by the public on National Scenic Trails and that the issue of motor vehicle use on these trails was muddied by the authorizing provision for the CDNST, which allows motor vehicle use on the CDNST in accordance with regulations promulgated by the appropriate Secretary.

Several respondents expressed concern that allowing off-highway vehicle use on the CDNST would increase use conflicts and undermine the nature and purposes of the CDNST to provide high-quality hiking, horseback, and other non-motorized recreation opportunities. Another respondent believed that there would never be a situation where motor vehicle use on the CDNST would not substantially interfere with its nature and purposes. Another respondent commented that the proposed amendments to the CDNST Comprehensive Plan and accompanying directives needed to state that motor vehicle use is incompatible with the nature and purposes of the CDNST and that although motor vehicle use may be allowable on the CDNST in specific situations, it should be minimized to comply with the intent of the National Trails System Act. Another respondent

opposed granting exceptions to the Act's prohibition on motor vehicle use.

Other respondents recognized that motor vehicle use may be permissible on certain segments of the CDNST in some situations. One respondent suggested that motor vehicle use could be allowed on the CDNST if necessary to meet emergencies. Other respondents supported motor vehicle use on the CDNST by land users, such as timber sale purchasers, as provided in the National Trails System Act.

One respondent requested that the provisions regarding allowing preexisting motor vehicle use include as deciding factors the date of construction of the trail segment and the type of motor vehicle use, such as the vehicle class allowed on the segment. Another respondent believed that use of the term ''substantially'' in relation to other uses' interference with the nature and purposes of National Scenic Trails in section 7(c) of the National Trails System Act (16 U.S.C. 1246(c)) demonstrates an intent to accommodate motorized use on National Scenic Trails where appropriate, as long as it does not impair the overall quality of the non-motorized purposes of the trail. In addition, one respondent interpreted this section of the Act to provide that the proper time for determining whether motor vehicle use has been allowed on a segment to be included in the CDNST is when it is added to the trail. Another respondent requested that the proposed amendments to the CDNST Comprehensive Plan and the proposed directives allow motor vehicle use where it existed as of the date of establishment of the CDNST, consistent with the 1985 CDNST Comprehensive Management Plan.

Response: A fundamental purpose of the CDNST Comprehensive Plan amendments and their implementing directives is to address provisions in the National Trails System Act regarding motor vehicle use. Section 7(c) of the National Trails System Act (16 U.S.C. 1246(c)) contains a prohibition on motor vehicle use on National Scenic Trails. However, section 7(c) also contains several exceptions to the prohibition. Notwithstanding section 7(c) of the Act, the authorizing provisions for the CDNST in section 5(a)(5) of the National Trails System Act (16 U.S.C. 1244(a)(5)) allow motor vehicle use on roads that are established as segments of the CDNST, in accordance with regulations promulgated by the Forest Service at 36 CFR part 212, subparts B and C. The provisions governing motor vehicle use in the final amendments to the CDNST Comprehensive Plan and the final directives are consistent with sections 5(a)(5) and 7(c) of the National Trails System Act (16 U.S.C. 1244(a)(5) and 1246(c)). Specifically, the final amendments and directives prohibit motor vehicle use on the CDNST, other than:

(1) When necessary to meet emergencies;

(2) When necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;

(3) For the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Federal regulations;

(4) On a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST;

(5) When designated in accordance with 36 CFR Part 212, Subpart B, on National Forest System lands or is allowed on public lands and

(a) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST or

(b) That segment was constructed as a road prior to November 10, 1978; or

(6) In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C, on National Forest System lands or is allowed on public lands and the use will not substantially interfere with the nature and purposes of the CDNST.

(Final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(6); FSM 2353.44b, para. 11, in the final directives.)

For clarity, the Agency has consolidated the provisions in the final amendments to the CDNST Comprehensive Plan and directives that govern motor vehicle use (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(6); FSM 2353.44b, para. 11, in the final directives). The first four provisions for allowing motor vehicle use are derived from section 7(c) of the National Trails System Act (16 U.S.C. 1246(c)). The fifth and sixth provisions derive from the Forest Service's travel management regulation (36 CFR part 212, subparts B and C). The fifth provision takes into account preexisting motor vehicle use by vehicle class and width and uses the date of establishment of the CDNST as the reference point.

To the extent appropriate, motor vehicle use on the CDNST will be addressed in land and resource management plans and site-specific plans.

Motor Vehicle Use Restrictions; Proposed FSM 2353.44b, Paragraph 6 (Removed From the Final Amended CDNST Comprehensive Plan and Directives)

Comments: Respondents were confused about the intent of this proposed direction. However, they generally supported mitigation of impacts from motor vehicle use. Some respondents believed that this provision was unnecessary because of the Forest Service's travel management rule.

Response: This provision has been removed from the final CDNST Comprehensive Plan and directives. The Forest Service's travel management rule at 36 CFR parts 212 and 261 and its implementing directives provide adequate direction for management of motor vehicle use on the CDNST.

Locating the CDNST on Roads; Proposed FSM 2353.43, Paragraph 7 (Final Amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5); FSM 2353.44b, Paragraph 8, in the Final Directives)

Comments: Many respondents stated that the CDNST should not be located on roads because roads are open to motor vehicle use, which is incompatible with the nature and purposes of the CDNST. One respondent stated that it might have been necessary, when Congress authorized the CDNST in 1978, to locate segments of the trail on motorized routes to maintain its continuity, but now it should be moved from these routes to permanently protected, non-motorized routes designed and built for use by hikers and equestrians. Another respondent stated that roads should be used for the CDNST only if no other practicable public right-of-way is available.

Some respondents were concerned about implementation of section 5(a)(5) of the National Trails System Act (16 U.S.C. 1244(a)(5)), which provides that notwithstanding section 7(c) of the Act (16 U.S.C. 1246(c)), which generally prohibits motor vehicle use on the CDNST, subject to certain exceptions, motor vehicle use on roads that are segments of the CDNST is permitted in accordance with regulations promulgated by the appropriate Secretary. Specifically, some respondents believed that an unintended consequence of the proposed plan amendments and directives could be to require an affirmative determination regarding motor vehicle use. Another respondent believed that the proposed plan and directives might unduly limit the discretion of the Secretary to

promulgate regulations governing motor vehicle use on CDNST road segments.

Response: Consistent with the prohibition on motor vehicle use in section 7(c) of the National Trails System Act (16 U.S.C. 1246(c)), the final amendments to the CDNST Comprehensive Plan and the final directives provide that a CDNST segment may be located on a road only where it is primitive and offers recreational opportunities comparable to those provided by a trail with a Designed Use of Pack and Saddle Stock, provided that the CDNST may have to be located on or across motorized routes because of the inability to locate the trail elsewhere (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(6); FSM 2353.44b, para. 8).

The Forest Service has promulgated regulations governing designation of roads, trails, and areas for motor vehicle use at 36 CFR part 212, subpart B. These regulations do not require designation of particular routes and areas for motor vehicle use. Rather, these regulations require creation of a system of routes and areas designated for motor vehicle use. Once routes and areas are designated for motor vehicle use on a particular administrative unit or ranger district, motor vehicle use that is inconsistent with those designations is prohibited (36 CFR 261.13).

Consistent with these regulations, the final plan amendments and directives provide that use of motor vehicles other than over-snow vehicles is allowed on the CDNST when it is designated in accordance with 36 CFR part 212, subpart B, and (a) the designated vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978 (the date of establishment of the CDNST), and the use will not substantially interfere with the nature and purposes of the CDNST; or (b) the designated segment was constructed as a road prior to November 10, 1978. Use of over-snow vehicles is allowed on the CDNST consistent with 36 CFR part 212, subpart C.

Locating the CDNST in a Wilderness Area; Proposed FSM 2353.43, Paragraphs 8 (FSM 2353.44b, Paragraph 4, in the Final Directives)

Comments: Respondents were mostly supportive of locating the CDNST in wilderness areas. One respondent suggested stating that generally the CDNST could be located in a wilderness area, so as to make it easier to avoid locating a segment in a wilderness area when it would result in potential adverse effects on natural resources. Some respondents expressed concerns regarding management of the CDNST in wilderness study areas and wilderness areas.

Response: The final directives at FSM 2353.44b, para. 4, give trail managers discretion to locate the CDNST inside or outside a wilderness area. Recreational use in wilderness areas is governed by wilderness regulations and management prescriptions. In addition, the final directives provide that when the CDNST is located in a congressionally designated wilderness study area or an area recommended for designation as a wilderness area in the applicable land management plan, the CDNST must be managed so as to leave the area unimpaired for inclusion in the National Wilderness Preservation System.

Easements; Proposed FSM 2353.43, Paragraph 9 (FSM 2353.44b, Paragraphs 5 and 6, in the Final Directives)

Comments: Many respondents supported locating the CDNST within the scope of permanent easements. Another respondent stated that the proposed directives should require easements for the CDNST to be wide enough to allow for use and management of the trail.

Response: The National Trails System Act limits the Forest Service's ability to locate the CDNST within the scope of easements. Specifically, section 5(a)(5) of the Act (16 U.S.C. 1244(a)(5)) states that no land or interest in land outside the boundaries of a Federally administered area may be acquired by the Federal Government for the CDNST without the owner's consent. This limitation is included in ''Acquisition of Non-Federal Interests in Land,'' Chapter IV(B)(3) of the final amended CDNST Comprehensive Plan and in FSM 2353.44b, para. 5, of the final directives.

However, the final directives state that where the CDNST crosses private property, it should be located within the scope of a permanent easement (FSM 5460.3). In addition, FSM 2353.44b, para. 5, in the final directives requires that CDNST access needs be addressed in assessing adjustments to land ownership in an administrative unit. FSM 2353.44b, para. 1a, requires the land management plan for an administrative unit through which the CDNST passes to establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features, except where the management area would overlap with a wilderness area. The scope of the management area will guide acquisition of easements for the CDNST.

Cooperative Agreements; new FSM 2353.44b, Paragraph 6, in the Final Directives

Comments: Some respondents suggested addressing cooperative agreements with state and local governments in this section of the proposed directives.

Response: The Agency has added a new provision at FSM 2353.44b, para. 6, which provides for execution of cooperative agreements with other Federal agencies and State, local, and tribal governments for CDNST purposes, in accordance with section 7(h) of the National Trails System Act (16 U.S.C. 1246(h)).

Designed Use; Proposed FSM 2353.43, Paragraph 10 (FSM 2353.44b, Paragraph 9, in the Final Directives)

Comments: Respondents generally supported the direction on Designed Use in proposed FSM 2353.43, para. 10. Designed Use is the Managed Use that requires the most demanding design, construction, and maintenance parameters and that determines which design, construction, and maintenance parameters will apply to a trail (FSM 2353.05). A Managed Use is a mode of travel that is actively managed and appropriate on a trail, based on its design and management (FSM 2353.05).

Some respondents expressed concerns about assigning a Designed Use of Hiker/Pedestrian to some segments of the CDNST and requested that all of the CDNST have a Designed Use of Pack and Saddle Stock. Some respondents expressed concerns regarding availability of water sources for hikers and equestrians along the CDNST.

Response: The 1976 CDNST Study Report allows for some segments of the CDNST to have a Designed Use of Hiker/Pedestrian, and some segments with that Designed Use exist along the CDNST. However, the goal is for new CDNST segments to have a Designed Use of Pack and Saddle Stock. Consistent with this intent, FSM 2353.44b, para. 9 in the final directives, provides that segments of the CDNST generally should fall into Trail Class 2 or 3 and have a Designed Use of Pack and Saddle Stock, but that a CDNST segment may fall into Trail Class 1, 2, or 3 and have a Designed Use of Hiker/Pedestrian where a substantial safety or resource concern exists or the direction for the management area provides only for hiker/pedestrian use. In addition, FSM 2353.44b, para. 9, in the final directives provides that where a CDNST segment has a Designed Use of Hiker/Pedestrian, trail managers must consider establishing side trails to accommodate

pack and saddle stock needs. With regard to available water sources, this same paragraph in the final directives provides that if the interval between natural water sources is excessive, trail managers must consider developing and protecting water sources for hikers and pack and saddle stock use.

Bicycle Use; Proposed FSM 2353.44, Paragraph 7 (Final Amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5); FSM 2353.44b, Paragraph 10, in the Final Directives)

Comments: One respondent stated that proposed FSM 2353.44, para. 7, adequately addressed mountain bike use where it cannot be avoided on the CDNST, but should establish a systematic framework for monitoring mountain bike use to determine thresholds that impair hiking and equestrian experiences. Several respondents requested that the proposed amendments to the CDNST Comprehensive Plan and directives address not only mountain bike use, but other non-motorized uses as well. Other respondents stated that the proposed amendments to the CDNST Comprehensive Plan should give all non-motorized uses consideration with respect to whether they are allowed on the CDNST.

One respondent believed that mountain bike use on the CDNST always would substantially interfere with the quality of hiking and equestrian experiences and that substantial safety issues arise when all these uses are combined. Another respondent was concerned about cumulative effects from mountain bike use and stated that it would be difficult, if not impossible, to analyze effects if mountain bike use is considered segment by segment. Some respondents requested that the section on bicycle use be removed.

Another respondent suggested that bicycling be described as an appropriate and established use on the CDNST that is consistent with the intent of Congress and the nature and purposes of the trail. Based on their understanding of the letter and spirit of the National Trails System Act, other respondents requested revising the proposed amendments to the CDNST Comprehensive Plan and directives to allow mountain bike use, except where the CDNST traverses a wilderness area.

Response: Consistent with section 7(c) of the National Trails System Act (16 U.S.C. 1246(c)), the final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5), and the final directives at FSM 2353.44b, para.10, provide that bicycle use may be allowed on the CDNST if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST.

Monitoring regarding the CDNST generally is addressed in FSM 2353.44b, para. 1c, 2g, and 3, in the final directives. Other non-motorized uses are addressed in Chapter IV(B)(5) in the amended CDNST Comprehensive Plan, and in FSM 2353.44b, para. 8, in the final directives, which states that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.

The amended CDNST Comprehensive Plan and its implementing directives do not make site-specific determinations regarding use of the CDNST. Rather, the amended plan and directives provide a framework for managing the CDNST. Mountain bike and other possible uses of the CDNST will be addressed through land management and unit plans.

Bicycle Use Mitigation; Proposed FSM 2353.44, Paragraph 8 (Removed From the Final Amended CDNST Comprehensive Plan and Directives)

Comments: Some respondents agreed that the Forest Service should avoid management practices that promote bicycle use on the CDNST.

Many other respondents did not support proposed FSM 2353.44, para. 8. These respondent noted that bicycling use on non-wilderness segments of the CDNST deserves fair consideration and believed that there are many non-wilderness segments where bicycling could occur.

Other respondents asked that this section be removed, since they believed that mitigation of mountain bike use on the CDNST should be addressed at the level of an administrative unit.

Response: The Agency has removed this direction from the final amended CDNST Comprehensive Plan and directives, since mitigation of bicycle use can be adequately addressed through requisite environmental analysis, land management and unit plans, and monitoring of the CDNST.

General Comment and Responses

Comments: One respondent believed that competitive running and mountain biking events on the CDNST are incompatible with high-quality scenic, primitive hiking and horseback riding opportunities.

Response: The desirability of competitive events on the CDNST typically will be addressed through land and resource management plans and site-specific plans. In addition, competitive events that involve an entry fee or 75 or more people require a special use permit and are subject to environmental analysis, which will determine whether the proposed activity would substantially interfere with the nature and purposes of the CDNST.

Comments: Respondents recommended defining ''affirmative determination,'' ''materially different,'' and ''substantially interfere.''

Response: The term ''affirmative determination'' does not appear in the final amended CDNST Comprehensive Plan and directives. The Agency does not believe definitions for ''materially different'' and ''substantially interfere'' are necessary or appropriate, as these terms are used in their ordinary sense and could apply in a variety of factual situations. These terms will be applied case specifically based on applicable land and resource management plans, as well as applicable carrying capacity and the nature and purposes of the CDNST.

Comments: One respondent requested that the proposed amendments to the CDNST Comprehensive Plan and proposed directives be revised to comply with E.O. 13266, Activities to Promote Personal Fitness.

Response: The Forest Service believes that the nature and purposes of the CDNST to provide for high-quality hiking and equestrian opportunities are consistent with E.O. 13266.

Regulatory Impact

Comments: Some respondents believed that the proposed amendments to the CDNST Comprehensive Plan and the proposed directives would have a significant economic impact in two counties if mountain bikes were precluded from the CDNST.

Response: Neither the proposed nor the final plan amendments and directives preclude mountain bike use on the CDNST. Rather, the final Comprehensive Plan amendments and directives state that bicycle use may be allowed on the CDNST if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST (final amendments to the CDNST Comprehensive Plan, Chapter IV(B)(5), and FSM 2353.44b, para. 10).

3. Regulatory Certifications

Environmental Impact

The final amendments to the CDNST Comprehensive Plan and corresponding directives will provide guidance to

agency officials implementing the National Trails System Act. The final amendments are consistent with the nature and purposes of the CDNST identified in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement adopted by the Forest Service in 1981 (40 FR 150). The final amendments and directives will be applied through land management planning and project decisions following requisite environmental analysis.

Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Forest Service has concluded that the final amendments and directives fall within this category of actions and that no extraordinary circumstances exist that require documentation in an environmental assessment or environmental impact statement.

Regulatory Impact

The final amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 have been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. The final amendments and directives will not have an annual effect of $100 million or more on the economy, nor will they adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. The final amendments and directives will not interfere with any action taken or planned by another agency, nor will they raise new legal or policy issues. Finally, the final amendments and directives will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, the final amendments and directives are not subject to review by the Office of Management and Budget under E.O. 12866.

Regulatory Flexibility Act Analysis

The Agency has considered the final amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final amendments and directives will not have any effect on small entities as defined by the Regulatory Flexibility Act. The final amendments and directives will not directly affect small businesses, small organizations, and small governmental jurisdictions. Therefore, the Agency has determined that the final amendments and directives will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because the final amendments and directives will not impose record-keeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

The Agency has analyzed the amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 in accordance with the principles and criteria contained in E.O. 12630. The Agency has been determined that the final amendments and directives will not pose the risk of a taking of private property.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Forest Service has considered the amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 under the requirements of E.O. 13132 on federalism and has determined that the final amendments and directives conform with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary. Moreover, the final amendments and directives will not have Tribal implications as defined by E.O. 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

The Agency has reviewed E.O. 13211 on actions concerning regulations that significantly affect the energy supply and has determined that the final amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 will not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of the final amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 on State, local, and Tribal governments and the private sector. The final amendments and directives will not compel the expenditure of $100 million or more by a State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

The final amendments to the 1985 CDNST Comprehensive Plan and corresponding final directives at FSM 2350 do not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

4. Final Amendments to the CDNST Comprehensive Plan

1. *Nature and Purposes.* For all chapters of the 1985 CDNST Comprehensive Plan, the Agency is revising the nature and purposes statement as follows:

> Administer the CDNST consistent with the nature and purposes for which this National Scenic Trail was established. The CDNST was established by an Act of Congress on November 10, 1978 (16 USC 1244(a)). The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.

2. *Acquisition of Non-Federal Interests in Land.* The Agency is removing in its entirety ''Rights-of-Way Acquisition on Non-Federal Lands,'' Chapter IV(B)(3), pages 40–44, in the 1985 CDNST Comprehensive Plan and replacing it with the following statement under ''Acquisition of Non-Federal Interests in Land,'' Chapter IV(B)(3), in the 2009 CDNST Comprehensive Plan:

> Do not acquire any non-federal land or interest in land for the CDNST without the owner's consent. Do not acquire in fee title more than an average of one quarter mile on either side of the CDNST.

3. *Visual Resource Management.* The Agency is adding the following

statements under ''Visual Resource Management,'' Chapter IV(B)(4), in the 2009 CDNST Comprehensive Plan:

Scenery along the CDNST may be managed using the Scenery Management System (FSM 2382.1; *Landscape Aesthetics:* A *Handbook for Scenery Management,* Agricultural Handbook 701, 1995, *http://www.fs.fed.us/cdt*). The CDNST is a concern level 1 route, with a scenic integrity objective of high or very high, depending on the trail segment.

4. *Recreation Resource Management.* The Agency is removing the following statement from pages 51–52 in the 1985 CDNST Comprehensive Plan:

Each agency will manage the CDNST in accordance with the recreation management objectives and prescriptions set forth in their respective land and resource management plans for the specific management area through which the trail passes.

The Agency is adding the following statements under ''Recreation Resource Management Along the CDNST,'' Chapter IV(B)(5), in the 2009 CDNST Comprehensive Plan:

Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST. Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)) if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST.

Use the Recreation Opportunity Spectrum (ROS) in delineating and integrating recreation opportunities in managing the CDNST. Where possible, locate the CDNST in primitive or semi-primitive non-motorized ROS classes, provided that the CDNST may have to traverse intermittently through more developed ROS classes to provide for continuous travel between the Montana-Canada and New-Mexico-Mexico borders.

Locate a CDNST segment on a road only where it is primitive and offers recreational opportunities comparable to those provided by a trail with a Designed Use of Pack and Saddle Stock, provided that the CDNST may have to be located on or across motorized routes because of the inability to locate the trail elsewhere.

5. *Motor Vehicle Use* (16 U.S.C. 1244(a)(5) and 1246(c); 36 CFR Part 212, Subpart B). The Agency is removing in its entirety the direction on motor vehicle use in Chapter IV(B)(6), pages 55–58, of the 1985 CDNST Comprehensive Plan.

The Agency is adding the following direction under ''Motor Vehicle Use on the CDNST,'' Chapter IV(B)(6), in the 2009 CDNST Comprehensive Plan:

Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable land management plan and:

a. Is necessary to meet emergencies;

b. Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;

c. Is for the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Federal regulations;

d. Is on a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST;

e. Is designated in accordance with 36 CFR Part 212, Subpart B, on National Forest System lands or is allowed on public lands and:

(1) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST or

(2) That segment of the CDNST was constructed as a road prior to November 10, 1978; or

f. In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C, on National Forest System lands or is allowed on public lands and the use will not substantially interfere with the nature and purposes of the CDNST.

6. *Trail and Facility Standards.* The Agency is removing the following statement from page 61 of the 1985 CDNST Comprehensive Plan:

In keeping with the National Scenic Trails concept, the trail should be regarded as a simple facility for the hiker and horseman, and where already existing and appropriate, for trail bikers and recreational four-wheel drive use.

The Agency is adding the following statement under ''Trail and Facility Standards,'' Chapter IV(B)(8), in the 2009 CDNST Comprehensive Plan:

Any development of and associated facilities for the CDNST should be minimal and appropriate for hiker/pedestrian and pack and saddle stock use.

7. *Carrying Capacity.* The Agency is removing the definition of ''carrying capacity'' from page E–4 and the following statement from page 69 of the 1985 CDNST Comprehensive Plan:

Forest Service and BLM managers will use the carrying capacity guidelines respectively, developed for each Recreation Opportunity Spectrum class through with the CDNST passes.

The Agency is adding the following statements under ''Carrying Capacity,'' Chapter IV(B)(9), in the 2009 CDNST Comprehensive Plan:

Establish a carrying capacity for the CDNST that accommodates its nature and purposes. The Limits of Acceptable Change or a similar system may be used for this purpose.

8. *Inconsistencies.* To the extent there is any inconsistency between the foregoing revisions and any other provisions in the 1985 CDNST Comprehensive Plan, the foregoing revisions control.

5. Final Amendments to FSM 2350

The final directives implementing the amendments to the 1985 CDNST Comprehensive Plan as applied to National Forest System lands are posted at *http://www.fs.fed.us/cdt.* The FSM can be found on the Internet at *http://www.fs.fed.us/im/directives/fsm/2300/2350.doc.* The final directives add a reference to the CDNST Comprehensive Plan as an authority in FSM 2353.01d; add administration of the CDNST as a responsibility of forest and grassland supervisors in FSM 2353.04i, para. 13; add the nature and purposes of the CDNST in FSM 2353.42; and add detailed direction in FSM 2353.44b governing implementation of the CDNST on National Forest System lands.

Approved: September 24, 2009.

Hank Kashdan,

Associate Chief, Forest Service.

[FR Doc. E9–23873 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Fredonia Flood Retarding Structure Rehabilitation Project, Coconino County, AZ

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service (NRCS) Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fredonia Flood Retarding Structure (FRS) Rehabilitation Project, Coconino County, Arizona.

FOR FURTHER INFORMATION CONTACT: David L. McKay, State Conservationist, USDA–NRCS, 230 North First Avenue, Suite 509, Phoenix, Arizona 85003, telephone: (602) 280–8801.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, David L. McKay, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to decommission the Fredonia FRS by converting the dam to a levee/floodway and directing flows north to a floodway discharging to Kanab Creek. This will meet the project purpose of providing for continued 100-year flood protection for the Town of Fredonia, Arizona, and surrounding areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Don Paulus, Assistant State Conservationist for Programs, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 28, 2009.

David L. McKay,

State Conservationist.

[FR Doc. E9–23890 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Applications for Value-Added Producer Grants

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice to correct dates.

SUMMARY: The Rural Business—Cooperative Service (RBS) announces corrections for anticipated award date and eligible grant period dates for the Value-Added Producer Grant.

SUPPLEMENTARY INFORMATON: RBS published a Notice of Funds Availability (NOFA) on September 1, 2009 stating an anticipated award date of January 7, 2010 for Value-Added Producer Grants. Due to the delay in publication of the NOFA in the **Federal Register**, this award date does not allow sufficient time for scoring and processing applications. Therefore the anticipated award date is May 3, 2010.

In addition, the delay was not reflected in dates for grant period eligibility for which the NOFA incorrectly stated ''Projects cannot begin earlier than March 1, 2010 and cannot end later than February 28, 2013. Applications that request funds for a time period beginning prior to March 1, 2010 and/or ending after February 28, 2013 will be considered ineligible, as will applications that exceed a maximum 36 months in length. Applicants may propose a start date falling any time during March 1, 2010 through September 30, 2010.''

Therefore, the corrected grant period times are as follows. Projects cannot begin earlier than June 1, 2010 and cannot end later than November 30, 2013. Applications that request funds for a time period beginning prior to June 1, 2010 and/or ending after November 30, 2013 will be considered ineligible, as will applications that exceed a maximum of 36 months in length. Applicants may propose a start date falling any time during June 1, 2010 through November 30, 2010. Finally, the deadline for submission of applications to State Offices for a preliminary review is revised from October 1, 2009 to November 2, 2009.

Dated: September 11, 2009.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E9–23939 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Teacher-At-Sea Alumni Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 54.

Average Hours per Response: 30 minutes.

Burden Hours: 27.

Needs and Uses: Consistent with the support for research and education under the National Marine Sanctuaries Act (16 U.S.C. 32 1440) and other coastal and marine protection legislation, National Oceanic and Atmospheric Administration (NOAA) provides educators an opportunity to gain first-hand experience with field research activities through the Teacher-at-Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The Teacher-at-Sea Program would like to survey the teacher participants on their experience before, during, and after they return from sea, in order to collect program evaluation data and improve program operations.

Affected Public: Individuals or households.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: September 29, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–23848 Filed 10–2–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR75

Fisheries of the Northeastern United States; Essential Fish Habitat (EFH) Components of Fishery Management Plans (Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Atlantic Herring, Skates, Atlantic Salmon, and Atlantic Deep-Sea Red Crab) 5–year Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The New England Fishery Management Council (Council) is in the process of preparing a programmatic Environmental Impact Statement (EIS) and Omnibus Amendment to the fishery management plans (FMPs) for Northeast multispecies, Atlantic sea scallop, monkfish, Atlantic herring, skates, Atlantic salmon, and Atlantic deep-sea red crab. This NOI proposes that the Council will prepare one final EIS that incorporates all topics considered in the development of the Omnibus Amendment, rather than preparing a final Phase 1 EIS prior to completing work on Phase 2 topics. During this scoping period, the Council is seeking comments on its intent to not complete a Phase 1 Final EIS (FEIS), as well as comments on any new scientific information identified since the 2004 scoping period that is pertinent to the development of the Omnibus Amendment.

DATES: Written comments must be received on or before 5 pm EST, November 4, 2009.

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

- E-mail: *comments@nefmc.org*.
- Mail: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.
- Fax: (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this notification is to alert the interested public of the Council's intent to revise the two-phased approach for the EIS associated with the Omnibus EFH Amendment, as proposed in the supplemental NOI dated September 9, 2005 (70 FR 53636). A complete description of the background and need for the Omnibus Amendment can be found in the original NOI dated February 24, 2004, (69 FR 8367) and is not repeated here. This two-phased approach called for the completion of a final EIS for the topics included in Phase 1, followed by the preparation of a draft Phase 2 EIS, and the merger of the two documents into a single final EIS, with sequential public review and comment, first on Phase 1, and then on Phases 1 and 2 combined. A notice of availability for the Phase 1 Draft EIS (DEIS) was published on April 6, 2007 (72 FR 17157).

As indicated in the September 9, 2005, NOI, the Council intended to complete the EFH Omnibus Amendment in two phases with one accompanying EIS. Phase 1 was to have included a review and update of EFH designations, consideration of habitat areas of particular concern (HAPC), an updated prey species list, an update of non-fishing impacts, and an update of research and information needs. Phase 2 was to have included an evaluation of the effects of fishing on EFH, and management measures to minimize the adverse effects of fishing on EFH across all FMPs. The process called for developing the two phases sequentially, with submission of draft and final EIS documents for Phase 1 prior to completion of Phase 2. Upon completion of Phase 2, a single EIS document incorporating both phases would then have been voted on by the Council and made available for public comment. Any final alternatives voted on by the Council during Phase 1 would have been subject to revision until completion of the final EIS. Since the phased approach was proposed, the Phase 1 alternatives were developed and analyzed, and a notice of availability for the Phase 1 DEIS was published in the **Federal Register** on April 6, 2007 (72 FR 17157). Public comments were accepted through May 21, 2007; however, a FEIS for Phase 1 has not been completed. Work to complete Phase 2 is ongoing.

The purpose of this NOI is to inform the interested public that the Council has determined that preparing a FEIS for Phase 1 is not practicable. Instead, the Council will wait until work on Phase 2 topics is finished and then prepare a single DEIS incorporating Phases 1 and 2. The elimination of this step in the process will give the Council additional time to complete the large number of proposed EFH maps for the numerous species and life stages included in the amendment. It will also allow for a more coordinated and comprehensive modification of the contents of Phases 1 and 2 so that they are more effectively integrated in the FEIS. In particular, proposed HAPC designations developed in Phase 1 could be modified to accommodate recent changes in the Council's discretionary authority to protect deep-sea corals from physical damage caused by fishing gear, as authorized in the Magnuson-Stevens Fishery Conservation and Management Act section 303(b)(2)(B). Alternatives pertaining to Phases 1 and 2 will be distinct in the combined DEIS, consistent with the approach proposed in 2005. Following public comment, the Council will select final alternatives and then prepare and submit a final EIS. The proposed sequence of events is described in Table 1.

TABLE 1. MILESTONES OF PHASED EFH OMNIBUS AMENDMENT 2

Step	Event/Milestone	Status
1	Council files modified Notice of Intent to explain the phased approach to the public.	Filed September 9, 2005
2	Council considers topics outlined in Phase 1 and develops a range of alternatives.	Completed
3	Council prepares DEIS that includes components of Phase 1.	Completed
4	Public Hearings/Public Comment Period on Phase 1 DEIS.	Completed
5	Council considers public comments and makes decisions on Phase 1 topics.	Considered at June and September 2007 Council meetings
6	Council considers topics outlined in Phase 2 and develops a range of alternatives.	In progress
7	Council prepares DEIS that includes components of Phase 2.	In progress
8	Public Hearings/Public Comment Period on combined Phase 1/Phase 2 DEIS.	To be completed

TABLE 1. MILESTONES OF PHASED EFH OMNIBUS AMENDMENT 2—Continued

Step	Event/Milestone	Status
9	Council considers public comments and makes final decisions on Phase 1 and Phase 2 topics.	To be completed
10	Council prepares and submits merged document to NMFS as a final, complete EIS/Magnuson Act FMP Amendment document.	To be completed
11	NMFS reviews EIS and issues a record of decision.	To be completed

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

Dated: September 29, 2009.

Emily H. Menashes,

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

[FR Doc. E9–23954 Filed 10–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 20–2009 and 22–2009]

Foreign–Trade Zones 29 and 203

Applications for Subzone Authority

Dow Corning Corporation and REC Silicon

Extension of Comment Period

The comment period for the applications for subzone status at the Dow Corning Corporation (Dow Corning) facilities in Carrollton, Elizabethtown and Shepherdsville, Kentucky (74 FR 21621–21622, 5/8/09) and at the REC Silicon facility in Moses Lake, Washington (74 FR 25488–25489, 5/28/09) is being extended to October 21, 2009 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until November 5, 2009. Submissions (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth_Whiteman@ita.doc.gov or (202) 482–0473.

Dated: September 28, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–23941 Filed 10–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Thursday, October 22, 2009. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:45 a.m. and will consist of an update on implementation of the 2004 Water Resources Plan for the Delaware River Basin (the ''Basin Plan''); recommendations of the Flood Advisory Committee (FAC) on floodplain management; and a presentation by a Decree Party representative on New York City's planned temporary tunnel shutdown.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Knoll, Inc., D–1974–162–3.* An application for the renewal of a 0.073 mgd discharge of industrial waste and non-contact cooling water from Knoll, Inc.'s industrial wastewater treatment plant (IWTP). The project IWTP discharges to the Perkiomen Creek, which is a tributary of the Schuylkill River. The project IWTP is located in Upper Hanover Township, Montgomery County, Pennsylvania.

2. *Doylestown Borough, D–1979–018 CP–4.* An application for the renewal of a groundwater withdrawal project with an expired DRBC docket, to continue a withdrawal of up to 50.6 mg/30 days to supply the applicant's public water supply system from existing Wells Nos. 7, 8, 9, 10, 11, and 12 in the Stockton Formation. The project is located in the Neshaminy Creek Watershed in the Borough of Doylestown, Bucks County, Pennsylvania, and is located in the southeastern Pennsylvania Ground Water Protected Area.

3. *Nestle Purina PetCare Company, D–1984–002–4.* An application for the renewal of a groundwater withdrawal project to continue the withdrawal of 25.92 mg/30 days to supply the applicant's industrial processes from existing Wells Nos. 2, 4, 5, and 6, completed in the Beekmantown Formation Aquifer. The project is located in the Jordon Creek Watershed in South Whitehall Township, Lehigh County, Pennsylvania and within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

4. *Leidy's, Inc., D–1993–021–2.* An application for the renewal of a groundwater withdrawal project with an expired DRBC docket, to continue a withdrawal of up to 3.45 mg/30 days to supply the applicant's industrial manufacturing processes from existing Wells Nos. PW–1, PW–2, and PW–3 in the Brunswick and Lockatong Formations. The project is located in the Skippack Creek Watershed in Souderton Borough, Montgomery County, Pennsylvania, and is located in the southeastern Pennsylvania Ground Water Protected Area.

5. *Deerwood Country Club, D–1994–006–3.* An application for renewal of a groundwater and surface water withdrawal project to continue the withdrawal of 6.7 mg/30 days to supply the irrigation system at the Deerwood Country Club from existing Wells Nos. 1, and 2 and two (2) existing surface water intakes. The project wells are located in the Englishtown Formation, and all wells and intakes are located in the Assiscunk Creek Watershed in Westhampton Township, Burlington County, New Jersey, in New Jersey Critical Water Supply Area 2.

6. *Upper Hanover Authority, D–2004–017 CP–2.* An application to approve the renewal of the Upper Hanover Authority Perkiomen WWTP. The WWTP will continue to discharge 0.098 mgd of treated sewage effluent to Perkiomen Creek, a tributary of the Schuylkill River. The facility is located in Upper

Hanover Township, Montgomery County, Pennsylvania.

7. *City of Bethlehem, D–1971–078 CP–2.* An application to update the docket for the City of Bethlehem's wastewater treatment plant (WWTP) to reflect an increase in the hydraulic design capacity of the WWTP from 15.5 mgd to 20 mgd. The expansion occurred in 1995 without DRBC approval. The WWTP will continue to discharge primarily to the Lehigh River at River Mile 183.66–9.51 (Delaware River—Lehigh River). Additionally, the old discharge outfall (Outfall 006 now acts as an emergency outfall and is located at River Mile 183.66–9.5–0.3 (Delaware River—Lehigh River—Saucon Creek). The project WWTP is located within the drainage area to the portion of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters, in Bethlehem, Northampton County, Pennsylvania.

8. *New Jersey American Water Company, D–1981–073 CP–4.* An application for an existing groundwater withdrawal project to continue the withdrawal of 12.8 mg/30 days to supply the applicant's Homestead public water supply system from existing Wells Nos. 1 and 2 completed in the Upper Potomac/Raritan/Magothy Aquifer. The project is located in the Assiscunk Creek Watershed in Mansfield Township, Burlington County, New Jersey and is located in the New Jersey Critical Water Supply Area 2.

9. *Stroudsburg Borough, D–1986–011 CP–2.* An application for the approval of an expansion to the existing Stroudsburg Borough WWTP. The applicant proposes to expand the WWTP by adding a sequencing batch reactor (SBR) system, along with new headworks, equalization tanks, tertiary cloth media filters, UV disinfection, and a new outfall. The 2.5 mgd WWTP will be expanded to treat an average annual daily flow rate of 4.5 mgd. The WWTP will continue to discharge to McMichael's Creek. McMichael's Creek is a tributary to the Brodhead Creek, and the project WWTP is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters. The facility is located in the Borough of Stroudsburg, Monroe County, Pennsylvania.

10. *Delaware County Solid Waste Authority, D–1989–018 CP–4.* An application for the approval of the modification and expansion of the Delaware County Solid Waste Authority's (DCSWA) Rolling Hills leachate treatment plant (LTP) from 0.08 million gallons per day (mgd) to 0.115 mgd. Modifications include a clarifier, new ozone system, additional blowers, new pumps, and new boilers to ensure treatment process comply with permit limitations such as color, ammonia, and total dissolved solids (TDS). The LTP treats leachate from the Rolling Hills landfill and discharges to the Manatawny Creek at River Mile 92.47–54.15–12.2 (Delaware River—Schuylkill River—Manatawny Creek) through a diffused outfall. The project LTP is located in Earl Township, Berks County, Pennsylvania.

11. *Baer Aggregates, Inc., D–1990–018–3.* An application for the modification of an existing groundwater withdrawal project to include the addition of a surface water withdrawal from a groundwater-fed dewatering pit. The project proposes to continue withdrawal of 38.0 mg/30 days to supply the applicant's sand and gravel washing operations from existing Well Nos. 1, 2, 3, and 4 and the proposed dewatering pit. The project withdrawals are located in the Kittatinny Formation in Pohatcong Township, Warren County, New Jersey.

12. *Gloucester County Utilities Authority, D–1990–074 CP–3.* An application for the continued approval of a 27 mgd discharge of treated wastewater from the Gloucester County Utilities Authority (GCUA) WWTP. On May 6, 2009, the DRBC approved Docket No. D–2008–27–1 for the West Deptford Energy Station (WDES). WDES was approved to withdraw up to 7.5 mgd of GCUA's effluent for cooling water purposes and to discharge approximately 2.0 mgd of contact cooling water (CCW) back into GCUA's effluent stream. As a result of the WDES approval, a TDS and thermal mixing zone are required for the GCUA discharge (Outfall No. DSN001A). This application includes a thermal mixing zone of 164 feet and a TDS mixing zone of 105 feet, both applicable to Outfall No. DSN001A. The project WWTP is located in Water Quality Zone 4 at River Mile 89.7 (Delaware River), in West Deptford Township, Gloucester County, New Jersey.

13. *Evesham Municipal Utilities Authority, D–1991–015 CP–3.* An application for approval to construct three new infiltration basins and the related force main required for conveyance. Docket No. D–1991–015 CP–2 approved the discharge of treated effluent to two infiltration basins and a spray field for the Kings Grant WWTP. The three new infiltration basins will replace the spray field component of the treatment process. The project WWTP and appurtenant facilities are located adjacent to an UNT to the South Branch Rancocas Creek near River Mile 111.06–15.41–8.65–0.36 (Delaware River—Rancocas Creek—South Branch Rancocas Creek—UNT). The facilities are located along Tomlinson Mill-Taunton Road, in Evesham Township, Burlington County, New Jersey.

14. *Borough of Woodstown, D–1999–004 CP–2.* An application for approval of a groundwater withdrawal project to supply up to 13 mg/30 days of water to the applicant's public supply distribution system from new Well No. 6 and to increase the existing withdrawal from all wells from 18.1 mg/30 days to 18.843 mg/30 days. The project is located in the Salem River and Oldmans Creek watersheds in Woodstown Borough, Salem County, New Jersey.

15. *Quakertown Borough, D–2000–064 CP–2.* The purpose of this project is to approve the addition of new Well No. 9 to the docket holder's distribution system and to continue to provide up to 51.1 mg/30 days of water to the docket holder's distribution system. The proposed total allocation of groundwater is not an increase in allocation from the prior docket. New Well No. 9 will replace existing Well No. 7 due to declining production rates. The docket holder will retain Well No. 7 as a back-up source of water. The project is located in the Brunswick Formation in the Tohickon Creek Watershed in Quakertown Borough, Bucks County, Pennsylvania and is located in the southeastern Pennsylvania Ground Water Protected Area. This withdrawal project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

16. *Penn Estates Utilities, Inc., D–2003–036 CP–2.* An application for approval of a groundwater withdrawal project to supply up to 1.296 mg/30 days of water to the applicant's public water supply system from new Well No. 8 and to increase the existing withdrawal from all wells from 10.80 mg/30 days to 12.025 mg/30 days. The increased allocation is requested in order to meet current needs in service area demand. The project is located in the Trimmers Rock Formation in the Brodhead Creek Watershed in Stroud Township, Monroe County, Pennsylvania. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

17. *City of Bordentown, D–2004–011 CP–2.* An application for the renewal of

a groundwater withdrawal project to increase withdrawal from 96 mg/30 days to 118 mg/30 days to supply the applicant's public water supply system from existing Well Nos. 1, 2, 3, and 4 completed in the Potomac/Raritan/Magothy Aquifer. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Crosswicks Creek Watershed in Hamilton Township, Mercer County, New Jersey.

18. *U.S. Army Corps of Engineers (USACE), D–2005–32 CP–2.* An application for approval to modify the existing spillway of the Prompton Dam. The project proposes to extend the existing 85-foot long spillway to approximately 130 feet. The project also includes the construction of a soil retention wall and other improvements to the spillway, as well as a new operations building and access bridge. The Prompton Dam is a flood control structure located on the West Branch Lackawaxen River in Prompton Borough, Wayne County, Pennsylvania. The dam is located within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware which is classified as Special Protection Waters.

19. *Ruscombmanor Township, D–2007–034 CP–2.* An application to modify the hydraulic design capacity of the Golden Oaks WWTP. On March 11, 2009 the Commission approved Docket No. D–2007–34 CP–1 providing for an expansion of the Golden Oaks WWTP from 0.025 mgd to 0.075 mgd. However, due to funding constraints, the expansion is being curtailed to 0.05 mgd. The WWTP is located in the Schuylkill River Watershed at River Mile 92.47–54.15–16.75–1.03–3.63–2.17 (Delaware River—Schuylkill River—Manatawny Creek—Little Manatawny Creek—Furnace Creek—UNT) in Ruscombmanor Township, Berks County, Pennsylvania.

20. *Yukiguni Maitake Manufacturing Corporation of America, D–2003–026–1.* An application for approval of a groundwater withdrawal project to supply up to 13.14 mg/30 days of water to the applicant's mushroom facility from new Well No. 001. The project is located in the Lower Devonian and Sulurian Formations in the Basher Kill Watershed in Mamakating Township, Sullivan County, New York. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

21. *Gemstar Development Corporation, D–2008–018–1.* An application for approval to construct the new 24,000 gallons per day (gpd) Heiden Road WWTP. The WWTP will discharge to Sheldrake Stream, a Class B tributary that flows into the Neversink River, a tributary to the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters. The project is located in the Town of Thompson, Sullivan County, New York.

22. *CBH20, LP, D–2008–026–1.* An application for approval of a groundwater withdrawal project to supply up to 5.71 mg/30 days of water to the applicant's public water supply system from existing Well No. PWS–4 and new Wells Nos. PWS–2 and PWS–3. The project is located in the Devonian-age, Long Run Member of the Catskill Formation in the Pocono Creek Watershed in Pocono Township, Monroe County, Pennsylvania. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

23. *Yukiguni Maitake Manufacturing Corporation of America, D–2008–035–1.* An application for approval of the construction of the Yukiguni Maitake Mushroom growing facility [pilot mushroom growing facility (1-story, 44,100 square foot building)], with three land discharges. The first and second discharges are to a three-bay infiltration basin system. The third is a leach field discharge from an on-site septic tank. The three-bay infiltration basin system will accept up to 55,000 gpd, 51,000 gpd of which will be from the geothermal system (Outfall No. 005) and the remaining 4,000 gpd will be from process water (Outfall No. 002). The leach field will discharge up to 1,000 gpd of sanitary wastewater (Outfall No. 001) from the on-site septic tank. The project is located in the Basher Kill Watershed in Mamakating Township, Sullivan County, New York, within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

24. *FiberMark, Inc., D–2009–005–1.* An application for the approval of an existing 0.09 mgd discharge of non-contact cooling water (NCCW). The facility discharges NCCW to an injection well in accordance with Docket No. D–82–31 Renewal 3. The surface discharge related to this application is to be used only during the emergency conditions also described in Docket No. D 82–31 Renewal 3. The project will continue to discharge to River Mile 157.00–11.75–11.68–0.86 (Delaware River—Tohickon Creek—Beaver Run—Unnamed Tributary (UNT)). The NCCW discharge is located on an UNT of Beaver Run, which is a tributary to the Lower Delaware Special Protection Water Area, and has been classified as Significant Resource Waters. The facility is located in Quakertown Borough, Bucks County, Pennsylvania.

25. *Fleischmanns Village, D–2009–008 CP–1.* An application for approval of a groundwater withdrawal project to supply up to 9.75 mg/30 days of water to the applicant's public water supply from existing Wells Nos. 2 and 4, new Well No. 5, rehabilitated existing Well No. 3, and existing spring-fed surface water source (Spring Nos. 3, 4, and 5). The allocation is requested in order to meet existing and projected demands in the project service area. The project wells are located in the Lower Walter Formation, and all water sources are located in the Bush Kill Watershed in the Village of Fleischmanns, Delaware County, New York. The site is located within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

26. *National Gypsum Company, D–2009–009–1.* An application for approval of a groundwater withdrawal project to supply up to 5.27 mg/30 days of water to the applicant's existing industrial processes from existing Well No. 2 and replacement Well No. 1R and to limit the existing withdrawal from each well to 2.635 mg/30 days. The applicant has not previously applied for a docket for its existing industrial process. The project is located in the Raritan Aquifer in the Delaware River Watershed in the City of Burlington, Burlington County, New Jersey.

27. *DMV International, D–2009–011–1.* An application for approval of an existing 0.72 mgd discharge of NCCW from Outfall No. 001 to the West Branch Delaware River. Outfall No. 001 is located at River Mile 330.70–52.93 (Delaware River—West Branch Delaware River) within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.. The facility is located in the Town of Delhi, Delaware County, New York.

28. *Essroc Cement Corporation, D–2009–016–1.* An application for approval of an existing NCCW discharge of 0.264 mgd from the Essroc Cement Corporation Portland Cement manufacturing facility. The manufacturing facility is located in the Lower Special Protection Waters drainage area and discharges to an UNT of Shoeneck Creek that PADEP has classified as a Warm Water Fishery. It is located at River Mile 184.03–5.85–4.1–

0.15 (Delaware River—Bushkill Creek—Shoeneck Creek—UNT) in Upper Nazareth Township, Northampton County, Pennsylvania.

The business meeting also will include adoption of the Minutes of the Commission's July 15, 2009 business meeting; announcements of upcoming DRBC advisory committee meetings and other events relating to watershed management in the basin; a report on hydrologic conditions; a report by the Executive Director; a report by the Commission's General Counsel; and consideration by the Commission of resolutions to (a) approve the FY 2010–2015 Water Resources Program; (b) authorize the Executive Director to enter into contracts with consultants to upgrade the Commission's Web site; (c) authorize the Executive Director to establish an integral part trust and adopt the ICMA Retirement Corporation's VantageCare Retirement Health Savings Employer Investment Program for purposes of GASB 45 compliance; and (d) amend the Commission's Investment Policy Manual to provide guidelines for the investment of assets placed in an integral part trust for purposes of GASB 45 compliance. An opportunity for public dialogue will be provided at the end of the meeting.

Draft dockets scheduled for public hearing on October 22, 2009 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, drbc.net, ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's Web site, drbc.net, closer to the meeting for changes that may be made after the deadline for filing this notice.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: September 29, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9–23920 Filed 10–2–09; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 30, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Student Aid on the Web.

Frequency: Annually; Monthly; On Occasion.

Affected Public: Individuals or household; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,655,377.

Burden Hours: 245,198.

Abstract: Federal Student Aid, an office of the U.S. Department of Education, seeks renewal of the registration system within the Student Aid on the Web, an Internet Portal Web site (hereafter ''The Web Site''). The Web site makes the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Web site uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Web site also provides a database of demographic information that helps Federal Student Aid target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Web site helps us to identify potential customers in the middle school age range. The FAFSA4caster Data Transfer module has been added to the Web site since its last approval. As with the FAFSA Data Transfer module, data from the student's MyFSA profile pre-populates the FAFSA4caster—FAFSA4caster is the U.S. Department of Education's financial aid estimator tool that determines what type of financial aid the student is eligible to receive and provides an estimated award amount for each. The FAFSA4caster data transfer module uses current MyFSA profile information and, therefore, does not require the collection of additional data items.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and

by clicking on link number 4097. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–23925 Filed 10–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program

Overview Information

Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

Dates:

Applications Available: October 5, 2009.

Deadline for Transmittal of Applications: December 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority, one competitive preference priority, and one invitational priority, which are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and the competitive preference priority are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Within this absolute priority, we give competitive preference to applications that address the following priority.

Competitive Preference Priority: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) and 34 CFR 662.21(d)(2)(iii), we award an additional five (5) points to an application that meets this priority.

This priority is:

A research project that focuses on any of the seventy-eight (78) languages deemed critical on the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs) found below.

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

This priority is:

Research projects that focus on one of the following fields or topics: Environmental Science, Ecology, Climate Studies, Development Studies, Economics, Public Health, Education, or Political Science.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries. As part of its FY 2010 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan both to utilize their language skills in world areas vital to the United States national security and to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields are eligible to apply for this program, in addition to those planning teaching careers. However, authority to use funds in this manner depends on final Congressional action. Applicants will be given an opportunity to amend their applications if such authority is not provided.

Estimated Available Funds: The Administration has requested $14,709,000 for International Education and Foreign Language Studies Overseas Programs, of which we propose to allocate $5,690,000 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $40,000.

Estimated Number of Fellowship Awards: 142.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2010. Students may request

funding for a period of no less than six months and nomore than twelve months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the internet by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than two pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). Student applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; and the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times: Applications Available:* October 5, 2009. *Deadline for Transmittal of Applications:* December 1, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, CFDA number 84.022A, must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *ddra@ed.gov:* Name of university, and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date, in order to facilitate timely submission of their applications; (2) Students must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must

officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using e-Application. Student transcripts, however, must be mailed or hand delivered to the Department on or before the application deadline date using the applicable mail or hand delivery instructions for paper applications in this notice.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents, except for student transcripts, electronically, including the Application for Federal Assistance (SF 424), the Supplement to the SF 424, and all necessary assurances and certifications. Both IHEs and student applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a student applicant uploads a file type other than the three file types specified in this paragraph or submits a password protected file, we will not review that material.

• Student transcripts must be mailed or hand delivered to the Department on or before the application deadline date in accordance with the applicable mail or hand delivery instructions for paper applications described in this notice.

• Both the IHE's and the student applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award Number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on the SF 424 and other forms at a later date. *Application Deadline Date Extension in Case of e-Application Unavailability:* If an IHE is prevented from electronically submitting its application on the application deadline date because e-Application is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through e-Application because—

• The IHE or a student applicant does not have access to the Internet; or

• the IHE or a student applicant does not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the

Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, and suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2010, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 662.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priority, is 105 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (10 points); and (6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's graduate academic record (10 points); (2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notice (GAN). We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of the binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the International Resource Information System (IRIS) electronic reporting system to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following DDRA measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of Fulbright-Hays DDRA Fellowship recipients at the

end of their period of research minus their average score at the beginning of the period.

Performance Measure 2: Percentage of DDRA projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency measure: Cost per grantee increasing language competency by at least one level in one (or all three) area(s).

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://iris.ed.gov/iris/pdfs/DDRA_director.pdf.& http://iris.ed.gov/iris/pdfs/DDRA_fellows.pdf.*

VII. Agency Contact

For Further Information Contact: Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *amy.wilson@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: September 30, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–23897 Filed 10–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

Dates:

Applications Available: October 5, 2009.

Deadline for Transmittal of Applications: December 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program provides opportunities to faculty of institutions of higher education (IHEs) to engage in research abroad in modern foreign languages and area studies.

Priorities: This notice contains one absolute priority, one competitive preference priority, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and the competitive preference priority are from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Within this absolute priority, we give competitive preference to applications that address the following priority.

Competitive Preference Priority: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) and 34 CFR 663.21(d), we award an additional five (5) points to an application that meets this priority.

This priority is:

A research project that focuses on any of the seventy-eight (78) languages deemed critical on the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs) found below.

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

This priority is:

Research projects that focus on one of the following fields or topics: Environmental Science, Ecology, Climate Studies, Development Studies, Economics, Public Health, Education, or Political Science.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $14,709,000 for International Education

and Foreign Language Studies Overseas Programs, of which we propose to allocate $1,399,000 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $25,000–$115,000.

Estimated Average Size of Fellowship Awards: $70,000.

Estimated Number of Fellowship Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2010. Faculty may request funding for a period of no less than three months and no more than twelve months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty members submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty applicants can obtain an application package via the Internet by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. *Telephone:* (202) 502–7700 or by *e-mail: carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than 2 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). Faculty applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; and the assurances and certification. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if the faculty applicant exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: October 5, 2009.

Deadline for Transmittal of Applications: December 1, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 6.

Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in Section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Faculty Research Abroad Fellowship Program, CFDA Number 84.019A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to

cynthia.dudzinski@ed.gov@ed.gov: Name of university, and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete and submit reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.

- The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- Faculty applicants will not receive additional point value because the faculty applicant submits his or her application in electronic format nor will we penalize the IHE or faculty applicant if the IHE or the faculty applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.
- IHEs must submit all documents electronically, including the Application for Federal Assistance (SF 424), the Supplement to the SF 424, and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a faculty applicant uploads a file type other than the three file types specified in this paragraph or submits a password protected file, we will not review that material.
- Both the IHE's and the faculty applicant's electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After the individual faculty applicant electronically submits his or her application to the faculty's IHE, the faculty member will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award Number (an identifying number unique to the IHE's application).
- Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on the SF 424 and other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because e-Application is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application system is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* Section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format if the IHE is unable to submit an application through e-Application because—

- The IHE or a faculty applicant does not have access to the Internet; or
- The IHE or a faculty applicant does not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Cynthia Dudzinski, U.S. Department of Education, 1990 K Street, NW., Room 6007, Washington, DC 20006–8521. *Fax:* (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.019A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.019A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, and suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2010, faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the faculty applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 663.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priority, is 105 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and (6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's academic record (teaching, research, contributions, professional association activities) (10 points); (2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notice (GAN). We may notify the IHE informally, also.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of the binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting system International Resource Information System (IRIS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results

Act of 1993, the objective for the Fulbright-Hays Faculty Research Abroad (FRA) Program is to provide grants to institutions of higher education to fund faculty to maintain and improve their area studies and language skills by conducting research abroad for periods of 3 to 12 months.

The Department will use the following FRA measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of Fulbright-Hays Faculty Research Abroad Program recipients at the end of their period of research minus their average language competency at the beginning of the period.

Performance Measure 2: Percentage of all Fulbright-Hays Faculty Research Abroad Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency measure: Cost per Fulbright-Hays Faculty Research Abroad grantee increasing language competency by at least one level in one (or all three) area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://www.ieps-iris.org/iris/pdfs/FRA_fellow.pdf; http://www.ieps-iris.org/iris/pdfs/FRA_director.pdf.*

VII. Agency Contact

For Further Information Contact: Cynthia Dudzinski, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6007, Washington, DC 20006–8521. *Telephone:* (202) 502–7589 or by *e-mail: cynthia.dudzinski@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in Section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: September 30, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–23898 Filed 10–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Technical Advisory Council

AGENCY: U.S. Department of Education, Office of Elementary and Secondary Education.

ACTION: Request for Nominations To Serve on the National Technical Advisory Council (NTAC).

SUMMARY: The Secretary of Education (Secretary) invites interested parties to submit nominations for individuals to serve on the National Technical Advisory Council.

SUPPLEMENTARY INFORMATION: The National Technical Advisory Council (NTAC or the Council) is established by the Secretary of Education and governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C. Appendix 2). In order to ensure that the U.S. Department of Education (Department) is making sound technical decisions related to the approval of state-designed standards, assessments, and accountability systems, the NTAC shall advise the Secretary and the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) on technical issues related to the design and implementation of standards, assessments, and accountability systems consistent with section 1111(b) of the No Child Left Behind Act of 2001 and 34 CFR 200.1 through 200.20.

The Council shall consist of approximately 16 members, including persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems for all students, including students with disabilities and limited English proficient students, and experts with technical knowledge related to statistics and psychometrics. At least one-third of the members shall have experience working in or with state educational agencies or local educational agencies. NTAC will advise the Secretary on matters that arise during the State Plan review process.

Nomination Process: Any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the Council, please submit the following information to the Department's White House Liaison Office:

- A copy of the nominee's resume;
- A cover letter that provides your reason(s) for nominating the individual; and
- Contact information for the nominee (name, title, business address, business phone, fax number, and business e-mail address).

In addition, the cover letter must state that the nominee (if nominating someone other than yourself) has agreed to be nominated and is willing to serve on the Council. Nominees will be appointed based on technical qualifications, professional experience, and demonstrated knowledge of issues related to state-designed standards, assessment, and accountability systems.

DATES: Nominations for individuals to serve on the Council must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by November 4, 2009.

ADDRESSES: You may submit nominations, including attachments, by any of the following methods:

- *Electronically:* Send to: *WhiteHouseLiaison@ed.gov* (specify in the e-mail subject line, ''NTAC Nomination'')
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit *one* copy of the documents listed above to the following address: U.S. Department of Education, White House Liaison Office, 400 Maryland Avenue, SW., Room 7C109, Washington, DC 20202. Attn: Karen Akins.

For questions, contact Karen Akins, White House Liaison Office, at (202)

401–3677, fax (202) 205–0723, or via e-mail at *WhiteHouseLiaison@ed.gov*.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–23961 Filed 10–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13569–000]

Southern Nevada Water Authority; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

September 28, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13569–000

c. *Dated Filed:* August 14, 2009

d. *Submitted By:* Southern Nevada Water Authority (Southern Nevada)

e. *Name of Project:* Arrow Canyon Conduit Energy Recovery Hydroturbine

f. *Location:* The proposed project would be located next to the existing Coyote Springs Project Water Transmission Conduit in Moapa Clark County, Nevada. The project would occupy 0.68 acres of federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* Scott P. Krantz, 100 City Parkway, Suite 700, Las Vegas, NV 89106; (702) 691–5240.

i. *FERC Contact:* Jim Fargo at (202) 502–6095; or e-mail at *james.fargo@ferc.gov*.

j. Southern Nevada notified the public of its request on August 26, 2009. In a letter dated September 28, 2009, the Director of the Office of Energy Projects approved Southern Nevada's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Nevada State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Southern Nevada filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–13569). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23859 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–466–000]

Northern Natural Gas Company; Notice of Application

September 28, 2009.

Take notice that on September 18, 2009, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP09–466–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place three horizontal compressor units consisting of 4,300 horsepower at its Sunray Compressor Station and associated piping, all located in Moore County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Dari R. Dornan, Senior Counsel, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, or by calling (402) 398–7077 (telephone) or (402) 398–7426 (fax), *dari.dornan@nngco.com,* or to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, or by calling (402) 398–7103 (telephone) or (402) 398–7592 (fax), *mike.loeffler@nngco.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in

determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 19, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23860 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13573–000]

City of Hamilton; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

September 25, 2009.

On August 31, 2009, the City of Hamilton, Ohio, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Greenup Hydrokinetic Project, located immediately downstream from the Greenup Lock and Dam on the Ohio River, in Scioto County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A 100 to 300-foot-long by 20 to 50-foot-wide barge anchored to the riverbed; (2) 10 6 to 8-foot-diameter by 20-foot-long turbine-generators attached to the barge; (3) high-voltage cables transmitting the generated power to the existing transmission line located near the Project; and (4) appurtenant facilities. The proposed project would generate about 1,533 megawatt-hours.

Applicant Contact: Michael Perry, Director of Electric, City of Hamilton, 345 High Street, Hamilton, Ohio 45011; phone: (513) 785–7229 or by e-mail at: *perrym@ci.hamilton.oh.us.*

FERC Contact: Sergiu Serban, 202–502–6211.

Competing Application: This application competes with the application for proposed Project No. 13451–000 filed on April 29, 2009.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13573) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23861 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bpi.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bfai.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing DGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 et seq. and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing

implementation of the principles provided in the following Federal Regulations and/or OMB circulars: 2 CFR Part 220 Cost Principles for Educational Institutions (CircularA–21); 2 CFR Part 225 Cost Principles for State, Local and Indian Tribal Governments (Circular A–87); Grants and Cooperative Agreements with State and Local Governments (Circular A–102); Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (Circular A–110); 2 CFR Part 230 Cost Principles for Non-Profit Organizations (Circular A–122); and Audits of States, Local Governments and Non-Profit Organizations (Circular A–133).

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 18, 2009.

Damian J. Kelly,

Manager, Purchasing/Property Governance.

[FR Doc. E9–23921 Filed 10–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 25, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–1066–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits Twenty-Seventh Revised Sheet 5B of its FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/09.
Filed Date: 09/23/2009.
Accession Number: 20090923–0033.
Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1067–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Fifth Revised Sheet 67 *et al.* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 11/1/09.
Filed Date: 09/23/2009.
Accession Number: 20090923–0032.
Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1068–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits the 32nd Revised Sheet 54 *et al.* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 12/1/09.
Filed Date: 09/23/2009.
Accession Number: 20090923–0034.
Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1069–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Cheniere Creole Trail Pipeline, LP submits work paper reflecting historical data in support of the continuation of the Retainage Percentage of 0.15%.
Filed Date: 09/23/2009.
Accession Number: 20090924–0024.
Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1070–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits Second Revised Sheet No 1301 *et al.* to FERC Gas Tariff, Third Revised Volume No 1.
Filed Date: 09/24/2009.
Accession Number: 20090924–0115.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 6, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23855 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–1054–000.
Applicants: Cheyenne Plains Gas Pipeline Company LLC.
Description: Cheyenne Plains Gas Pipeline Company, LLC submits Firm Transportation Service Agreement and Eleventh Revised Sheet No 1 to its FERC Gas Tariff, Original Volume No 1, to be effective 10/20/09.
Filed Date: 09/18/2009.
Accession Number: 20090921–0066.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 30, 2009.

Docket Numbers: RP09–1055–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits First Revised Sheet No 344 *et al* to its FERC Gas Tariff, Fourth Revised Volume No 1.
Filed Date: 09/21/2009.
Accession Number: 20090921–0131.
Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1056–000.
Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits Fifth Revised Sheet No 5 *et al* to its FERC Gas Tariff, Fourth Revised Volume No 1.

Filed Date: 09/21/2009.

Accession Number: 20090921–0132.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1057–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company LLC submits Fourth Revised Sheet 148 *et al* of its FERC Gas Tariff, Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0076.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1058–000.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits Fifth Revised Sheet 156 *et al* of its FERC Gas Tariff, First Revised Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0077.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1059–000.

Applicants: Southeast Supply Header, LLC.

Description: Southeast Supply Header, LLC submits its FERC Gas Tariff, Original Volume and Second Revised Sheet 342, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0078.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1060–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Eighth Revised Sheet 307 of its FERC Gas Tariff, First Revised Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0079.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1061–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits Second Revised Sheet 281 of its FERC Gas Tariff, Original Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0080.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1062–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Fourth Revised Sheet 375A *et al* of its FERC Gas Tariff, Third Revised Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0081.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1063–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits Sixth Revised Sheet 607 *et al* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0082.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1064–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Sixth Revised Sheet 509 *et al* of its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 11/16/09.

Filed Date: 09/22/2009.

Accession Number: 20090922–0083.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23856 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–858–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits Substitute First Revised Sheet No 300 *et al.* to its FERC Gas Tariff, Seventh Revised Volume No 1.

Filed Date: 09/10/2009.

Accession Number: 20090911–0060.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 29, 2009.

Docket Numbers: RP09–826–002.

Applicants: Central New York Oil and Gas Co., LLC.

Description: Central New York Oil and Gas Company, LLC submits Substitute Second Revised Sheet No 103A *et al.* to FERC Gas Tariff, Original Volume No 1 to comply with the Commission's 9/3/09 Letter Order.

Filed Date: 09/18/2009.

Accession Number: 20090921–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 30, 2009.

Docket Numbers: RP96–320–116.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits an amendment to a negotiated rate letter agreement

executed by Gulf South and one of its customers in relation to the East Texas to Mississippi Expansion Project.

Filed Date: 09/18/2009.

Accession Number: 20090921–0065.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 30, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23858 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 25, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP04–274–019.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits revised tariff sheet to its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 09/22/2009.

Accession Number: 20090923–0030.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1012–001.

Applicants: Quest Pipelines (KPC).

Description: Quest Pipeline (KPC) submits Second Revised Sheet 52 to replace Third Revised Sheet 52 to FERC Gas Tariff, Second Revised Volume 1 to update the Annual Charge Adjustment unit rates.

Filed Date: 09/23/2009.

Accession Number: 20090924–0026.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–1038–001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits a correction to their 9/9/09 filing of a non-conforming Firm Transportation Agreement with Northern States Power Company.

Filed Date: 09/23/2009.

Accession Number: 20090924–0025.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–856–002.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, LLC submits Second Substitute Original Sheet 304 to FERC Gas Tariff, Original Volume 1, to be effective 10/11/09.

Filed Date: 09/23/2009.

Accession Number: 20090924–0028.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Docket Numbers: RP09–970–001.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Co, LLC submits Second Revised Sheet 4554 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 10/1/09.

Filed Date: 09/23/2009.

Accession Number: 20090924–0027.

Comment Date: 5 p.m. Eastern Time on Monday, October 5, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23857 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 25, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1169–005.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits compliance filing revising its Open Access Transmission, Energy and Operating Reserve Markets Tariff and Open Access Transmission and Energy Markets Tariff.

Filed Date: 09/23/2009.

Accession Number: 20090924–0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: ER09–1381–001.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits revised Sheet No 2A *et al* to its FERC Electric Tariff, Second Revised Volume No 1.

Filed Date: 09/23/2009.

Accession Number: 20090924–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: ER09–1734–000.

Applicants: Avista Corporation.

Description: Avista Corp submits Fifth Revised Sheets 8 and 9 to First Revised

FERC Rate Schedule 184 to be effective 10/1/09.

Filed Date: 09/23/2009.

Accession Number: 20090923–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: ER09–1735–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits Original Sheet 478 to FERC Electric Tariff, Third Revised Volume 6 to be effective 11/22/09.

Filed Date: 09/23/2009.

Accession Number: 20090923–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: ER09–1738–000.

Applicants: Barton Windpower II LLC.

Description: Barton Windpower II, LLC submits Substitute Original Sheet 1 *et al* to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/23/2009.

Accession Number: 20090924–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: ER09–1740–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff to implement a rate change for Oklahoma Gas and Electric Company.

Filed Date: 09/24/2009.

Accession Number: 20090924–0116.

Comment Date: 5 p.m. Eastern Time on Thursday, October 15, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23865 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08–420–000; CP08–420–001]

Algonquin Gas Transmission, LLC; Hubline/East to West Project

September 25, 2009.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared the final Environmental Impact Statement (EIS) to address Algonquin Gas Transmission, LLC's (Algonquin) proposed expansion of its natural gas pipeline system in the above-referenced dockets. The HubLine/East to West Project (E2W Project or Project) would involve replacement of existing pipeline facilities in New London County, Connecticut and modifications to an existing compressor station in Morris County, New Jersey.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The FERC is the lead agency for the preparation of the EIS. The U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) are cooperating agencies. A cooperating agency has jurisdiction by law or special expertise with respect to environmental impacts involved with the proposal and is involved in the NEPA analysis.

Based on the analysis in the EIS, the FERC staff concludes that construction and operation of the Project would result in some adverse environmental impacts. However, if the Project is constructed and operated in accordance with applicable laws and regulations, Algonquin's proposed mitigation, and the additional mitigation measures recommended by staff in the EIS, all impacts would be reduced to a less-than-significant level.

The E2W Project would provide 281,500 dekatherms per day of east to west natural gas transportation service for delivery to high growth markets in the Northeast. The Project would increase the diversity of supply by accessing natural gas from liquefied natural gas projects offshore of Massachusetts, increase Algonquin's system flexibility, and strengthen Algonquin's ability to mitigate capacity restrictions on the eastern end of the system.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities proposed by Algonquin:

- Installation of 2.56 miles of 12-inch-diameter pipeline (E–3 System Replacement) that would replace a segment of an existing 6-inch-diameter pipeline in New London County, Connecticut;
- Installation of minor aboveground facilities including one mainline valve and remote blow-off valve, one mainline remote control valve; one pig [1] launcher; and one pig receiver in New London County, Connecticut; and
- Piping modifications to the existing Hanover Compressor Station in Morris County, New Jersey to accommodate reverse flow and backhaul capability along Algonquin's system.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First St. NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on a CD that can be read by a computer with a CD–ROM drive. The

[1] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

final EIS is also available for viewing on the FERC Internet Web site at *www.ferc.gov*. In addition, copies of the document have been mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; and other interested parties (*i.e.,* affected landowners, miscellaneous individuals, and environmental groups who provided scoping comments, commented on the draft EIS, or asked to remain on the mailing list). Hard copies of the final EIS were mailed to those who specifically requested them, while all other parties on the mailing list were sent a CD of the final EIS. Hard copies of the final EIS can be viewed at the libraries in the Project area that are listed in Appendix A of the final EIS.

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP08–420). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet website.

Information concerning the involvement of the COE is available from Susan Lee at (978) 318–8494. Information concerning the involvement of the EPA is available from Timothy Timmermann at (617) 918–1025.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23862 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1723–000]

Dry Lake Wind Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 25, 2009.

This is a supplemental notice in the above-referenced proceeding, of Dry Lake Wind Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 15, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23864 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–77–000]

JD Wind 1, LLC, JD Wind 2, LLC, JD Wind 3, LLC, JD Wind 4, LLC, JD Wind 5, LLC, JD Wind 6, LLC; Notice for Petition for Declaratory Order

September 25, 2009.

Take notice that on September 24, 2009, JD Wind 1, LLC, JD Wind 2, LLC, JD Wind 3, LLC, JD Wind 4, LLC, JD Wind 5, LLC, and JD Wind 6, LLC (collectively JD Wind) filed a Petition for Enforcement and Declaratory Order, pursuant to Section 210(h) of the Public Utility Regulatory Policy Act of 1978, (PURPA). JD Wind asserts that a decision rendered by the Public Utility Commission of Texas (PUCT) is contrary to PURPA and requests that the Commission take enforcement action, or in the alternative, issue a declaratory order finding that the PUCT's decision does not implement PURPA and the Commission's rules and thus is preempted by Federal law.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on October 22, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–23863 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–008; Docket No. ER06–63–000]

Electric Quarterly Reports; Take Two, LLC; Notice of Revocation of Market-Based Rate Tariffs

October 23, 2008.

On September 18, 2008, the Commission issued an order announcing its intent to revoke the market-based rate authority of two public utilities that had failed to file their required Electric Quarterly Reports.[1] The Commission gave the utilities fifteen days in which to file their overdue Electric Quarterly Reports or face revocation of their market-based rate tariffs.

In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[2]

In the September 18 Order, the Commission directed Solaro Energy Marketing Corporation and Take Two, LLC. each to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs. [3]

The time period for compliance with the September 18 Order has elapsed. One company identified in the September 18 Order (Take Two, LLC) has failed to file its delinquent Electric Quarterly Reports.

The Commission hereby revokes this company's market-based rate authority and terminates the electric market-based rate tariff.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23950 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electric Quarterly Reports,* 124 FERC ¶ 61,242 (2008) (September 18 Order).

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31,043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[3] September 18 Order at Ordering Paragraph A.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–009; Docket No. ER07–559–000]

Electric Quarterly Reports; Flat Earth Energy, LLC; Notice of Revocation of Market-Based Rate Tariff

January 2, 2009.

On November 20, 2008, the Commission issued an order announcing its intent to revoke the market-based rate authority of the above captioned public utility, which had failed to file its required Electric Quarterly Reports.[1] The Commission provided the utility fifteen days in which to file its overdue Electric Quarterly Reports or face revocation of its market-based rate tariff.

In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[2]

In the November 20 Order, the Commission directed Flat Earth Energy, LLC to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of its authority to sell power at market-based rates and termination of its electric market-based rate tariff. [3]

The time period for compliance with the November 20 Order has elapsed. The company identified in the November 20 Order (Flat Earth Energy, LLC) has failed to file its delinquent Electric Quarterly Reports.

The Commission hereby revokes this company's market-based rate authority and terminates the electric market-based rate tariff.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–23949 Filed 10–2–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electric Quarterly Reports,* 125 FERC ¶ 61,203 (2008) (November 20 Order).

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 Fed. Reg. 31,043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[3] November 20 Order at Ordering Paragraph A.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–8965–5]

Draft Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for two draft assessment documents titled, *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards—External Review Draft* and *Particulate Matter Urban-Focused Visibility Assessment—External Review Draft* (74 FR 46589; September 10, 2009). The EPA is extending the comment period that originally was scheduled to end on October 15, 2009. The extended comment period will close on November 9, 2009. The EPA is extending the comment period to provide stakeholders and the public with adequate time to conduct appropriate analysis and prepare meaningful comments.

DATES: Comments on the above reports must be received on or before November 9, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0492.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0492. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to the draft document titled, *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009), please contact Dr. Zachary Pekar, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *pekar.zachary@epa.gov*; telephone: 919–541–3704; fax: 919–541–0237.

For questions related to the draft document titled, *Particulate Matter Urban-Focused Visibility Assessment—External Review Draft* (September 2009), please contact Ms. Vicki Sandiford, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *sandiford.vicki@epa.gov*; telephone: 919–541–2629; fax: 919–541–0237.

For questions related to the preliminary draft document, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards: Preliminary Draft* (September 2009), please contact Ms. Beth Hassett-Sipple, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *hassett-sipple.beth@epa.gov*; telephone: 919–541–4605; fax: 919–541–0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public

health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for particulate matter (PM) and NAAQS have been established for $PM_{2.5}$ and PM_{10} to provide protection from fine and coarse particles, respectively. Presently, EPA is reviewing the air quality criteria and NAAQS for PM. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.*[1] A draft of the integrated review plan was released for public review and comment in October 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on November 30, 2007 (72 FR 63177; November 8, 2007). Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of EPA's review of the primary (health-based) and secondary (welfare-based) PM NAAQS, the Agency is conducting quantitative assessments characterizing (1) the health risks associated with exposure to ambient PM and (2) urban visibility impairment associated with PM. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in two planning documents titled, *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment* and *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (henceforth, Scope and Methods Plans).[2] These documents were released for public comment in February 2009 and were the subject of a consultation with the CASAC on April 2, 2009 (74 FR 11580; March 18, 2009). Comments received from the CASAC consultation (Samet, 2009)[3] as well as public comments on the Scope and Methods Plans have been considered in developing the draft assessment documents being released at this time.

The draft documents announced on September 10, 2009 (74 FR 46589) convey the approaches taken to assess exposures to ambient PM and to characterize associated health risks or urban visibility impairment, as well as present the initial key results, observations, and related uncertainties associated with the quantitative analyses performed. These draft documents were made available on September 8, 2009, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*. These documents may be accessed in the ''Documents from Current Review'' section under ''Risk and Exposure Assessments.'' The EPA is soliciting advice and recommendations from the CASAC by means of a review of the draft documents at an upcoming public meeting of the CASAC scheduled in Chapel Hill, NC. Information about this public meeting was published as a separate notice in the **Federal Register** on September 10, 2009 (74 FR 46586). Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing revisions to these assessment documents.

In addition, on September 16, 2009, EPA made available a third draft document titled, *Policy Assessment for the Review of the National Ambient Air Quality Standards: Preliminary Draft.* The development of this document is a result of recent changes to the NAAQS review process. On May 21, 2009, Administrator Jackson called for key changes to the NAAQS review process including reinstating a policy assessment document that contains staff analyses of the scientific bases for alternative policy options for consideration by senior Agency management prior to rulemaking. This document, which builds upon the historical ''Staff Paper,'' will serve to ''bridge the gap'' between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards. In conjunction with this change, EPA will no longer issue a policy assessment in the form of an Advance Notice of Proposed Rulemaking (ANPR).[4]

The preliminary draft Policy Assessment (PA) builds upon information presented in the *Integrated Science Assessment for Particulate Matter* (Second External Review Draft)[5] and the two draft assessment documents described above. This preliminary draft PA includes several chapters but is not intended to be a complete draft PA document in that it does not include staff conclusions on a range of policy options that could be appropriate for the Administrator to consider concerning whether, and if so how, to revise the primary and secondary PM NAAQS. It is instead being released for informational purposes to facilitate a discussion with CASAC on the overall structure, areas of focus, and level of detail to be included in an external review draft of the document, which EPA plans to release for CASAC review and public comment later this year.

The preliminary draft PA may be accessed online through EPA's TTN Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*. This document may be accessed in the ''Documents from Current Review'' section under ''Policy Assessments.'' The discussion with CASAC on this preliminary draft PA will be held at the same meeting that CASAC will review the second draft Integrated Science Assessment (ISA) and the two draft assessment documents described above.

The draft documents briefly described above do not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the documents.

Dated: September 28, 2009.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–23940 Filed 10–2–09; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA 452R–08–004; March 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[2] EPA–452/P–09–001 and –002; February 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[3] *See http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/350899ec134552948525746600691de5!OpenDocument&TableRow=2.3#2.*

[4] *See http://www.epa.gov/ttn/naaqs/review.html* for a copy of Administrator Jackson's May 21, 2009 memorandum and for additional information on the NAAQS review process.

[5] EPA/600/R–08/139B; July 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8965–6; Docket ID No. EPA–HQ–ORD–2007–0517]

Extension of Public Comment Period: Second External Review Draft Integrated Science Assessment for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA published a notice in the **Federal Register** of Monday, August 31, 2009 (74 FR, 44842–44843), announcing the extension of the public comment period for the ''Integrated Science Assessment for Particulate Matter—Second External Review Draft'' (EPA/600/R–08/139B and EPA/600/R–08/139BA). The closing date of the extended comment period is a Federal holiday, October 12, 2009. Thus, the comment period is being extended to October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Lindsay Wichers Stanek, NCEA; telephone: 919–541–7792; fax: 919–541–2985; or e-mail: *stanek.lindsay@epa.gov.*

Correction

In the **Federal Register** of August 31, 2009, in FR Doc. FRL–8951–4, on page 44842, in the second column, correct the **DATES** caption to read:

DATES: The public comment period started on July 31, 2009 (74 FR 38185). This notice announces the extension of the deadline for public comment from October 12, 2009, to October 13, 2009. Comments must be received on or before October 13, 2009.

Dated: September 23, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–23943 Filed 10–2–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 123]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Our customers will be able to submit this form on paper or electronically. The information collected will be used to make a determination of eligibility under the Export Import Bank's medium-term insurance and guarantee programs.

DATES: Comments should be received on or before November 4, 2009 to be assured of consideration.

ADDRESSES: Direct all comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 OMB Number 3048–0014.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 03–02. Medium Term Insurance or Guarantee Application.

OMB Number: 3048–0014.

Type of Review: Regular.

Need and Use: The information collected will be used to make a determination of eligibility under the Export Import Bank's medium-term insurance and guarantee program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 1.5 hours.

Government Annual Burden Hours: 300.

Frequency of Reporting or Use: As needed to request support for a medium-term export sale.

Form Title: Application for Medium-Term Insurance or Guarantee (EIB 03–02).

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. E9–23880 Filed 10–2–09; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Petition for Reconsideration of Action in Rulemaking Proceeding

September 11, 2009.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by October 20, 2009. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.622(b), Final DTV Table of Allotments, Television Broadcast Stations (Fond du Lac, Wisconsin) (MB Docket No. 09–115).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–23927 Filed 10–2–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. 901 0086]

K+S Aktiengesellschaft; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''K+S International Salt, File No. 901 0086'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

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

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

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

A comment filed in paper form should include the ''K+S International Salt, File No. 901 0086'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

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

FOR FURTHER INFORMATION CONTACT: Jill Frumin, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2458.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 25, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from K+S Aktiengesellschaft (''K+S''), and its subsidiary, International Salt Company LLC (''ISCO''), that is designed to remedy the anticompetitive effects that would otherwise result from K+S's proposed acquisition of Morton International, Inc. (''Morton''), from The Dow Chemical Company (''Dow''). Under the terms of the proposed Consent Agreement, K+S is required to divest assets related to its bulk de-icing salt business in Maine to an up-front buyer, Eastern Salt Company, Inc. (''Eastern Salt'' or ''Maine Purchaser''), and to divest assets related to its bulk de-icing salt business in Connecticut to an up-front buyer, Granite State Minerals, Inc. (''Granite State'' or ''Connecticut Purchaser'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to a Stock Purchase Agreement dated April 1, 2009 (the ''Agreement''), K+S proposes to acquire Morton from Dow for approximately $1.675 billion (the ''Acquisition''). The Commission's complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in Maine and Connecticut for the sale and delivery of bulk de-icing road salt.

II. The Parties

K+S is currently one of the world's leading suppliers of salt products. K+S sells salt into the United States through its U.S. subsidiary, ISCO. Morton, headquartered in Chicago, Illinois, and a wholly-owned subsidiary of Dow, is a leading salt vendor in North America. Morton produces consumer salt, industrial salt, and de-icing salt. The acquisition of Morton will make K+S the largest producer and distributor of de-icing road salt for customers in Maine and Connecticut.

III. The Proposed Complaint

According to the Commission's proposed Complaint, the relevant product market in which to assess the competitive effects of the proposed Acquisition is the sale and delivery of bulk de-icing salt. The evidence indicates that there are no practical

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

substitutes for bulk de-icing salt to melt snow and ice. The relevant geographic markets in which to assess the impact of the proposed Acquisition are the states of Maine and Connecticut.

The relevant markets are highly concentrated. ISCO and Morton are the two principal bidders in the states of Maine and Connecticut for the sale and delivery of bulk de-icing salt. Post acquisition, the combined entity will have a market share exceeding 70 percent in both Maine and Connecticut. Post-merger HHIs for Maine and Connecticut are 5,142 and 5,834, and the acquisition will increase HHI levels by 1,914 and 2,642, respectively. These market concentration levels far exceed the thresholds set forth in the *Horizontal Merger Guidelines* and thus create a presumption that the proposed merger will create or enhance market power.

Entry into the relevant markets is difficult because, among other things, there is a lack of acceptable stockpile space along the coasts of Maine and Connecticut. As a result, new entry sufficient to achieve a significant market impact within two years is unlikely.

Finally, the Complaint alleges that the proposed Acquisition will reduce competition in the relevant markets by eliminating direct and substantial competition between ISCO and Morton, and by increasing the likelihood that ISCO would increase prices either unilaterally or through coordinated interaction with the few remaining firms in the relevant markets.

IV. The Consent Agreement

To preserve the competition that otherwise would be eliminated by the Acquisition, the proposed Consent Agreement requires ISCO to divest to Commission-approved buyers, Eastern Salt and Granite State, assets sufficient to enable these buyers to become viable competitors for the de-icing salt business in the relevant markets beginning with the 2010-2011 bidding cycle. ISCO will divest to Eastern Salt the Maine Divestiture Assets, including: 1) stockpile space in the state, 2) all associated handling and trucking contracts, and 3) a book of de-icing salt business for the 2009-2010 winter season. ISCO will divest to Granite State the Connecticut Divestiture Assets, including: 1) stockpile space in the state, 2) all associated handling and trucking contracts, 3) a book of de-icing salt business for the 2009-2010 winter season, and 4) a three-year supply of de-icing salt at a price that is no more than ISCO's costs.

The Commission has preliminarily determined that Eastern Salt is a well-qualified buyer of the Maine Divestiture Assets and is well situated to replace the competition Morton provided in the state. Eastern Salt is a family-owned company that has been a de-icing salt supplier in other geographic markets along the East Coast for roughly 60 years. Eastern Salt is a vertically-integrated supplier with a dependable, high-quality supply of de-icing salt. With the divested assets, Eastern Salt will be well positioned to compete for future business in Maine and to deliver salt to customers in a timely manner.

The Commission has preliminarily determined that Granite State is a well-qualified buyer of the Connecticut Divestiture Assets and is well situated to replace the competition Morton provided in the state. Granite State has experience supplying de-icing salt to customers in a number of states along the East Coast. The Consent Agreement requires ISCO to provide Granite State with a three-year supply of bulk de-icing salt at no more than ISCO's costs. The supply requirement will ensure that Granite State has a supply of salt in Connecticut during the 2010-2011 and 2011-2012 bid cycles while Granite State develops the necessary supply arrangements to serve Connecticut customers in subsequent years. With the divested assets, Granite State will be well positioned to compete for future business in Connecticut and to deliver salt to customers in a timely manner.

The proposed Consent Agreement requires that the divestitures occur no later than twenty (20) days after the Acquisition is consummated. However, if ISCO divests the assets to Eastern Salt or Granite State during the public comment period, and if, at the time the Commission decides to make the Order final, the Commission notifies K+S or ISCO that either purchaser is not an acceptable acquirer or that the asset purchase agreement with the Maine Purchaser or Connecticut Purchaser is not an acceptable manner of divestiture, then ISCO must immediately rescind the transaction in question and divest those assets to another buyer within six (6) months of the date the Order becomes final. At that time, Respondents must divest those assets only to an acquirer and in a manner that receives the prior approval of the Commission. The proposed Consent Agreement also enables the Commission to appoint a trustee to divest any assets identified in the Order that K+S or ISCO has not divested to satisfy the requirements of the Order.

The proposed Consent Agreement further requires K+S and ISCO to maintain the viability and marketability of the Maine Divestiture Assets and the Connecticut Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of those assets prior to divestiture.

In order to ensure that the Commission remains informed about the status of the divestitures, the proposed Consent Agreement requires K+S and ISCO to file reports with the Commission periodically until the divestitures are completed. Written reports describing how K+S and ISCO are complying with the Order must be filed one year after the Order becomes final and annually for the next three (3) years.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. E9–23826 Filed 10–2–09: 6:40 am]

BILLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Pandemic Influenza Vaccines—Amendment

Authority: 42 U.S.C. 247d–6d.

ACTION: Notice of first amendment to the June 15, 2009 Republished Declaration under the Public Readiness and Emergency Preparedness Act.

SUMMARY: Amendment to declaration issued on June 15, 2009 (74 FR 30294) pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide targeted liability protections for pandemic countermeasures to add provisions consistent with other declarations issued under this authority that may facilitate vaccination campaigns, and republication of the declaration to reflect the declaration in its entirety, as amended.

DATES: The first amendment of the republished declaration issued on June 15, 2009 is effective as of September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone

(202) 205–2882 (this is not a toll-free number).

HHS Secretary's Amendment to the June 15, 2009 Republished Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1, H2, H6, H9 and 2009–H1N1 Vaccines:

Whereas, on April 26, 2009, Acting Secretary Charles Johnson determined under section 319 of the Public Health Service Act, (42 U.S.C. 247d) (''the Act''), that a public health emergency exists nationwide involving the Swine influenza A virus that affects or has significant potential to affect the national security (now called ''2009–H1N1 influenza'');

Whereas, on July 24, 2009, I renewed the determination by the Acting Secretary that a public health emergency exists nationwide involving the Swine influenza A virus (now called ''2009–H1N1 influenza'');

Whereas, the World Health Organization has established a Pandemic alert phase 6 for the 2009–H1N1 influenza virus currently circulating worldwide;

Whereas, vaccination may be effective to protect persons from the threat of pandemic influenza;

Whereas, provisions that appear in other declarations issued pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) may assist in vaccination efforts;

Whereas, Secretary Michael O. Leavitt issued a Declaration for the Use of the Public Readiness and Emergency Preparedness Act dated January 26, 2007 (''Original Declaration''), as amended on November 30, 2007 and October 17, 2008 with respect to certain avian influenza viruses;

Whereas, I amended the declaration on June 15, 2009 which was republished in its entirety;

Whereas, modifications are necessary to aid States, Tribes, localities and other entities in conducting vaccination campaigns to make this declaration consistent with other declarations issued pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d), and to correct a previous, minor, editorial error;

Whereas, the findings I made in the declaration issued on June 15, 2009 continue to apply;

Whereas, in accordance with section 319F–3(b)(6) of the Act (42 U.S.C. 247d–6d(b)), I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of additional covered countermeasures with respect to the category of disease and population described in sections II and IV of the republished Original Declaration, and have found it desirable to encourage such activities for these additional covered countermeasures, and;

Whereas, to encourage the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in sections II and IV of the June 15, 2009 Republished Declaration, as hereby amended, it is advisable, in accordance with section 319F–3(a) and (b) of the Act, to provide immunity from liability for covered persons, as that term is defined at section 319F–3(i)(2) of the Act, and to include as such covered persons other qualified persons as I have identified in section VI of the June 15, 2009 Republished Declaration, as amended;

Therefore, pursuant to section 319F–3(b) of the Act, I have determined that 2009–H1N1 influenza and resulting disease constitutes a public health emergency. In order to aid States, Tribes, localities and other entities in vaccination campaigns, to make this Declaration consistent with other Declarations issued pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) and to correct a previous, minor, editorial error, the June 15, 2009 Republished Declaration, is hereby amended as follows:

In the title, add ''H7'' before ''or H9''.

After the fifth ''whereas'' clause, insert two new recitals as follows:

Whereas, on July 24, 2009, I renewed the determination by the Acting Secretary that a public health emergency exists nationwide involving the Swine influenza A virus (now called ''2009–H1N1 influenza virus'');

Whereas, vaccination may be effective to protect persons from the threat of pandemic influenza;

In section I, second paragraph, strike the second sentence, and insert after the first sentence: ''The immunity specified in section 319F–3(a) of the Act shall only be in effect with respect to: (1) Present or future Federal contracts, cooperative agreements, grants, interagency agreements, or memoranda of understanding for pandemic countermeasure influenza A H5N1, H2, H6, H7, H9, and 2009 H1N1 vaccines used and administered in accordance with this Declaration, and (2) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the pandemic countermeasures following a declaration of an emergency, as defined in section IX below.

In section III, add a second paragraph as follows: ''With respect to Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction, the effective period of time of this Declaration commences on the date of a declaration of an emergency and lasts through and includes the final day that the emergency declaration is in effect including any extensions thereof; except that with respect to 2009 H1N1 influenza vaccine, the effective period commences on June 15, 2009 and extends through March 31, 2013.''

Section VI, strike the second sentence and insert after the first sentence: ''Additional persons who are qualified persons pursuant to section 319F–3(i)(8)(B) are the following: (1) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency, and (2) Any person authorized to prescribe, administer, or dispense Covered Countermeasures or who is otherwise authorized under an Emergency Use Authorization.''

After Section VII, insert new Section VIII as follows and renumber subsequent sections:

VIII. Compensation Fund

In addition to conferring immunity to manufacturers, distributors, and administrators of the Covered Countermeasures, the Act provides benefits to certain individuals who sustain a covered injury as the direct result of the administration of the Covered Countermeasure. The Countermeasure Injury Compensation Program (CICP) within the Health Resources and Services Administration (HRSA) administers the Act's compensation program. Information about the CICP is available at 1–888–275–4772 or *http://www.hrsa.gov/countermeasurescomp/default.htm.*

Section VIII, strike the first sentence and insert: ''The Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1 was published on January 26, 2007; amended on November 30, 2007 to add

H7 and H9 vaccines; amended on October 17, 2008 to add H2 and H6 vaccines; amended on June 15, 2009 to add 2009 H1N1 vaccines and republished in its entirety.''

Section IX, strike in its entirety, and insert: ''For the purpose of this Declaration, including any claim for loss brought in accordance with section 319F–3 of the PHS Act against any covered persons defined in the Act or this Declaration, the following definitions will be used:

Administration of a Covered Countermeasure: As used in section 319F–3(a)(2)(B) of the Act includes, but is not limited to, public and private delivery, distribution, and dispensing activities relating to physical administration of the countermeasures to recipients, management and operation of delivery systems, and management and operation of distribution and dispensing locations.

Authority Having Jurisdiction: Means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, Tribal, State, or Federal boundary lines) or functional (*e.g.* law enforcement, public health) range or sphere of authority.

Covered Persons: As defined at section 319F–3(i)(2) of the Act, include the United States, manufacturers, distributors, program planners, and qualified persons. The terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' are further defined at sections 319F–3(i)(3), (4), (6), and (8) of the Act.

Declaration of Emergency: A declaration by any authorized local, regional, State, or Federal official of an emergency specific to events that indicate an immediate need to administer and use pandemic countermeasures, with the exception of a Federal declaration in support of an emergency use authorization under section 564 of the FDCA unless such declaration specifies otherwise.

Pandemic Phase: the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (4) First Human Case in North America; and (5) Spread Throughout United States.

Pre-pandemic Phase: the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (0) New Domestic Animal Outbreak in At-Risk Country; (1) Suspected Human Outbreak Overseas; (2) Confirmed Human Outbreak Overseas; and (3) Widespread Human Outbreaks in Multiple Locations Overseas.''

Appendix I, ''I. List of U.S Government Contracts—Covered H5N1 Vaccine Contracts,'' title, add '', H2, H6, H9, and 2009–H1N1'' after ''H5N1''; delete ''[January 26, 2007]'' and add to the end of the list, ''32. All present, completed and future Government H5N1, H2, H6, H9, and 2009–H1N1 vaccine contracts not otherwise listed.''

All other provisions of the June 15, 2009 Republished Declaration remain in full force.

Republication of HHS Secretary's June 15, 2009 Republished Declaration, as Amended, for the Use of the Public Readiness and Emergency Preparedness Act for H5N1, H2, H6, H9, and 2009 H1N1 Vaccines.

To the extent any term of the June 15, 2009 Republished Declaration, as hereby amended, is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

HHS Secretary's Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1, H2, H6, H7, H9, and 2009–H1N1 Vaccines

Whereas highly pathogenic avian influenza A H5N1, H7, and H9 have spread by infected migratory birds and exports of live poultry from Asia through Europe and Africa since 2004, and could spread into North America in 2006 or later, and have caused disease in humans with an associated high case fatality upon infection with this virus;

Whereas, the H2 class of influenza viruses, which caused the human influenza pandemic of 1957 and reappeared recently in U.S. animals including swine, is viewed as a likely candidate to re-evolve into an influenza strain capable of causing a pandemic of human influenza;

Whereas, the H6 class of influenza viruses, which appeared recently in animals including domestic fowl, is viewed as a likely candidate to evolve into an influenza strain capable of causing a pandemic of human influenza;

Whereas, an H5N1, H2, H6, H7 or H9 avian influenza virus may evolve into strain capable of causing a pandemic of human influenza;

Whereas, on April 26, 2009, Acting Secretary Charles E. Johnson determined under section 319 of the Public Health Service Act, (42 U.S.C. 247d), that a public health emergency exists nationwide involving the Swine Influenza A virus that affects or has significant potential to affect the national security (now called ''2009–H1N1 influenza'');

Whereas, on July 24, 2009, I renewed the determination by the Acting Secretary that a public health emergency exists nationwide involving the Swine influenza A virus (now called ''2009–H1N1 influenza virus'');

Whereas, vaccination may be effective to protect persons from the threat of pandemic influenza;

Whereas, the possibility of governmental program planners obtaining stockpiles from private sector entities except through voluntary means such as commercial sale, donation, or deployment would undermine national preparedness efforts and should be discouraged as provided for in section 319F–3(b)(2)(E) of the Public Health Service Act (42 U.S.C. 247d–6d(b)) (''the Act'');

Whereas, immunity under section 319F–3(a) of the Act should be available to governmental program planners for distributions of Covered Countermeasures obtained voluntarily, such as by (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles;

Whereas, the extent of immunity under section 319F–3(a) of the Act afforded to a governmental program planner that obtains Covered Countermeasures except through voluntary means is not intended to affect the extent of immunity afforded other covered persons with respect to such covered countermeasures;

Whereas, to encourage the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in section II and IV it is advisable, in accordance with section 319F–3(a) and (b) of the Act, to provide immunity from liability for covered persons, as that term is defined at section 319F–3(i)(2) of the Act, and to include as such covered persons such other qualified persons as I have identified in section VI;

Whereas, in accordance with section 319F–3(b)(6) of the Public Health Service Act (42 U.S.C. 247d–6d(b)) (''the Act''), I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging,

marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in sections II and IV below, and have found it desirable to encourage such activities for the Covered Countermeasures;

Therefore, pursuant to section 319F–3(b) of the Act, I have determined there is a credible risk that the spread of avian influenza viruses and resulting disease could in the future constitute a public health emergency, and that 2009 H1N1 influenza constitutes a public health emergency.

I. Covered Countermeasures (as Required by Section 319F–3(b)(1) of the Act)

Covered Countermeasures are defined at section 319F–3(i) of the Act.

At this time, and in accordance with the provisions contained herein, I am recommending the manufacture, testing, development, distribution, dispensing; and, with respect to the category of disease and population described in sections II and IV, below, the administration and usage of the pandemic countermeasures influenza A H5N1, H2, H6, H7, H9, and 2009 H1N1 vaccines and any associated adjuvants. The immunity specified in section 319F–3(a) of the Act shall only be in effect with respect to: (1) Present or future Federal contracts, cooperative agreements, grants, interagency agreements, or memoranda of understanding for pandemic countermeasure influenza A H5N1, H2, H6, H7, H9, and 2009 H1N1 vaccines used and administered in accordance with this Declaration, and (2) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the pandemic countermeasures following a declaration of an emergency, as defined in section IX below. In accordance with section 319F–3(b)(2)(E) of the Act, for governmental program planners, the immunity specified in section 319F–3(a) of the Act shall be in effect to the extent they obtain Covered Countermeasures through voluntary means of distribution, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles. For all other covered persons, including other program planners, the immunity specified in section 319F–3(a) of the Act shall, in accordance with section 319F–3(b)(2)(E) of the Act, be in effect pursuant to any means of distribution.

This Declaration shall subsequently refer to the countermeasures identified above as Covered Countermeasures.

This Declaration shall apply to all Covered Countermeasures administered or used during the effective time period of the Declaration.

II. Category of Disease (as Required by Section 319F–3(b)(2)(A) of the Act)

The category of disease for which I am recommending the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans following exposure to the virus with (1) highly pathogenic avian influenza A (H5N1, H2, H6, H7, or H9) virus; or (2) 2009 H1N1 influenza.

III. Effective Time Period (as Required by Section 319F–3(b)(2)(B) of the Act)

The effective period of time of this Declaration commences on December 1, 2006 and extends through February 28, 2010; except that with respect to 2009 H1N1 influenza vaccine, the effective period commences on June 15, 2009 and extends through March 31, 2013.

With respect to Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction, the effective period of time of this Declaration commences on the date of a declaration of an emergency and lasts through and includes the final day that the emergency declaration is in effect including any extensions thereof; except that with respect to 2009 H1N1 influenza vaccine, the effective period commences on June 15, 2009 and extends through March 31, 2013.

IV. Population (as Required by Section 319F–3(b)(2)(C) of the Act)

Section 319F–3(a)(4)(A) confers immunity to manufacturers and distributors of the Covered Countermeasure, regardless of the defined population.

Section 319F–3(a)(3)(C)(i) confers immunity to covered persons who could be program planners or qualified persons with respect to the Covered Countermeasure only if a member of the population specified in the Declaration administers or uses the Covered Countermeasure and is in or connected to the geographic location specified in this Declaration, or the program planner or qualified person reasonably could have believed that these conditions were met.

The populations specified in this Declaration are the following: (1) All persons who use a Covered Countermeasure or to whom such a Covered Countermeasure is administered as an Investigational New Drug in a human clinical trial conducted directly by the Federal Government, or pursuant to a contract, grant or cooperative agreement with the Federal Government; (2) all persons who use a Covered Countermeasure or to whom such a Countermeasure is administered in a pre-pandemic phase, as defined below; and/or (3) all persons who use a Covered Countermeasure, or to whom such a Covered Countermeasure is administered in a pandemic phase, as defined below.

V. Geographic Area (as Required by Section 319F–3(b)(2)(D) of the Act)

Section 319F–3(a) applies to the administration and use of a Covered Countermeasure without geographic limitation.

VI. Other Qualified Persons (as Required by Section 319F–3(i)(8)(B) of the Act)

With regard to the administration or use of a Covered Countermeasure, Section 319F–3(i)(8)(A) of the Act defines the term ''qualified person'' as a licensed individual who is authorized to prescribe, administer, or dispense the countermeasure under the law of the State in which such Covered Countermeasure was prescribed, administered or dispensed. Additional persons who are qualified persons pursuant to section 319F–3(i)(8)(B) are the following: (1) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency, and (2) Any person authorized to prescribe, administer, or dispense Covered Countermeasures or who is otherwise authorized under an Emergency Use Authorization.

VII. Additional Time Periods of Coverage After Expiration of Declaration (as Required by Section 319F–3(b)(3)(B) of the Act)

A. I have determined that, upon expiration of the applicable time period specified in Section III above, an additional twelve (12) months is a reasonable period to allow for the manufacturer to arrange for disposition of the Covered Countermeasure, including the return of such product to

the manufacturer, and for covered persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasure, and the liability protection of section 319F–3(a) of the Act shall extend for that period.

B. The Federal Government shall purchase the entire production of Covered Countermeasures under the contracts specifically listed by contract number in section I for the stockpile under section 319F–2 of the Act, and shall be subject to the time-period extension of section 319F–3(b)(3)(C). Production under future contracts for the same vaccine will also be subject to the time-period extension of section 319F–3(b)(3)(C).

VIII. Compensation Fund

In addition to conferring immunity to manufacturers, distributors, and administrators of the Covered Countermeasures, the Act provides benefits to certain individuals who sustain a covered injury as the direct result of the administration of the Covered Countermeasure. The Countermeasure Injury Compensation Program (CICP) within the Health Resources and Services Administration (HRSA) administers the Act's compensation program. Information about the CICP is available at 1–888–275–4772 or *http://www.hrsa.gov/countermeasurescomp/default.htm.*

IX. Amendments

The Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1 was published on January 26, 2007; amended on November 30, 2007 to add H7 and H9 vaccines; amended on October 17, 2008 to add H2 and H6 vaccines; amended on June 15, 2009 to add 2009 H1N1 vaccines and republished in its entirety. This Declaration incorporates all amendments prior to the date of its publication in the **Federal Register**. Any future amendment to this Declaration will be published in the **Federal Register**, pursuant to section 319F–2(b)(4) of the Act.

X. Definitions

For the purpose of this Declaration, including any claim for loss brought in accordance with section 319F–3 of the PHS Act against any covered persons defined in the Act or this Declaration, the following definitions will be used:

Administration of a Covered Countermeasure: As used in section 319F–3(a)(2)(B) of the Act includes, but is not limited to, public and private delivery, distribution, and dispensing activities relating to physical administration of the countermeasures to recipients, management and operation of delivery systems, and management and operation of distribution and dispensing locations.

Authority Having Jurisdiction: Means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, Tribal, State, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

Covered Persons: As defined at section 319F–3(i)(2) of the Act, include the United States, manufacturers, distributors, program planners, and qualified persons. The terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' are further defined at sections 319F–3(i)(3), (4), (6), and (8) of the Act.

Declaration of Emergency: A declaration by any authorized local, regional, State, or Federal official of an emergency specific to events that indicate an immediate need to administer and use pandemic countermeasures, with the exception of a Federal declaration in support of an emergency use authorization under section 564 of the FDCA unless such declaration specifies otherwise.

Pandemic Phase: The following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (4) First Human Case in North America; and (5) Spread Throughout United States.

Pre-pandemic Phase: The following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (0) New Domestic Animal Outbreak in At-Risk Country; (1) Suspected Human Outbreak Overseas; (2) Confirmed Human Outbreak Overseas; and (3) Widespread Human Outbreaks in Multiple Locations Overseas.

Dated: September 28, 2009.

Kathleen Sebelius,

Secretary.

Appendix

I. List of U.S. Government Contracts—Covered H5N1, H2, H6, H9, and 2009–H1N1 Vaccine Contracts

1. HHSN266200400031C
2. HHSN266200400032C
3. HHSN266200300039C
4. HHSN266200400045C
5. HHSN266200205459C
6. HHSN266200205460C
7. HHSN266200205461C
8. HHSN266200205462C
9. HHSN266200205463C
10. HHSN266200205464C
11. HHSN266200205465C
12. HHSN266199905357C
13. HHSN266200300068C
14. HHSN266200005413C
15. HHSO100200600021C (formerly 200200409981)
16. HHSO100200500004C
17. HHSO100200500005I
18. HHSO100200700026I
19. HHSO100200700027I
20. HHSO100200700028I
21. HHSO100200600010C
22. HHSO100200600011C
23. HHSO100200600012C
24. HHSO100200600013C
25. HHSO100200600014C
26. HHSO100200600022C (formerly 200200511758)
27. HHSO100200600023C (formerly 200200410431)
28. CRADA No. AI–0155 NIAID/MedImmune
29. HHSO100200700029C
30. HHSO100200700030C
31. HHSO100200700031C
32. All present, completed and future Government H5N1, H2, H6, H9, and 2009–H1N1 vaccine contracts not otherwise listed.

[FR Doc. E9–23844 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-09–09CV]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

All-Hazards Public Health Emergency Preparedness and Response Generic Data Collection—New—Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Data from agencies and individuals are needed to assist CDC in responding to and planning for domestic and international all-hazards public health emergencies. According to the glossary from the National Response Framework Resource Center, ''all-hazards'' is defined as ''describing an incident, natural or manmade, that warrants action to protect life, property, environment, and public health or safety, and to minimize disruptions of government, social, or economic activities.'' This generic IC requests the authority to collect a wide array of data from traditional and non-traditional public health sources to assist in this effort. This generic IC will enable CDC to collect data during public health emergencies (as the response is taking place) and after public health emergencies (as the recovery is taking place) to aid response and recovery efforts and to answer pre-determined research questions. These data may be used to inform our preparedness for subsequent emergencies that may potentially occur and also inform decisions made by CDC Director.

All-hazards public health emergencies are those events that are formally declared emergencies by Federal, State or local jurisdictions. Declarations can be made by the Secretary of the Department of Health and Human Services (DHHS) under Section 319 of the Public Health Service Act and at the state or local levels by the Governor, state public health officer, city or county council or mayor and the local public health officer respectively. During and after these emergencies, assistance may be needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Also, CDC may have to assist the State and local, tribal, and territorial levels of government with critical data collection to support immediate data needs for situational awareness. Situational Awareness has been defined as ''the perception of elements in the environment within a volume of time and space, the comprehension of their meaning, and the projection of their status in the near future.''

A three-year OMB approval is requested to allow CDC to collect data during and after emergencies. Data collected under this generic IC will use a variety of data collection methods. *Some of the methods include but are not limited to:* Personal interviews, telephone interviews, focus groups, institutional record reviews, medical record reviews, and paper or Internet questionnaires and other secure electronic data exchange. Each proposed data collection submitted under this generic IC will provide information pertaining to that particular public health emergency. Respondents will be advised of the nature of the activity, the length of time required for participation and that their participation is voluntary.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Public	50,000	1	1	50,000
Total	50,000			

Dated: September 26, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–23883 Filed 10–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice to Award Five Expansion Supplement Grants.

CFDA Number: 93.592.

Legislative Authority: The Family Violence Prevention and Services Act, 42 U.S.C. 10401 through 10421, as extended by the Department of Health and Human Services Appropriations Act, 2009, Public Law 111–8.

Total Amount of Awards: $400,000.

Project Period: September 30, 2009—September 29, 2010.

SUMMARY: This notice announces the award of expansion supplement grants to five grantees under the Family and Youth Services Bureau (FYSB)/Family Violence Prevention and Services Program. Expansion supplement awards are made to four technical assistance (TA) providers to support their capacity to enhance victim services by providing more extensive TA to local domestic violence programs and State domestic violence coalitions under the Open Doors to Safety: Capacity-Building Grant (Capacity-Building) project. The supplemental funds, coupled with the TA providers' expertise, will enable Open Doors Safety Capacity-Building project grantees to receive more training and site-specific consultation, so that they may build program capacity. The awards will also support State-level collaboration between domestic violence organizations and child welfare agencies. These combined efforts will strengthen the ability of domestic violence programs and their partners to better serve survivors who have diverse backgrounds, experiences, and abilities.

Technical assistance provider organizations	Amount of award	Location
Family Violence Prevention Fund	$175,000	San Francisco, CA.
Domestic Abuse Intervention Programs	50,000	Minneapolis, MN.
Hektoen Institute, LLC	50,000	Chicago, IL.
National Network to End Domestic Violence	100,000	Washington, DC.

A $25,000 expansion supplement grant is awarded to the Institute on Domestic Violence in the African American Community (IDVAAC), Minneapolis, MN, for the period of July 1, 2009 through September 30, 2009, to support development of conference materials, a scholarly publication on healing after domestic violence, and conference scholarships.

Contact for Further Information: Marylouise Kelley, Ph.D., Director, Family Violence Prevention and Services Program, 1250 Maryland Avenue, SW., Suite 8216, Washington, DC, 20024. Telephone: 202–104–5756 E-mail: *Marylouise.kelley@acf.hhs.gov.*

Dated: September 28, 2009.

Maiso L. Bryant,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. E9–23922 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0057]

Determination of Regulatory Review Period for Purposes of Patent Extension; EMEND FOR INJECTION

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EMEND FOR INJECTION and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EMEND FOR INJECTION (fosaprepitant meglumine). EMEND FOR INJECTION, in combination with other antiemetic agents, is indicated for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of highly emetogenic cancer chemotherapy including high-dose cisplatin, and for prevention of nausea and vomiting associated with initial and repeat courses of moderately emetogenic cancer chemotherapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EMEND FOR INJECTION (U.S. Patent No. 5,691,336) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 26, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EMEND FOR INJECTION represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EMEND FOR INJECTION is 4,473 days. Of this time, 3,810 days occurred during the testing phase of the regulatory review period, while 663 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 29, 1995. The applicant claims October 28, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 29, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 3, 2006. The applicant claims March 31, 2006, as the date the new drug application (NDA) for Emend for Injection (NDA 22–023) was initially submitted. However, FDA records indicate that NDA 22–023 was submitted on April 3, 2006.

3. *The date the application was approved*: January 25, 2008. FDA has verified the applicant's claim that NDA 22–023 was approved on January 25, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and

Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by December 4, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 5, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–23900 Filed 10–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0470]

Draft Guidance for Industry and FDA Staff; the Scope of the Prohibition Against Marketing a Tobacco Product in Combination With Another Article or Product Regulated Under the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act.'' This guidance is intended for manufacturers, retailers, importers, and FDA staff. The Federal Food, Drug, and Cosmetic Act (FDCA), as amended by the Family Smoking Prevention and Tobacco Control Act (FSPTCA), states ''A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).'' The guidance discusses certain activities that FDA believes do or do not fall within the scope of the prohibition. The guidance is not intended to be an exhaustive analysis of all activities that may or may not fall within the scope of the prohibition.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 4, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–595–7946. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michele Mital, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 0850–3229, 301–796–4800, *Michele.Mital@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the FSPTCA (Public Law 111–31) into law. The FSPTCA amended the FDCA (21 U.S.C. 301 *et seq.*) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 201(rr)(4) of the FDCA, as amended by the FSPTCA, states ''A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).''

This guidance discusses certain activities that FDA believes do or do not fall within the scope of the prohibition. The guidance is not intended to be an exhaustive analysis of all activities that may or may not fall within the scope of the prohibition.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on ''The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. The guidance document may be accessed at the Center for Tobacco Products' Web site at *http://www.fda.gov/tobaccoproducts*. This guidance document is also available at *http://www.regulations.gov*. To receive ''The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act,'' you may either send an e-mail request to *michele.mital@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–595–7946 to receive a hard copy.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–23866 Filed 9–30–09; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0447]

Draft Guidance for Industry on Helicobacter pylori-Associated Duodenal Ulcer Disease in Adults: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''*Helicobacter pylori*-Associated Duodenal Ulcer Disease in Adults: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in clinical drug development for the treatment of adults with duodenal ulcers caused by *H. pylori* for the reduction of duodenal ulcer recurrence. Specifically, this guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs to support antimicrobial-containing *H. pylori* treatment regimens.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 4, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Joette M. Meyer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6130, Silver Spring, MD 20993–0002, 301–796–1600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''*Helicobacter pylori*-Associated Duodenal Ulcer Disease in Adults: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in clinical antimicrobial drug development for the treatment of adults with duodenal ulcers caused by *H. pylori* for the reduction of duodenal ulcer recurrence. This guidance, when finalized, will supersede advice given in the draft guidance for industry entitled ''Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products,'' published in 1997, which contains section V, regarding indication 25 *H. pylori*.

This draft guidance pertains to development of drugs for the treatment of adults with duodenal ulcers. It does not address treatment of children, or those with other conditions also associated with *H. pylori*, including gastric ulcers and non-ulcer dyspepsia.

Currently approved regimens for the treatment of adults with duodenal ulcers consist of multiple drugs used in combination. We anticipate that drug development for new drugs or regimens will occur in one of three ways: (1) Substitution of a new drug for one component of an approved regimen, (2) addition of a new drug to an approved regimen, and (3) development of a new regimen not studied previously. The draft guidance provides information on the type of study design and supportive information that should be provided for each of these development paths. Information is also provided regarding microbiological procedures and use of diagnostic testing to determine subject evaluability.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on developing drugs for the treatment of *H. pylori*-associated duodenal ulcer disease in adults. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: September 29, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–23875 Filed 10–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Task Force; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a second public meeting to discuss issues related to transparency at the agency. The purpose of this public meeting is to receive detailed and in-depth comments on three specific issues related to

transparency at FDA. The topics to be covered are early communication about emerging safety issues concerning FDA-regulated products, disclosure of information about product applications that are abandoned (which means that no work is being done or will be undertaken to have the application approved) or withdrawn by the applicant before approval, and communication of agency decisions about pending product applications.

DATES: The public meeting will be held on November 3, 2009, from 9 a.m. to 3 p.m. Persons interested in attending and/or participating in the meeting must register by 5 p.m. on October 27, 2009. Submit electronic or written comments by November 6, 2009.

ADDRESSES: The public meeting will be held at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets at the heading of this document. Submit electronic registration by e-mail to *Transparency.Meeting@fda.hhs.gov.*

For Registration to Attend and/or to Participate in the Meeting: If you wish to attend the public meeting, you must register by e-mail (see **ADDRESSES**) by close of business on October 27, 2009. When registering, you must provide the following information: (1) Your name, (2) title, (3) company or organization (if applicable), (4) mailing address, (5) telephone number, and (6) e-mail address.

At the time of registration, if you wish to participate in one of the three planned discussion groups, you must indicate which discussion group(s), in rank order (see section **III. ISSUES FOR DISCUSSION**). Please also submit a brief statement that describes your experience with the discussion topic and/or the general nature of what you would like to present about the discussion topic. The Transparency Task Force (''Task Force'') is seeking participants interested in engaging in an in-depth discussion about the considerations and principles the agency should consider with respect to communicating to the public about each of the issues outlined below (see section **III. ISSUES FOR DISCUSSION**).

Each discussion group will include 4 to 6 people. Only one participant from an organization or company will be assigned to a discussion group. FDA will attempt to have a range of stakeholders participate in each discussion group. Participants will be contacted prior to the meeting with the approximate time the discussion group is scheduled to begin. Others in attendance at the public meeting will have an opportunity to listen to the discussion and comment on the issues discussed during the public comment period that will occur after each discussion group.

There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Registration on the day of the public meeting will be permitted on a space-available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Afia Asamoah (see **FOR FURTHER INFORMATION CONTACT**) by October 27, 2009.

FOR FURTHER INFORMATION CONTACT: Afia Asamoah, Office of the Commissioner, Food and Drug Administration, Bldg. 1, rm. 2220, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4625, FAX: 301–847–3531, *Afia.Asamoah@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 2009, President Obama's first full day in office, the President issued a memorandum to the heads of executive departments and agencies on transparency and openness in government. The memorandum expressed the Administration's commitment to achieve ''an unprecedented level of openness in Government'' and instructed executive departments and agencies to solicit public input to identify information of greatest use to the public. Executive departments and agencies were also charged with harnessing new technologies to make information about agency operations and decisions available online and readily available to the public.

In response to the Administration's commitment to promote transparency in government, FDA formed an internal Task Force to consider how to make FDA and its processes more transparent to the public. The Task Force is soliciting input from the public to develop recommendations for making useful and understandable information about FDA activities and decisionmaking more readily available to the public in a timely manner and in a user-friendly format, while appropriately protecting confidential information. To solicit public input on improving agency transparency, the Task Force established a public docket, launched an online blog, and held a public meeting in June. At the first public meeting, the Task Force posed six questions about ways in which the agency should provide information to the public about what FDA is doing, the bases for the agency's decisions, and the processes used to make agency decisions.[1]

Based on the comments received to date, the Task Force is holding a second public meeting to solicit in-depth and detailed comments on three specific issues related to transparency at the agency.

II. Second Public Meeting

The objective of the second public meeting on transparency is for the Task Force to receive public input and hear different points of view about the agency's communications about, and public disclosures of information about, the following issues:

(1) Emerging safety issues concerning FDA-regulated products,

(2) Product applications that are abandoned (no work is being done or will be undertaken to have the application approved) or withdrawn by the applicant before approval, and

(3) Agency decisions about pending product applications.

The Task Force is interested in focused, detailed comments about the considerations and principles the agency should assess regarding its communications to the public about the topics outlined in the previous paragraphs.

The second public meeting will be conducted as a series of three moderated discussion groups covering these three topics. The specific topic for each discussion will be presented in the form of a case study. Only one discussion group will be held at a time. Following each moderated discussion, Task Force members may ask questions of the participants in each discussion group. Others in attendance at the public meeting then will have an opportunity to comment on the issues discussed during the public comment period that will occur after each discussion group.

At least 7 days in advance of the meeting, the initial scenarios of the case studies for each of the three topics will be made available on the Internet. The initial scenarios will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. The initial scenarios will also be available on

[1] See 74 FR 26712, June 3, 2009.

FDA's Web site at *http://www.fda.gov/transparency* along with the agenda for this meeting. The complete case studies will be available in the same locations after the public meeting.

III. Issues for Discussion

The discussion of the three issues described in the following section of this document should not be limited by current statutes or regulations, as the proposals the Task Force develops may include recommendations for changes to current law.

A. Emerging Safety Issues Concerning FDA-Regulated Products

When FDA receives safety information associated with a marketed FDA-regulated product, e.g., medical device, drug, biologic, dietary supplement, cosmetic, or food (including ingredients and food additives), FDA evaluates the information in deciding whether and what actions to take, such as regulatory action regarding the product. FDA will continue to receive, gather, and evaluate additional information to further inform its decisions.

During this process, while still evaluating the situation, FDA may communicate with the public based on the agency's current analysis of the available information about the situation. For example, the agency may issue an early communication about its ongoing safety review of a drug, device, or biologic, or may issue an early communication advising consumers not to eat a certain type of food that may be linked to a foodborne illness or to stop using a certain dietary supplement that may be associated with adverse events.

The Task Force is interested in discussing the principles the agency should use when deciding whether to issue an early communication about a potential problem with an FDA-regulated product. For example, when is it appropriate, or not appropriate for the agency to advise the public about a possible, but unconfirmed foodborne illness outbreak or to issue an early communication about an emerging safety issue with a medical product, dietary supplement, or cosmetic? If appropriate, how should this information be conveyed to the public so that it is useful and does not cause unfounded or unnecessary concern about the product? And what mechanisms (e.g., Internet, mass media, cell phones, direct outreach to health professional and patient organizations) should FDA use to effectively reach the target audiences in a timely manner?

B. Product Applications That Are Abandoned (Which Means That No Work is Being Done or Will Be Undertaken to Have the Application Approved) or Withdrawn By the Applicant Before Approval

The Task Force is interested in discussing the principles and considerations the agency should apply to disclosure of data contained in product applications that are abandoned during the approval process or withdrawn before approval by the applicant. The Task Force would also like to receive comments on whether the considerations governing treatment of these data should depend on the reason the product application was abandoned or withdrawn.

C. Communicating Agency Decisions About Pending Product Applications

The Task Force is interested in discussing what information about pending product applications should be disclosed. Should the agency inform the public when:

- A marketing application seeking approval of a drug or biologic is submitted to the agency for review?
- A marketing application seeking approval or clearance of a medical device is submitted to the agency for review?

When the agency does not approve a marketing application for a drug or biologic, it issues a letter that informs the applicant of FDA's determination not to approve the application in its current form, identifying all apparent deficiencies in the application. Should the agency disclose to the public a determination not to approve a marketing application for a drug or biologic? What, if any, information should the agency disclose about the determination not to approve the application? What, if any, information contained in the response letter should the agency disclose? What principles should the agency apply in making these determinations?

When the agency does not approve a premarket application (PMA) for a medical device, it may issue a ''not approvable'' letter that informs the applicant of FDA's determination not to approve the application in its current form. When the agency does not clear a device submitted through the 510(k) process, a ''not substantially equivalent'' (NSE) letter is issued to the applicant. Should the agency disclose to the public a determination not to approve or clear a marketing application for a medical device? What, if any, information should the agency disclose about the determination not to approve or clear the application? What, if any, information contained in the not approvable letter or the NSE letter should the agency disclose? What principles should the agency apply in making these determinations?

IV. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES**). Submit a single copy of electronic comments to *http://www.regulations.gov* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: September 29, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–23916 Filed 10–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Delivery Ticket

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0081.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Delivery

Ticket. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 4, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Delivery Ticket.

OMB Number: 1651–0081.

Form Number: Form 6043.

Abstract: This collection of information requires warehouse proprietors, carriers, Foreign Trade Zone operators and others to prepare a CBP Form 6043 (Delivery Ticket) to cover the receipt of the merchandise and its transport from the custody of the arriving carrier. The information is to be used by CBP officers to document transfers of imported merchandise between parties.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1000.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

Dated: September 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–23820 Filed 10–2–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms and flooding beginning on September 18, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Cherokee, Cobb, Douglas, and Paulding Counties for Individual Assistance.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–23957 Filed 10–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 25, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2009.

Carroll, Chattooga, and Stephens Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–23955 Filed 10–5–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 25, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2009.

Walker County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–23959 Filed 10–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 25, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2009.

Catoosa, DeKalb, Fulton, Gwinnett, Newton and Rockdale Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–23958 Filed 10–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 26, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2009.

Carroll, Catoosa, Chattooga, Cobb, Douglas, Gwinnett, Paulding, Stephens, and Walker Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

Bartow, Coweta, and Heard Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–23956 Filed 10–5–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0845]

Public Meeting on Ports and Waterways Assessment

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting in order to receive public comments on the results of the U.S. Coast Guard sponsored Ports and Waterways Safety Assessment conducted July 14–15, 2009. Specific comments should target any risk areas within the waterways and mitigating measures which may address outstanding risk areas along the Houston Ship Channel. The Captain of the Port would also like to receive comments related to possible areas which can be used for Waterways Optimization, including improving port security for the channel and adjacent facilities.

DATES: A public meeting will be held on Tuesday, October 6, 2009, from 9 a.m. to 12 p.m. (noon) to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must be received by the Coast Guard on or before Friday, October 30, 2009.

ADDRESSES: The public meeting will be held at Marine Safety Unit Galveston, 3101 FM 2004, Texas City, TX 77591, telephone 409–978–2700. A government-issued photo identification will be required for entrance to the building.

You may submit written comments identified by docket number USCG–2009–0845 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2009–0845.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please call or e-mail LTJG Margaret Brown, Coast Guard Sector Houston-Galveston, Waterways Management, telephone 713–678–9001, e-mail *Margaret.A.Brown@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The purpose of the meeting is to receive comments on the U.S. Coast Guard sponsored Ports and Waterways Safety Assessment conducted July 14–15, 2009. A copy of the assessment will be attached to the docket. Specific comments should target any risk areas within the waterways and mitigating measures which may address outstanding risk areas along the Houston Ship Channel. The Captain of the Port would also like to receive comments related to possible areas which can be used for Waterways Optimization, including improving port security for the channel and adjacent facilities.

You may view the online docket and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert ''USCG–2009–0845'' in the ''Keyword'' box and click ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this meeting by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before October 30, 2009. If you submit a comment online via *http://*

www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LTJG Margaret Brown at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding the Houston-Galveston waterways on Tuesday, October 6, 2009, from 9 a.m. to 12 p.m. (noon) at Marine Safety Unit Galveston, 3101 FM 2004, Texas City, TX 77591, telephone 409–978–2700. The meeting location is not accessible by public transportation. Parking is available at no cost.

Dated: September 21, 2009.

M.E. Woodring,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. E9–23876 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–26]

Announcement of Funding Awards for Fiscal Year 2009 Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2009 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $25,000 to complete work on their dissertations. Grants are awarded for a two-year period.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.517.

On July 8, 2009, a Notice of Funding Availability (NOFA) for this program was posted on Grants.gov announcing the availability of $200,000 in FY 2009 for the DDRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the winners can be found at *http://www.oup.org.*

Dated: September 17, 2009.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2009 Doctoral Dissertation Reseach Grant Program Funding Competition, by Institution, Address, Grant Amount and Name of Student Funded

1. The Regents of the University of California, Julian Chun-Chung Chow, Ph.D., The Regents of the University of California, School of Social Welfare, 2150 Shattuck Avenue, Suite 313, Berkeley, CA 94704–5940. Grant: $25,000 to Richard Smith.

2. New York University, Jeff Manza, New York University, Department of Sociology, 665 Broadway, Suite 801, New York, NY 10012. Grant: $15,195.73 to Brian McCabe.

3. The University of Illinois at Chicago, Janet L. Smith, The University of Illinois at Chicago, Department of Urban Planning and Policy, 809 South Marshfield, 502 MB, M/C551, Chicago, IL 60612–7205. Grant: $25,000 to Andrew Greenlee.

4. Trustees of Boston University, Judith G. Gonyea, Ph.D., Trustees of Boston University, School of Social Work, 881 Commonwealth Avenue, Boston, MA 02215. Grant: $19,450 to Kelly Mills-Dick.

5. The Regents of the University of California, Allison Crowther, The Regents of the University of California, Department of Planning, Policy and Design, Office of Research Administration, Irvine, CA 92697–7600. Grant: $15,418.50 to Michael Powe.

6. The Trustees of Princeton University, Mitchell Duneier, The Trustees of Princeton University, Department of Sociology, PO Box 36, 4 New South Building, Princeton, NJ 08544–0036. Grant: $24,975.77 to Alexandra Murphy.

7. The University of Chicago, Dr. Andrew Abbott, The University of Chicago, Department of Sociology, 5801 South Ellis Avenue, Chicago, IL 60637. Grant: $25,000 to Len Albright.

8. New York University, Dr. Ingrid Gould Ellen, New York University, Department of Public Policy and Urban Planning, 665 Broadway, Suite 801, New York, NY 10012. Grant: $24,960 to Michael Lens.

9. The President and Fellows of Harvard College, Dr. Richard Peiser, The President and Fellows of Harvard College, Department of Urban Planning and Design, 1350 Massachusetts

Avenue, Cambridge, MA 02138. Grant: $25,000 to Suzanne Charles.

[FR Doc. E9–23841 Filed 10–2–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of November 7, 2009 Meeting for Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of November 7, 2009 meeting for Flight 93 National Memorial Advisory Commission.

SUMMARY: This notice sets the date of the November 7, 2009 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, November 7, 2009 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda: The November 7, 2009 joint Commission and Task Force meeting will consist of the following:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from August 1, 2009.
3. Reports from the Flight 93 Memorial Task Force and National Park Service.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814–443–4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. E9–23700 Filed 10–2–09; 8:45 am]

BILLING CODE 4312–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from July 27 to July 31, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: September 15, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

COLORADO

Jefferson County

Brook Forest Inn, 8136 S. Brook Forest Rd., Evergreen, 09000567, LISTED, 7/29/09

ILLINOIS

Cook County

Episcopal Church of the Atonement and Parish House, The, 5751 N. Kenmore Ave., Chicago, 09000590, LISTED, 7/30/09

KENTUCKY

Franklin County

Central Frankfort Historic District, Bounded by East and West 2nd St., Logan St., the Kentucky River, High St., and Mero St., Frankfort, 09000570, LISTED, 7/28/09

NEW JERSEY

Camden County

Mount Peace Cemetery and Funeral Directing Company Cemetery, 329 US Rt. 30, Lawnside, 08000971, LISTED, 7/29/09

NEW YORK

Albany County

Lustron Houses of Jermain Street Historic District, 1, 3, 5, 7, 8 Jermain St., Albany, 09000572, LISTED, 7/29/09 (Lustron Houses in New York MPS)

Columbia County

Dick House, 641 Co. Rte. 8, Germantown vicinity, 09000573, LISTED, 7/29/09

Herkimer County

Emmanuel Episcopal Church, 588 Albany St., Little Falls vicinity, 09000574, LISTED, 7/29/09

Lewis County

Lewis County Soldiers' and Sailors' Monument, Village Green, NY 26 and Bostwick Sts., Lowville vicinity, 09000575, LISTED, 7/29/09

RHODE ISLAND

Newport County

Indian Avenue Historic District, 357–515 Indian Ave. and 55–75 Vaucluse Ave., Middletown, 09000362, DETERMINED ELIGIBLE, 5/29/09

Providence County

Borders Farm, 31–38 N. Rd, Foster, 09000576, LISTED, 7/29/09

TENNESSEE

Sumner County

Trousdale-Baskerville House, 211 W. Smith St., Gallatin, 09000577, LISTED, 7/30/09

WASHINGTON

King County

Roanoke Park Historic District, Bounded by Shelby St. on the N., Roanoke St. on the S., Harvard Ave on the W., 10th Ave. on the E., Seattle, 09000578, LISTED, 7/30/09

Lincoln County

Atlas E Missile Site 9, 36000 Crescent Rd. N., Reardan vicinity, 09000579, LISTED, 7/31/09

WISCONSIN

Columbia County

Farnham, Fred and Lucia, House, 553 W. James St., Columbus, 09000580, LISTED, 7/30/09

Columbia County

Jones, John A. and Maggie, House, 307 N. Ludington St., Columbus, 09000581, LISTED, 7/30/09

[FR Doc. E9–23887 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 19, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under

the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 20, 2009.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

AMERICAN SAMOA

Western District

Papa Site,
Address Restricted,
A'asufou village, 09000852

COLORADO

Delta County

Hotchkiss Methodist Episcopal Church,
285 N. 2nd St.,
Hotchkiss, 09000853

Weld County

Land Utilization Program Headquarters,
(New Deal Resources on Colorado's Eastern Plains MPS)
44741 Weld Co. Rd. 77,
Briggsdale, 09000854

HAWAII

Honolulu County

Honouliuli Internment Camp,
Address Restricted,
Waipahu, 09000855

MISSOURI

Clay County

First Methodist Church,
114 N. Marietta St.,
Excelsior Springs, 09000856
Dunklin County
Birthright, Charles and Bettie, House,
109 S. Main St.,
Clarkton, 09000857

Gasconade County

Hermann Historic District,
Roughly bounded by Wharf, First, Mozart, 5th, Schiller, 4th, Gutenberg, and Reserve Sts.,
Hermann, 09000858

St. Louis County

Downtown Kirkwood Historic District,
105–133 E. Argonne, 100–159 W. Argonne, 108–212 N. Clay, 105–140 E. Jefferson, 100–161 W. Jefferson, Kirkwood, 09000859

NEW YORK

Chenango County

Mathewson, Holden B., House,
1567 NY 26,
South Otselic, 09000860

Columbia County

Van Rensselaer, Conyn, House,
644 Spook Rock Rd.,
Claverack, 09000861

Dutchess County

Mt. Beacon Fire Observation Tower,
S. Beacon Mtn.,
Beacon, 09000862

Onondaga County

Barber, Peale's, Farm Mastodon Exhumation Site,
Rt. 17K,
Montgomery, 09000863

Queens County

Rego Park Jewish Center,
97–30 Queens Blvd.,
Rego Park, 09000864

OREGON

Wallowa County

Wallowa Ranger Station,
(Depression-Era Buildings TR)
602 W. 1st St.,
Wallowa, 09000865

TEXAS

Harris County

Farnsworth & Chambers Building,
2999 S. Wayside,
Houston, 09000866

Request for REMOVAL has been made for the following resource:

GEORGIA

Cobb County

Gibson, John S., Farmhouse,
(Kennesaw MPS)
3370 Cherokee St.,
Kennesaw, 80000998

[FR Doc. E9–23889 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0100]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Monitoring Information Collections.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), 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 extension of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 4, 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 Rebekah Whiteaker, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the extension of a previously approved collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection.

(2) *Title of the Form/Collection:* Monitoring Information Collections.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: COPS Office hiring grantees that are selected for in-depth monitoring of their grant implementation and equipment grantees that report using COPS funds to implement a criminal intelligence system will be required to respond. The Monitoring Information Collections include two types of information collections: the Monitoring Request for Documentation and the 28 CFR Part 23 Monitoring Kit.

(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 140 respondents annually will complete the collections: 40 respondents to the Monitoring Request for Documentation at 3 hours per respondent; 100 respondents to the 28 CFR Part 23 Monitoring Kit at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 320 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 29, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–23869 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Expedited, Emergency Review: Office on Violence Against Women.

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 expedited, emergency review and approval in accordance with the Paperwork Reduction Act of 1995 and emergency clearance procedures under 5 CFR 1320.13. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 30 days for public comment until November 4, 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:* Proposed collection.

(2) *Title of the Form/Collection:* OVW Solicitation Template.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–XXXX. U.S. Department of Justice, OVW.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* The affected public includes applicants to OVW grant programs authorized under 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. These include States, territory, Tribe or unit of local government; State, territorial, tribal or unit of local governmental entity; institutions of higher education including colleges and universities; tribal organizations; Federal, State, tribal, territorial or local courts or court-based programs; State sexual assault coalition, State domestic violence coalition; territorial domestic violence or sexual assault coalition; tribal coalition; tribal organization; community-based organizations and non-profit, nongovernmental organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes the requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.* project activities and timeline, proposed budget): And provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collect annually from the approximately 1800 respondents (applicants to the OVW grant programs). The public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare a narrative, budget and other materials for the application as well to coordinate with and develop a memorandum of understanding with requisite project partners.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 54,000 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, 601 D Street, NW., Washington, DC 20530.

Dated: September 29, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–23868 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Under the Clean Air Act

Pursuant to 28 CFR § 50.7, notice is hereby given that, on September 24, 2009, a proposed Consent Decree in *United States* v. *Pacific Gas & Electric Company* [''PG&E''], Civil Action No. 09–4503 (N.D. Cal.), was lodged with the United States District Court for the Northern District of California. The Consent Decree addresses an alleged violation of the Clean Air Act, 42 U.S.C. 7401–7671 *et seq.*, which occurred at

the Gateway Generating Station, a natural gas fired power plant located near Antioch, California. The alleged violation arises from the construction of the plant by PG&E allegedly without an appropriate permit in violation of the Prevention of Significant Deterioration provisions of the Clean Air Act, 42 U.S.C. 7475, and without installing and applying best available control technology at the plant to control emissions of various air pollutants.

The proposed Consent Decree would resolve the claim alleged in the Complaint filed in this matter in exchange for PG&E's commitment to perform injunctive relief including: (1) Achieving more stringent limits for emissions of nitrogen oxides (NO_X) and carbon monoxide; and (2) installing and operating two computer software programs that are designed to limit the number of start-ups and shut-downs that the Gateway plant will experience and to further reduce NO_X emissions. The proposed Consent Decree also requires PG&E to pay a $20,000 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to the United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611. Comments should refer to *United States* v. *Pacific Gas & Electric Company,* Civil Action No. 09–4503 (N.D. Cal.) and D.J. Ref. No. 90–5–2–1–09753.

The Consent Decree may be examined at: (1) The offices of the United States Department of Justice, 301 Howard Street, San Francisco, California 94105; and (2) the offices of the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, 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 $5.25 (21 pages at 25 cents per page reproduction costs) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–23923 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 23, 2009, an electronic version of a proposed Consent Decree was lodged in the United States District Court for the District of Arizona in *United States* v. *Apache Nitrogen Products, Inc.,* No. 4:09–CV–00542–JMR. The Consent Decree settles the United States' claims against Apache Nitrogen Products (''Apache'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (''CERCLA''), 42 U.S.C. 9606 & 9607, in connection with the Apache Powder Superfund Site outside of Bensen, Arizona.

Under the terms of the proposed Consent Decree, Apache will perform the remaining work at the Site, will pay $1,200,000 out of $7 million in past response costs, and will pay all future EPA oversight after the first $200,000. Apache will also relinquish a claim for reimbursement from the Superfund under 106(b) of CERLA, 42 U.S.C. 9706(b).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Apache Nitrogen Products, Inc.,* No. 4:09–CV–00542–JMR and DOJ #90–11–2–1088.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Arizona, 405 W. Congress Street, Suite 4800, Tucson, AZ 85701–5040. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $74.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–23928 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0001]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Extension of a currently approved collection; Return A—Monthly Return of Offenses Known to the Police; Supplement to Return A—Monthly Return of Offenses Known to the Police

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of 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 until December 4, 2009. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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 of 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) *The title of the form/collection:* Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Return of Offenses Known to the Police.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–720, 1–720a, 1–720b, 1–720c, 1–720d, 1–720e, and 1–706; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal, and tribal law enforcement agencies.

This collection is needed to collect information on Part I offense, rate, trend, and clearance data as well as stolen and recovered monetary values of stolen property throughout the United States. Data are tabulated and published in the semiannual and preliminary reports and the annual Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,738 law enforcement agency respondents at 10 minutes for hard copy and 5 minutes for electronic submissions for the Return A and 11 minutes for hard copy and 5 minutes for electronic submissions for the Supplement to Return A.

(6) *An estimate of the total public burden (in hours) associated with this collection:*

There are approximately 40,114 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. 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: September 29, 2009

Lynn Bryant,

Department Clearance Officer, United States Department of Justice

[FR Doc. E9–23867 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of new information collection under review: 2009–2010 BJS Survey of Campus Law Enforcement Agencies.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request 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. The proposed information collection was previously published in the **Federal Register** on July 31, 2009, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 4, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New information collection, 2009–2010 BJS Survey of Campus Law Enforcement Agencies (CLEA).

(2) *The Title of the Form/Collection:* 2009–2010 BJS Survey of Campus Law Enforcement Agencies.

(3) *The Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* The form label is CJ–44C, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract*: *Primary:* Universities and Colleges. The purpose of the CLEA project is to provide detailed statistical information on police and security agencies serving university and college campuses. The project will collect information from campus police and security agencies on functions performed, number and type (*sworn* vs. *nonsworn*) of officers employed, arrest jurisdiction, patrol coverage, operating budget, race and gender of officers, screening methods used for hiring new officers, education and training requirements for officers, salaries and special pay for officers, weapons authorized for use by officers, type and number of vehicles operated, use of infield and fixed-site computers, community policing activities, emergency preparedness activities, type and coverage of mass notification systems being used, special units/

programs operated, and clearance rates for part I offenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected from 1,500 campus law enforcement agencies, including approximately 1,300 agencies serving 4-year campuses, and 200 agencies serving 2-year campuses. Annual cost to the respondents is based on the number of hours involved in providing information from agency records. Public reporting burden for this collection of information is estimated to average 3 hours per data collection form. The estimate of hour burden is based on prior BJS surveys of law enforcement agencies that collected similar types of data.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 4,500 hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 30, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–23888 Filed 10–2–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 30, 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 Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, 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: Office of Workers' Compensation Programs (OWCP).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Provider Enrollment Form.

OMB Control Number: 1215–0137.

Agency Form Numbers: OWCP–1168.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 70,185.

Total Estimated Annual Burden Hours: 9,335.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $32,987.

Description: The Form OWCP–1168 requests profile information on providers that enroll in one (or more) of OWCP's benefit programs so its billing contractor can pay them for services rendered to beneficiaries using its automated bill processing system. For additional information, see related notice published at Volume 74 FR 29721 on June 23, 2009.

Agency: Office of Workers' Compensation Programs (OWCP).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Uniform Billing Form.

OMB Control Number: 1215–0176.

Agency Form Number: OWCP–04.

Affected Public: Private Sector—Businesses and other for-profits, Not-for-profit institutions.

Total Estimated Number of Respondents: 5,481.

Total Estimated Annual Burden Hours: 2,558.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $0.

Description: Form OWCP–04 is used by OWCP and contractor bill payment staff to process bills for medical services provided by hospitals and other institutional medical providers. For additional information, see related notice published at Volume 74 FR 29721 on June 23, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–23944 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,202]

Sappi Fine Paper N.S., a Subsidiary of Sappi Ltd., Including On-Site Leased Workers From ABB, Inc., Storeroom Solutions, Schneider Trucking, Sonoco Co. and Foreway Trucking, Muskegon, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 19, 2009, applicable to workers of Sappi Fine Paper N.A., a subsidiary of Sappi Ltd., including on-site leased workers from ABB, Inc., Muskegon, Michigan. The notice was published in the **Federal Register** September 2, 2009 (74 FR 45477).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of fine coated paper.

The company reports that on-site leased workers from Storeroom Solutions, Schneider Trucking, Sonoco Co., and Foreway Trucking were

employed on-site at the Muskegon, Michigan location of Sappi Fine Paper N.A., a subsidiary of Sappi Ltd. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Storeroom Solutions, Schneider Trucking, Sonoco Co. and Foreway Trucking working on-site at the Muskegon, Michigan location of Sappi Fine Paper N.A., a subsidiary of Sappi Ltd.

The amended notice applicable to TA–W–71,202 is hereby issued as follows:

All workers of Sappi Fine Paper N.A., a subsidiary of Sappi Ltd., including on-site leased workers from ABB, Inc., Storeroom Solutions, Schneider Trucking, Sonoco Co. and Foreway Trucking, Muskegon, Michigan, who became totally or partially separated from employment on or after June 12, 2008, through July 22, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23901 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,384; TA–W–70,384A]

National Mills, Inc. Including On-Site Leased Workers From Manpower Temp Service, Pittsburg, KS; National Mills, Inc. Executive Offices, Marriam, KS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 2009, applicable to workers of National Mills, Inc., including on-site leased workers from Manpower Temp Service, Pittsburg, Kansas. The notice was published in the **Federal Register** on August 19, 2009 (74 FR 41935).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of fashion decorated T-shirts.

The company reports that worker separations occurred at the Executive Offices, Merriam, Kansas location of the subject firm. The Executive Offices provides administrative, sales and financial service functions for the subject firm's production facility in Pittsburg, Kansas.

Accordingly, the Department is amending this certification to include workers of the National Mills, Inc., Executive Offices, Merriam, Kansas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production of fashion decorated T-shirts to Honduras.

The amended notice applicable to TA–W–70,384 is hereby issued as follows:

All workers of National Mills, Inc., including on-site leased workers from Manpower Temp Service, Pittsburg, Kansas (TA–W–70,384), and National Mills, Inc., Executive Offices, Merriam, Kansas (TA–W–70,384A), who became totally or partially separated from employment on or after May 19, 2008 through June 26, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23912 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,221]

Wacker Chemical Corporation, Wacker Polymers Division, a Subsidiary of Wacker Chemie AG, Including On-Site Leased Workers From On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc. and Yoh Managed Staffing, South Brunswick, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 2009, applicable to workers of Wacker Chemical Corporation, Wacker Polymers Division, a subsidiary of Wacker Chemie AG, including on-site leased workers from Wycoff Group, d/b/a Snelling Staffing and BSS, South Brunswick, New Jersey. The notice was published in the **Federal Register** on September 2, 2009 (74 FR 45476).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wet emulsions used in the construction industry, such as adhesives, paints, caulks, grouts and paper products.

The company reports that on-site leased workers from On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc., and Yoh Managed Staffing were employed on-site at the South Brunswick, New Jersey location of Wacker Chemical Corporation, Wacker Polymers Division, a subsidiary of Wacker Chemie AG. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc., and Yoh Managed Staffing working on-site at the South Brunswick, New Jersey location of the subject firm.

The amended notice applicable to TA–W–70,221 is hereby issued as follows:

All workers of Wacker Chemical Corporation, Wacker Polymers Division, a subsidiary of Wacker Chemie AG, including on-site leased workers from Wycoff Group, d/b/a/Snelling Staffing, BSS, On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc., and Yoh Managed Staffing, South Brunswick, New Jersey, who became totally or partially separated from employment on or after May 18, 2008, through July 16, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23911 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,085]

Emerson Network Power, Embedded Computing, Including On-Site Leased Workers of QTI, Madison, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on August 5, 2009, applicable to workers of Emerson Network Power, Embedded Computing, including on-site leased workers from QTI, Madison, Wisconsin. The notice will be published soon in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the manufacturing of embedded computer products.

The review shows that on July 30, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of Emerson Network Power, Embedded Computing Facility, Madison, Wisconsin, separated from employment on or after June 29, 2006 through July 30, 2009. The notice was published in the **Federal Register** on August 14, 2007 (72 FR 45451).

In order to avoid an overlap in worker group coverage, the Department is amending the May 18, 2008 impact date established for TA–W–70,085, to read July 31, 2009.

The amended notice applicable to TA–W–70,085 is hereby issued as follows:

All workers of Emerson Network Power, Embedded Computing, including on-site leased workers of QTI, Madison, Wisconsin, who became totally or partially separated from employment on or after July 31, 2009, through August 5, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 16th day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23909 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,028, TA–W–65,028A, TA–W–65,028B, TA–W–65,028C, TA–W–65,028D, TA–W–65,028E]

Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Detroit Lakes, MN; Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Cambridge, MN; Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Bagley, MN; Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Audubon, MN; Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Park Rapids, MN; Team Industries, Inc., Including On-Site Leased Workers From Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Baxter, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 27, 2009, applicable to workers of Team Industries, Inc., Detroit Lakes, Minnesota, Cambridge, Minnesota, Bagley, Minnesota, Audubon, Minnesota, Park Rapids, Minnesota and Baxter, Minnesota. The notice was published in the **Federal Register** on March 19, 2009 (74 FR 11757).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of drive train components for recreational vehicles.

New information shows that workers leased from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel were employed on-site at the Detroit Lakes, Minnesota, Cambridge, Minnesota, Bagley, Minnesota, Audubon, Minnesota, Park Rapids, Minnesota and Baxter, Minnesota locations of Team Industries, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working on-site at the above mentioned locations of Team Industries, Inc.

The amended notice applicable to TA–W–65,028 is hereby issued as follows:

All workers of Team Industries, Inc., including on-site leased workers from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Detroit Lakes, Minnesota (TA–W–65,028), Team Industries, Inc., including on-site leased workers from Work Connection, Press Employment Professionals, Express Personnel Services and Masterson Personnel, Cambridge, Minnesota (TA–W–65,028A), Team Industries, Inc., including on-site leased workers from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Bagley, Minnesota (TA–W–65,028B), Team Industries, Inc., including on-site leased workers from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Audubon, Minnesota (TA–W–65,028C), Team Industries, Inc., including on-site leased workers from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Park Rapids, Minnesota (TA–W–65,028D), and Team Industries, Inc., including on-site leased workers from Work Connection, Express Employment Professionals, Express Personnel Services and Masterson Personnel, Baxter, Minnesota (TA–W–65,028E) who became totally or partially separated from employment on or after January 28, 2008, through February 27, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23908 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,019]

Delphi Corporation, Corporate Headquarters, and Product & Service Solutions Division, Including On-Site Leased Workers From Aerotek, Bartech, Securitas Security, Rapid Global Business Systems, Inc. (RGBSI) and Gonzalez Contract Services, Troy, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2009, applicable to workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, Troy, Michigan. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115). The certification was amended on April 3, 2009 and April 9, 2009 to include on-site leased workers from Aerotek, Bartech, Securitas Security and Rapid Global Business Systems, Inc., (RGBSI). The notices were published in the **Federal Register** on April 14, 2009 (74 FR 17219) and April 19, 2009 (74 FR 17692).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers perform administrative and support functions for prototype automotive parts.

New information shows that workers leased from Gonzalez Contract Services were employed on-site at the Troy, Michigan location of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division.

The Department has determined that these workers were sufficiently under the control of Delphi Corporation, Corporate Headquarters, and Product & Service Solutions Division to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production of prototype automotive parts to Mexico.

Based on these findings, the Department is amending this certification to include workers leased from Gonzalez Contract Services working on-site at the Troy, Michigan location of the subject firm.

The amended notice applicable to TA–W–65,019 is hereby issued as follows:

All workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, including on-site leased workers from Aerotek, Bartech, Securitas Security, Rapid Global Business System, Inc. (RGBSI) and Gonzalez Contract Services, Troy, Michigan, who became totally or partially separated from employment on or after January 27, 2008, through January 30, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 21st day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23907 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,675]

Procter and Gamble Hair Care, LLC, a Subsidiary of Procter and Gamble Including On-Site Leased Workers From Staff Management, Seaton Corp., Horizon Staffing and Hewlett-Packard Company, Stamford, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 29, 2008, applicable to workers of Procter and Gamble Hair Care, LLC, a subsidiary of Procter and Gamble, Stamford, Connecticut. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4463). The certification was amended on January 15, 2009 to include on-site leased workers from Staff Management, Seaton Corp. and Horizon Staffing. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5868–5869).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hair colorants.

New information shows that a worker, leased from Hewlett-Packard Company, was employed on-site at the Stamford, Connecticut location of Procter and Gamble Hair Care, LLC, a subsidiary of Procter and Gamble. The Department has determined that this worker was sufficiently under the control of Procter and Gamble Hair Care, LLC to be considered a leased worker.

Based on these findings, the Department is amending this certification to include a worker leased from Hewlett-Packard Company working on-site at the Stamford, Connecticut, location of the subject firm.

The intent of the Department's certification is to include all workers employed at Procter and Gamble Hair Care, LLC, a subsidiary of Procter and Gamble, Stamford, Connecticut, who were adversely affected by a shift in production of hair colorants to Mexico.

The amended notice applicable to TA–W–64,675 is hereby issued as follows:

All workers of Procter and Gamble Hair Care, LLC, a subsidiary of Procter and Gamble, including on-site leased workers from Staff Management, Seaton Corp., Horizon Staffing, and Hewlett-Packard Company, Stamford, Connecticut, who became totally or partially separated from employment on or after December 12, 2007 through December 29, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23906 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,401]

Qimonda 200MM Facility Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA-Tencor Craftcorps, Inc., Colonial Webb, Novellus Systems, Inc., and ASML US, INC. and Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG, Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200MM Facility, Sandston, Virginia. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914). The certification was amended on February 10, 2009, March 3, 2009, March 31, 2009, June 12, 2009, July 21, 2009 and August 7, 2009 to include on-site leased workers of Tokyo Electron America, Nikon Precision, Ebara Technologies, Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA/Tencor, Craftcorps, Inc., Colonial Webb, and Novellus Systems, Inc. and Qimonda North America Corp., Qimonda Richmond, an on-site subsidiary of the subject firm. These notices were published in the **Federal Register** on February 23, 2009 (74 FR 8111), March 11, 2009 (74 FR 10619), April 7, 2009 (74 FR 15752), June 24, 2009 (74 FR 30112), July 30, 2009 (74 FR 38046), and August 26, 2009 (74 FR 43157–43158).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

The company reports that workers leased from ASML US, Inc. were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from ASML US, Inc. working on-site at the Sandston, Virginia location of the subject firm.

The intent of the Department's certification to include all workers employed at Qimonda 200MM Facility, Sandston, Virginia who were adversely affected by a shift in production to a foreign country followed by increased imports of articles like or directly competitive with DRAM semiconductor wafers produced by the subject firm.

The amended notice applicable to TA–W–64,401 is hereby issued as follows:

All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA–Tensor, Craftcorps, Inc., Colonial Webb, Novellus Systems, Inc., and ASML US, Inc., and including on-site workers of Qimonda North America Corp., Qimonda Richmond, a subsidiary of Qimonda AG, Sandston, Virginia, who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23905 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,990]

Whirlpool Corporation, Oxford Division, Including On-Site Leased Workers From Vend-A-Snack Inc., Willstaff, Inc., Cobra Security Inc., Tri-Star Companies Inc., Cross Gate Services, Inc., Impact Business Group, and CJ Industrial Supply, Oxford, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 1, 2008, applicable to workers of Whirlpool Corporation, Oxford Division, Oxford, Mississippi, including on-site leased workers from Vend-A-Snack, Willstaff, Cobra Security, Tri-Star Companies, Inc., and Cross Gate Services, Inc. The notice was published in the **Federal Register** on October 20, 2008 (73 FR 62322).

Additionally, the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 8, 2009, applicable to workers of Whirlpool Corporation, Oxford Division, Oxford, Mississippi, including on-site leased workers from Vend-A-Snack, Willstaff, Cobra Security, Tri-Star Companies, Inc., Cross Gate Services, Inc., and iMPact Business Group. The notice was published in the **Federal Register** on April 16, 2009 (74 FR 17694).

The Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cooking products (household ovens, stove tops, and microwaves).

New information shows that workers leased from CJ Industrial Supply were employed on-site at the Oxford, Mississippi location of Whirlpool Corporation, Oxford Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from CJ Industrial Supply working on-site at the Oxford, Mississippi location of the subject firm.

The intent of the Department's certification is to include all workers employed at Whirlpool Corporation, Oxford Division, Oxford, Mississippi who were adversely affected by a shift in production of cooking products to Mexico.

The amended notice applicable to TA–W–63,990 is hereby issued as follows:

All workers of Whirlpool Corporation, Oxford Division, Oxford, Mississippi, including on-site leased workers from Vend-A-Snack, Willstaff, Cobra Security, Tri-Star Companies, Inc., Cross Gate Services, Inc., iMPact Business Group, and CJ Industrial Supply, who became totally or partially separated from employment on or after September 4, 2007 through October 1, 2010,

are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23904 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,939]

Hewlett Packard Inkjet and Web Solutions Division Including On-Site Leased Workers From CDI, Manpower, Securitas Security Services USA, Volt, Cable Consultants, D/B/A Black Box Network Services, Managed Business Solutions, 888 Consulting Group, Inc., D/B/A TAC Worldwide, Finesse Personnel, Techlink Systems, Inc., and Lyonbridge, Corvallis, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 19, 2008, applicable to workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA and Volt, Corvallis, Oregon. The notice was published in the **Federal Register** on October 3, 2008 (73 FR 57682). The certification was amended on December 4, 2008 and February 20, 2009 to include on-site leased workers from Cable Consultants, d/b/a Black Box Network Services, Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide. The notices were published in the **Federal Register** on December 15, 2008 (73 FR 76058) and March 4, 2009 (74 9431–9432).

At the request of State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of inkjet supplies, particularly in jet printer cartridge heads.

New information shows that workers leased from Finesse Personnel, Techlink Systems, Inc. and Lyonbridge were employed on-site at the Corvallis, Oregon location of Hewlett Packard, Inkjet and Web Solutions Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Finesse Personnel, Techlink Systems, Inc. and Lyonbridge working on-site at the Inkjet and Web Solutions Division, Corvallis, Oregon location of the subject firm.

The amended notice applicable to TA–W–63,939 is hereby issued as follows:

All workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA, Volt, Managed Business Solutions, 888 Consulting Group, Inc., d/b/a TAC Worldwide, Finesse Personnel, Techlink Systems, Inc. and Lyonbridge, Corvallis, Oregon, engaged in the production of inkjet supplies, who became totally or partially separated from employment on or after August 26, 2007, through September 19, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23903 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for New Mexico

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for New Mexico.

The following change has occurred since the publication of the last notice regarding New Mexico's EB status:

• New Mexico's TUR for July 2009, released on August 21, 2009, by the Bureau of Labor Statistics, brought its three-month average seasonally adjusted TUR to the threshold for triggering ''on'' to an extended benefit period. For weeks of unemployment beginning on September 6, 2009, eligible unemployed workers will be able to collect up to an additional 13 weeks of unemployment insurance benefits.

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)). Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 29th day of September 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–23885 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for

adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/24/09 and 8/28/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72102	E.R. Wagner Manufacturing Company, Casters and Wheels Division (Comp).	Hustisford, WI	08/24/09	08/21/09
72103	Terex, LLC (State)	Cedar Rapids, IA	08/24/09	08/21/09
72104	Smithfield (Wkrs)	Elon College, NC	08/24/09	08/20/09
72105	Oclars, Inc. (Wkrs)	Tuscon, AZ	08/24/09	08/21/09
72106	Sinteite Furnace Division/Gasbarre Products, Inc. (Wkrs)	St. Mary's, PA	08/24/09	08/15/09
72107	Kuka Assembly and Test Corp. (Wkrs)	Fenton, MI	08/25/09	08/18/09
72108	Crown Group (Wkrs)	Port Huron, MI	08/25/09	08/24/09
72109	Tyco Electronics Corporation, Global Application Tooling Division (Comp).	Mount Sidney, VA	08/25/09	08/24/09
72110	JR Engineering (Wkrs)	Barberton, OH	08/25/09	08/22/09
72111	Fuzion Technologies, Inc. (Comp)	Adrian, PA	08/25/09	07/29/09
72112	Micro Motion Inc. (Wkrs)	Boulder, CO	08/25/09	07/17/09
72113	Imerys Clays (Wkrs)	Sandersville, GA	08/25/09	08/25/09
72114	Furniture Brands—Thomasville P #9 (Wkrs)	Hickory, NC	08/25/09	08/12/09
72115	Emerson Climate Technologies (Comp)	St. Louis, MO	08/25/09	08/18/09
72116	RCO Engineering, Inc. (Comp)	Roseville, MI	08/25/09	08/25/09
72117	Manitowoc Cranes (Union)	Manitowoc, WI	08/25/09	08/24/09
72118	Whitey's Inc. (Comp)	Mansfield, OH	08/25/09	08/24/09
72119	CTC/Ford Motor Company (Wkrs)	Dearborn, MI	08/25/09	08/24/09
72120	Vanguard Furniture (Wkrs)	Conover, NC	08/25/09	08/14/09
72121	General Motors (Wkrs)	Warren, MI	08/25/09	08/14/09
72122	The Dial Company (Wkrs)	St. Louis, MO	08/25/09	08/07/09
72123	MKS (Wkrs)	Rochester, NY	08/25/09	08/01/09
72124	Joy Ranch, Inc. (Comp)	Woodlawn, VA	08/25/09	08/10/09
72125	Manitowoc Crane Group (Union)	Port Washington, WI	08/26/09	08/25/09
72126	Medtronic (Wkrs)	Tempe, AZ	08/26/09	08/24/09
72127	Wintersleiger, Inc. (Comp)	Colwich, KS	08/26/09	08/25/09
72128	Samsung Austin Semiconductor (Comp)	Austin, TX	08/26/09	08/26/09
72129	Hampton Lumber Mills-Washington, Inc. (Comp)	Morton, WA	08/26/09	08/25/09
72130	Sanoh-America, Inc. (Wkrs)	Findlay, OH	08/26/09	08/21/09
72131	Phillips Van Heusen Corp. (Wkrs)	Schuylkui haven, PA	08/26/09	08/25/09
72132	Plastic Engineering (State)	Sheboygan, WI	08/26/09	08/25/09
72133	North American Pulp Molding (State)	Haynesville, LA	08/26/09	08/25/09
72134	General Electric (Wkrs)	Winchester, VA	08/26/09	08/19/09
72135	IACNA (Wkrs)	Strasburg, VA	08/26/09	08/13/09
72136	EME Corporation (Comp)	Burkesville, KY	08/26/09	08/25/09
72137	DHL Express (Union)	Romulus, MI	08/26/09	08/24/09
72138	Manitowoc Ice (Union)	Manitowoc, WI	08/26/09	08/24/09
72139	EDS, an HP COmpany (Comp)	Auburn Hills, MI	08/27/09	08/26/09
72140	Par SpringerMiller Systems (Wkrs)	Stowe, VT	08/27/09	08/18/09
72141	CR Laine Furniture Company (Wkrs)	Newton, NC	08/27/09	08/20/09
72142	Drake Manufacturing Services Co. (Comp)	Warren, OH	08/27/09	08/26/09
72143	Parker Hannifio Hydrolic Cartridge Systems Division (Comp)	Chanhassen, MN	08/27/09	08/26/09
72144	Cummins Filtration (State)	Lake Mills, IA	08/27/09	08/26/09
72145	HSBC Beneficial (State)	Dubois, PA	08/27/09	08/26/09
72146	Dassault Systems Americas Corp. (Comp)	Woodland Hills, CA	08/27/09	08/25/09
72147	Vantec, Inc (State)	Webster City, IA	08/27/09	08/26/09
72148	Spansion (Wkrs)	Sunnyvale, CA	08/27/09	08/26/09
72149	Knight Celotex (Wkrs)	Lisbon Falls, ME	08/27/09	08/22/09
72150	DAO Operations Manufacturing (Wkrs)	Round Rock, TX	08/28/09	08/24/09
72151	UPF, Inc. (Comp)	Flint, MI	08/28/09	08/27/09
72152	Marvel (Union)	Richmond, IN	08/28/09	08/26/09
72153	MedQuist (State)	Mount Laurel, NJ	08/28/09	08/27/09
72154	Elcam Inc. (Wkrs)	St. Marys, PA	08/28/09	08/27/09
72155	McKinney Products Company (Wkrs)	Scranton, PA	08/28/09	08/27/09

APPENDIX—Continued

[TAA petitions instituted between 8/24/09 and 8/28/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72156	Metal Technologies (Union)	West Allis, WI	08/28/09	08/27/09
72157	Risdon International Inc. (Comp)	Laconia, NH	08/28/09	08/27/09
72158	Vital Diagnostics Inc. (Comp)	Brea, CA	08/28/09	08/27/09
72159	Caterpillar (Wkrs)	Sumter, SC	08/28/09	08/27/09
72160	Rogim & Hexas/Dow Advanced Materials (Wkrs)	Philadelphia, PA	08/28/09	08/27/09
72161	Hokumo America Corporation (Wkrs)	Bardentown, KY	08/28/09	08/18/09
72162	SDE Business Partnering (Wkrs)	Troy, MI	08/28/09	08/11/09

[FR Doc. E9–23914 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of September 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/31/09 and 9/4/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72163	Direct Brands, Inc. (Wkrs)	Indianapolis, IN	08/31/09	08/28/09
72164	L&W Murfreesboro, LLC (Comp)	Murfreesboro, TN	08/31/09	08/28/09
72165	Norbord Industries, Inc. (Comp)	Deposit, NY	08/31/09	08/28/09
72166	Gera Tool and Die Inc. (Wkrs)	St. Marys, PA	08/31/09	08/28/09
72167	Shorewood Packaging (Comp)	Newport News, VA	08/31/09	08/25/09
72168	Dimensions, Inc (Comp)	Reading, PA	08/31/09	08/21/09
72169	NuTec Tooling Systems, Inc. (Comp)	Meadville, PA	08/31/09	08/28/09
72170	Bombardier Learjet (Union)	Wichita, KS	08/31/09	08/26/09
72171	Hawker Beechcraft—Wichita & Salina, KS (Union)	Wichita, KS	08/31/09	08/27/09
72172	Cessna Aircraft Company (Union)	Wichita, KS	08/31/09	08/26/09
72173	Reliant Machine, Inc. (Wkrs)	Green Bay, WI	08/31/09	08/27/09
72174	Johnson Controls, Inc. (Comp)	Roanoke, VA	08/31/09	08/28/09
72175	Gerdau Ameristeel (Wkrs)	Sand Springs, OK	08/31/09	08/28/09
72176	Boeing Integrated Defense Systems, Inc. (Union)	Wichita, KS	08/31/09	08/25/09
72177	Heus Mfg. LLC and EHR Enterprises (53042)	New Holstein, NE	08/31/09	08/19/09
72178	Mullen Industries (Wkrs)	St. Clair, MO	09/01/09	08/31/09
72179	Licking County Department of Job & Family Service (Comp)	Newark, OH	09/01/09	08/25/09
72180	Philips Medical Systems (Wkrs)	Reedsville, PA	09/01/09	09/01/09
72181	National Payment Network (Wkrs)	El Segundo, CA	09/01/09	08/21/09
72182	Worthington Steel-Monroe (Wkrs)	Monroe, OH	09/01/09	08/15/09
72183	Chicago & Midwest Regional Joint Board (Union)	Chicago, IL	09/01/09	08/31/09
72184	ABB Inc. (Comp)	Lake Mary, FL	09/01/09	08/31/09
72185	GHS Corporation (State)	Battle Creek, MI	09/01/09	08/31/09
72186	Lebanon Apparel Corp. (Wkrs)	Lebanon, VA	09/01/09	08/31/09
72187	Accuride Cuyahoga Falls (Wkrs)	Evansville, IN	09/01/09	08/31/09
72188	Dolphin Inc. (Wkrs)	Phoenix, AZ	09/01/09	08/25/09
72189	D.M.E. (Wkrs)	Youngwood, PA	09/01/09	08/14/09
72190	Electronic Data Systems (State)	Plano, TX	09/02/09	09/01/09
72191	Carolina Glove Co. (Wkrs)	Wilkesboro, NC	09/02/09	08/24/09
72192	Delphi Packard Mississippi Operations (Comp)	Brookhaven, MS	09/02/09	08/27/09
72193	Coherent, Inc (Comp)	Santa Clara, CA	09/02/09	09/01/09

APPENDIX—Continued

[TAA petitions instituted between 8/31/09 and 9/4/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72194	Pendleton Woolen Mills (Union)	Washougal, WA	09/02/09	08/24/09
72195	Experian (Wkrs)	Costa Mesa, CA	09/02/09	09/01/09
72196	Wheeling LaBelle Nail Company (Union)	Wheeling, WV	09/02/09	09/01/09
72197	Manpower Inc. (Wkrs)	Harrisburg, PA	09/02/09	08/30/09
72198	Paulstra CRC (Union)	Grand Rapids, MI	09/02/09	09/01/09
72199	Littelfuse LP (Comp)	Irving, TX	09/02/09	09/01/09
72200	VP Buildings (Wkrs)	Kernersville, NC	09/02/09	08/20/09
72201	Metaldyne (Auth)	Whitsett, NC	09/02/09	09/01/09
72202	Ideal Clamp Products, Inc. (Comp)	St. Augustine, FL	09/02/09	08/28/09
72203	Georgino Industrial Supply Inc. (Wkrs)	Penfield, PA	09/02/09	09/01/09
72204	Ayrshire Electronics (State)	Williamsburg, KY	09/03/09	08/25/09
72205	Charles Conkle Motor Company, Inc. (Wkrs)	Kokomo, IN	09/03/09	08/31/09
72206	Engineering Design and Sales, Inc. (EDS) (Comp)	Danville, VA	09/03/09	09/02/09
72207	General Electric Ohio Lamp Plant (IUECWA)	Warren, OH	09/03/09	08/15/09
72208	General Motors Moraine Assembly (Wkrs)	Moraine, OH	09/03/09	09/02/09
72209	JD Norman Industries, Inc. (Wkrs)	Addison, IL	09/03/09	08/31/09
72210	Mitchell Gold-Bob Williams (Wkrs)	Taylorsville, NC	09/03/09	09/02/09
72211	Unisia Steering Systems, Inc. (Comp)	Oakwood, GA	09/03/09	09/02/09
72212	General Motors (Wkrs)	Bowling Green, KY	09/03/09	08/31/09
72213	Yale Lift-Tech Division of Columbus Mckinnon Corp (Comp)	Muskegan, MI	09/04/09	09/03/09
72214	RIB Lake Plywood, Inc (Wkrs)	Rib Lake, WI	09/04/09	09/04/09
72215	Kmart Store #4422 (Wkrs)	South Point, OH	09/04/09	08/27/09
72216	Gwynn Lumber & Reload Inc. (Comp)	Eureka, MT	09/04/09	09/02/09
72217	SAES Getters America, Inc. (Comp)	Cleveland, OH	09/04/09	09/02/09
72218	SOMA Networks (Wkrs)	San Francisco, CA	09/04/09	08/31/09
72219	USF Holland (State)	Jackson, MI	09/04/09	09/03/09
72220	Eco Lab (Wkrs)	Hebron, OH	09/04/09	08/26/09
72221	AEES Platinum Equity (Comp)	San Antonio, TX	09/04/09	08/24/09
72222	Y.R.C. (State)	Richfield, OH	09/04/09	09/03/09
72223	Axle Tech International (Wkrs)	Oshkosh, WI	09/04/09	08/31/09
72224	Akzo Nobel Inc. (Wkrs)	High Point, NC	09/04/09	08/14/09
72225	Tube City, IMS (State)	Cuyahoga Heights, OH	09/04/09	09/03/09

[FR Doc. E9–23913 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (NAETC), as constituted under WIA.

DATES: The meeting will begin at 9 a.m. (Eastern Time) on Monday, November 2, 2009, and continue until 4:30 p.m. that day. The meeting will reconvene at 1:30 p.m. on Tuesday, November 3, 2009, and adjourn at 5 p.m. that day. The period from 2:30 p.m. to 4:30 p.m. on November 3, 2009 will be reserved for participation and presentations by members of the public.

ADDRESSES: The meetings will be held at the Brown Hotel, 335 West Broadway, Louisville, Kentucky 40202.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public not present may submit a written statement on or before October 30, 2009, to be included in the record of the meeting. Statements are to be submitted to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) U.S. Department of Labor, Indian and Native American Program Update; (2) PY 2009–PY 2010 Strategic Planning; (3) Training and Technical Assistance; (4) Community of Practice; (5) 2010 Census; (6) Native American and Employment Training Council Workgroup Reports; (7) Council Update; and (8) Council Recommendations.

FOR FURTHER INFORMATION CONTACT: Mrs. Evangeline M. Campbell, DFO, Indian and Native American Program, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 29th day of September 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–23918 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,089]

Glenn Springs Holdings, Inc., a Subsidiary of Occidental Petroleum Corporation, New Castle, DE; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 19, 2009, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 24, 2009 and published in the **Federal Register** on September 2, 2009 (74 FR 45478).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Glenn Springs Holdings, Inc., a subsidiary of Occidental Petroleum Corporation, New Castle, Delaware was based on the finding that imports of services like or directly competitive with services provided by workers of the subject firm did not contribute to worker separations at the subject firm during the relevant period. The investigation revealed that workers of the subject firm were engaged in refining facility's water, removing sludge from machines, repairing the building's electrical system, distributing the anhydrous potassium hydroxide and closing the facility. The subject firm did not import nor acquire services from a foreign country and also did not shift the provision of these services to a foreign country.

In the request for reconsideration, the petitioner stated that workers of the subject firm were previously certified eligible for TAA based on increased imports of chlorine. The petitioner further stated that even though production of chlorine did not occur at the subject facility in the relevant period, workers of the subject firm were retained by the subject firm to effectively close the plant. The petitioner appears to allege that because workers of the subject firm were previously certified eligible for TAA and the workers of the current petition were the part of that worker group but stayed employed beyond the expiration date of the previous certification, the workers of the subject firm should be granted another TAA certification.

The workers of Glenn Springs Holdings, Inc., a subsidiary of Occidental Petroleum Corporation, New Castle, Delaware were previously certified eligible for TAA under petition numbers TA–W–58,508, which expired on January 12, 2008. The investigation revealed that at that time workers of the subject firm were engaged in production of chlorine and the employment declines at the subject facility were attributed to increased imports of chlorine. However, the current investigation revealed that production of chlorine at the subject firm ceased during November 2007.

When assessing eligibility for TAA, the Department exclusively considers worker activities during the relevant time period (from one year prior to the date of the petition). Therefore, events occurring in 2007 are outside of the relevant period and are not considered in this investigation.

The investigation revealed that workers of the subject firm were engaged in refining facility's water, removing sludge from machines, repairing the building's electrical system, distributing the anhydrous potassium hydroxide and closing the facility during the relevant period. These functions, as described above, were not imported, or shifted abroad nor were the service acquired from a foreign country during the relevant period. Therefore, criteria II.A. and II.B. of Section 222(a) of the Act were not met. Furthermore, with the respect to Section 222(c) of the Act, the investigation revealed that criterion 2 was not met because the workers did not supply a service that was used by a firm with TAA-certified workers in the production of an article or supply of a service that was a basis for TAA certification.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23910 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. L–11566]

Notice of Proposed Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption.

This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the UAW Chrysler Retiree Medical Benefits Plan (the New Chrysler VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) (collectively the VEBA).[1] The proposed exemption, if granted, would affect the VEBA, its participants and beneficiaries.

Effective Date: If granted, this proposed exemption will be effective as of June 10, 2009.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption

[1] Because the New Chrysler VEBA Plan will not be qualified under section 401 of the Internal Revenue Code of 1986, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application No. L–11566. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *chrysler@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski or Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8566. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of ERISA. The proposed exemption has been requested in an application filed by New Chrysler pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

Summary of Facts and Representations[2]

The Applicant

Prior to filing for bankruptcy protection under chapter 11 of Title 11 of the United States Code (the Bankruptcy Code) on April 30, 2009, Chrysler LLC (Chrysler LLC), a Delaware limited liability company, was an American automobile manufacturer headquartered in Auburn Hills, Michigan, first organized as Chrysler Corporation in 1925. Chrysler LLC manufactured, assembled, and sold cars, trucks, and related automotive parts and accessories primarily in the United States, Canada, and Mexico. It supplied passenger cars, SUVs, sports tourers, minivans, and pickups. The company also purchased and distributed passenger cars manufactured by Mitsubishi Motor Manufacturing of America. Prior to filing for bankruptcy protection, Chrysler LLC employed approximately 55,000 hourly and salaried employees worldwide, about 70% of whom were based in the United States. As of the date of the exemption application filing, Chrysler LLC had 32 manufacturing and assembly facilities, 23 of which (or 69% of the vehicle production) are located in the United States, and 24 parts depots, 20 of which are in this country. Chrysler's business interests touched all 50 states, as well as Canada, Mexico, Europe and Asia. Chrysler LLC has an expansive dealer network, with over 3,200 dealerships in the United States selling Chrysler cars and trucks (or 60% of the global dealer network). Seventy-two percent of Chrysler LLC's sales were in the United States, and it purchased 78% of its parts and materials from U.S.-based suppliers. For the twelve months ended December 31, 2008, Chrysler LLC recorded revenue of more than $48.5 billion and had assets of approximately $39.3 billion and liabilities totaling $55.2 billion. During the same period, Chrysler LLC had a net loss of approximately $16.8 billion.

From 1998 to 2007, Chrysler and its subsidiaries were part of the German based DaimlerChrysler AG (now Daimler AG). Under DaimlerChrysler, the company was named ''DaimlerChrysler Motors Company LLC'', with its U.S. operations generally referred to as the ''Chrysler Group''. On May 14, 2007, DaimlerChrysler announced the sale of 80.1% of Chrysler Group to American private equity firm Cerberus Capital Management, L.P., with Daimler continuing to hold a 19.9% stake. The deal was finalized on August 3, 2007, and upon completion of the sale, the company was renamed Chrysler LLC. On April 27, 2009, Daimler AG signed a binding agreement to give up its 19.9% remaining stake in Chrysler LLC to Cerberus Capital Management and pay as much as $600 million into the automaker's pension fund.

On May 31, 2009, in the course of the bankruptcy proceeding (the Bankruptcy Proceeding), the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court) issued an opinion granting Chrysler LLC's motion for authority to sell, pursuant to section 363 of the Bankruptcy Code, substantially all of its assets to an entity called New Chrysler (New Chrysler).[3] New Chrysler is a Delaware limited liability company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A (Fiat). New Chrysler expects to remain headquartered in Auburn Hills, Michigan, and expects to employ most of Chrysler's approximately 55,000 hourly and salaried employees worldwide, 70% or 38,500 of whom were based in the United States and still manufactures, assembles, and sells cars, trucks, and related automotive parts and accessories in the United States, Europe, Canada, and Mexico. Pursuant to the UAW Retiree Settlement Agreement between New Chrysler and the UAW (the Settlement Agreement), the UAW Chrysler Retiree Medical Benefits Plan (the New Chrysler VEBA Plan) will be established to provide retiree medical benefits to certain Chrysler-UAW represented employees and retirees, and their spouses and dependents.[4]

Background

Throughout much of 2007, Chrysler LLC and the UAW engaged in extended discussions concerning the impact of rising health care costs on Chrysler LLC's financial condition. During these discussions, Chrysler LLC asserted that it had the right to unilaterally modify the retiree health benefits under the Chrysler Health Care Program for Hourly Employees and that, if no agreement was reached to address the economic burden of its retiree health obligation, Chrysler LLC would do so unilaterally. The UAW disagreed with Chrysler LLC's position and asserted that retiree benefits were vested and that Chrysler LLC did not have the right to modify them unilaterally. In 2007, the UAW along with respective class representatives of plaintiff class members in *UAW* v. *Chrysler LLC* (the ''English'' Case) filed a lawsuit challenging Chrysler LLC's position and sought a permanent injunction prohibiting such termination or modification. After an extensive review by the UAW and Class Counsel (Class Counsel) of Chrysler LLC's ability to continue providing retiree health care benefits, the parties entered into a Settlement Agreement (English Settlement Agreement) on March 30, 2008, providing, among other things,

[2] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department.

[3] *In re* Chrysler LLC, *et al.,* No. 09B 50002 (Document 3073), slip op. (Bankr. S.D.N.Y. May 31, 2009).

[4] Specifically, the New Chrysler VEBA Plan will provide retiree medical benefits to members of the ''Class'' and the ''Covered Group'' as defined in the Settlement Agreement and in Section VI. of this exemption.

that Chrysler LLC transfer responsibility and funding for retiree health care benefits to a voluntary employee benefits association.[5]

The English Settlement Agreement provided that on the later of January 1, 2010, or final court approval of the Settlement Agreement, Chrysler LLC would continue to provide retiree medical benefits for class members, known as the ''Covered Group'', under the old Chrysler Plan and would transfer certain assets to the VEBA Trust to provide the Class and Covered Group with post-retirement medical benefits. The English Settlement Agreement modified existing retiree medical benefits and Chrysler LLC was obligated to provide benefits until January 1, 2010, and then funding of the benefits would be shifted to the VEBA Trust. Under the English Settlement Agreement, Chrysler LLC's obligation to provide post-retirement medical benefits to the Class and Covered Group would be terminated. The Trust would be established and maintained not by Chrysler LLC, but by an employees' beneficiary association consisting of the population described in the English Settlement Agreement and administered by an independent committee (''Committee''). A Plan, to be funded exclusively through the VEBA Trust, would be solely responsible for the payment of post-retirement medical benefits to members of the Class and Covered Group on and after January 1, 2010.

In September of 2008, a sharp downturn in sales significantly affected Chrysler LLC. Soon thereafter, Chrysler LLC focused its attention on acquiring a merger partner, but talks were put on hold while the company sought government funds to prevent bankruptcy. In December of 2008, Chrysler LLC received a $4 billion loan from the United States Treasury Department to fund their operations through the liquidity crunch. At the same time that Chrysler LLC was pursuing government assistance, it continued its efforts to secure a strategic partner that could assist it in achieving its long-term viability goals. Pursuant to the terms of the loan, Chrysler LLC was required to submit a plan showing that it was able to achieve and sustain long-term viability, energy efficiency, rationalization of costs and competitiveness in the U.S. marketplace, which would indicate Chrysler LLC's ability to repay the financing.

These long-term production goals led Chrysler LLC to announce that they were going to form a global alliance with Fiat S.p.A. On January 20, 2009, Fiat and Chrysler LLC announced that they had a non-binding term sheet to form a global alliance. Under the terms of the potential agreement, Fiat could take a 35% stake in Chrysler LLC and gain access to its North American dealer network in exchange for providing Chrysler LLC with the platform to build smaller, more fuel-efficient vehicles in the US and reciprocal access to Fiat's global distribution network. Fiat is an Italian automobile manufacturer, engine manufacturer, and financial and industrial group based in Turin. As of 2009, Fiat is the world's 6th largest carmaker as well as Italy's largest carmaker.

Bankruptcy

In light of deteriorating market conditions and a growing liquidity crisis that would make it impossible for Chrysler LLC to continue operations, Chrysler LLC and 26 of its domestic direct and indirect subsidiaries, filed a bankruptcy action under chapter 11 of Title 11 of the United States Code (the ''Bankruptcy Code'') on April 30, 2009 with the Bankruptcy Court and announced a plan for a partnership with Italian automaker Fiat.[6] As noted previously, the Bankruptcy Court approved a sale under Section 363 of Title 11 of the U.S. Code by which New Chrysler succeeded to certain assets and liabilities of Chrysler LLC (''Section 363 Sale''). The Bankruptcy Court also approved the Modified Settlement Agreement. The section 363 Sale closed, and the Modified Settlement Agreement was executed, on June 10, 2009. The assets in the Section 363 Sale were sold free and clear of liens, claims, interests, and encumbrances.

Through the Bankruptcy Proceeding, New Chrysler acquired certain core assets from Chrysler LLC in exchange for the assumption of certain liabilities of Chrysler LLC and a cash payment to Chrysler LLC pursuant to the Master Transaction Agreement, dated as of April 30, 2009 as subsequently amended (collectively with other ancillary and supporting documents, the ''MTA'').

Pursuant to the MTA, Chrysler LLC transferred substantially all of its operating assets to New Chrysler, and in exchange for those assets, New Chrysler assumed certain liabilities of Chrysler LLC and paid Chrysler LLC $2 billion in cash. New Chrysler is jointly owned by Fiat, the US Treasury, the Governments of Canada and Ontario (the Canadian Government) and the VEBA Trust. The transaction is expected to strengthen New Chrysler's viability for the long term with access to Fiat's existing technology, including competitive platforms, powertrain, and vehicles to be produced at New Chrysler's manufacturing sites. The transaction is also expected to allow Fiat and New Chrysler to each take advantage of the other's distribution networks in key growth markets and to optimize fully their respective manufacturing footprint and global supplier base.

Pursuant to the Plan of Reorganization, New Chrysler, a Delaware limited liability company, was formed by Fiat North America, LLC, as an alliance entity[7] for the acquisition of the assets from Chrysler LLC generally free and clear of claims of Chrysler LLC's creditors.[8] Upon the closing of the sale, the government entities will hold 12.31% (The U.S. Treasury will hold 9.85% and the Canadian Government will hold 2.46%), the New Chrysler VEBA Plan will hold 67.69%, and Fiat will hold 20% of the total value of shares (the Shares). Upon reaching certain milestones, fully explained later in this exemption, Fiat's interest will increase to 35%, with the right to acquire an additional 16% by buying certain shares of New Chrysler. Fiat will not be able to get control of New Chrysler until the outstanding debts to

[5] In 2007 and 2009, Chrysler LLC agreed to provide certain retiree medical benefits specified in certain memoranda of understanding between Chrysler, the UAW and the class representatives. Chrysler LLC and the UAW, along with respective class representatives of plaintiff class members *in UAW* v. *Chrysler, LLC,* Civ. Act. No. 2:07–cv–14310 (E.D. Mich, complaint filed October 11, 2007) (the *''English''* Case) entered into a separate settlement agreement in 2007, which provided for Chrysler LLC to make certain deposits and remittances to the UAW Retiree Medical Benefits Trust for the provision of retiree medical benefits.

In light of the Bankruptcy Proceeding, the settlement in the *English* case is of no further effect. Although not a party to the Bankruptcy Proceeding or the Modified Settlement Agreement described in this exemption application, the firm of Stember, Feinstein, Doyle & Payne, LLC, as Class Counsel in the *English* case, was engaged to render an opinion on the fairness, from a financial point of view, of the consideration to be received by Chrysler LLC in connection with the sale of assets to New Chrysler (the Sale), and also to review the Modified Settlement Agreement described in this exemption application. Class Counsel concurs that it is fair, reasonable and in the best interest of the former class members, and supports the request by New Chrysler for an individual exemption request.

[6] In connection with the Bankruptcy Proceeding, Chrysler LLC's non-U.S. direct and indirect subsidiaries have not sought relief under chapter 11 of the Bankruptcy Code or any other insolvency laws. Chrysler LLC's Mexican, Canadian and other international operations are also not part of any bankruptcy filing.

[7] None of the debtor's equity holders received an interest in New Chrysler.

[8] See In Re Chrysler LLC, *et. al.,* Case No. 09B 50002 (Document 3073), slip op.(Bankr.S.D.N.Y. May 31, 2009)), the order authorizing the sale of substantially all of the debtor's assets free and clear of all liens, claims, interests, and encumbrances.

the U.S. Treasury and Canada are paid in full. After the Sale, New Chrysler became the new legal entity, Chrysler Group LLC. The claims of Chrysler LLC's unsecured creditors were not assumed by New Chrysler through the Bankruptcy Proceeding unless expressly provided for in the MTA. Among the claims that were not assumed by New Chrysler, was the obligation owed by Chrysler LLC to provide retiree medical benefits pursuant to the Memorandum of Understanding Post-Retirement Medical Care, dated October 12, 2007, between Chrysler and the UAW and the Memorandum of Understanding Post-Retirement Medical Care, dated April 29, 2009, between Chrysler and the UAW (together, the ''MOUs''), as well as the English Settlement Agreement reached in *UAW* v. *Chrysler, LLC,* Civ. Act. No. 2:07–cv–14310 (E.D. Mich. complaint filed October 11, 2007).

New Chrysler represents that the Bankruptcy Proceeding and related Sale are critical to the survival of the business previously conducted by Chrysler LLC. New Chrysler's emergence from bankruptcy was dependent on the achievement of a number of interrelated agreements among its creditors, lenders, interested government agencies, and unionized employees. To avoid the devastation to the global economy that would be caused if Chrysler's business were to fail, the governments of the United States, Canada, and the Province of Ontario have offered to fund a new venture, New Chrysler, that will combine substantially all of Chrysler LLC's core operating assets with advanced automotive technology, distribution, procurement capabilities, and management services of Fiat or its subsidiaries to create an ongoing viable automobile company. Under these extraordinary and urgent circumstances, the governments are prepared to subsidize the restructured New Chrysler to ensure that a viable automobile manufacturing industry remains in North America. Knowing how quickly New Chrysler's prospects could deteriorate, however, the governments have placed stringent conditions on their commitment. Those stringent conditions include the conditions related to the exemption transaction, which is an integral component of that larger picture.

The UAW asserted during the Bankruptcy Proceeding, and New Chrysler denied, that New Chrysler was bound by the MOUs as a successor to Chrysler LLC and that it was, therefore, responsible for providing the retiree medical benefits contemplated. After due consideration of the factual and legal arguments regarding this issue, as well as the costs, risks, and delays associated with litigating the issue, New Chrysler and the UAW agreed to enter into a settlement agreement, that was presented to the Bankruptcy Court for approval after notice was provided to affected parties. Ultimately, the Modified Settlement Agreement was approved by the Bankruptcy Court and the initial steps towards implementing the transactions that are at the heart of this application began to occur as contemplated in that agreement.

After several months of arms length negotiations, the UAW has asserted that, after due consideration of the issues involved and seeking to avoid protracted litigation on the matter, it entered into a Modified Settlement Agreement with New Chrysler under which New Chrysler agreed to provide retiree medical benefits to a defined group of current UAW retirees who were formerly employed by Chrysler LLC as well as a defined group of current active employees (once retired) of New Chrysler who are covered under a collective bargaining agreement between New Chrysler and the UAW (collectively, the ''Covered Group''). The medical benefit coverage for New Chrysler active employees prior to their retirement is not within the scope of this Modified Settlement Agreement and shall continue to be provided in accordance with the terms of the applicable collective bargaining agreement and health care benefit plan.

The Modified Settlement Agreement is another part of the complete and integrated arm's-length transactions involving multiple parties, including New Chrysler, Fiat, the Treasury Department, the Canadian Government, and the UAW. Throughout the 2009 negotiations over the terms of the Settlement Agreement, the parties engaged in extended discussions concerning the impact of rising health care costs on New Chrysler's financial viability. In this regard, the UAW has completed its due diligence utilizing professional financial and legal advisors with respect to the Modified Settlement Agreement and determined that it is fair, reasonable and in the best interest of the Covered Group.

On June 10, 2009, 41 days after filing for bankruptcy protection, the sale of most of Chrysler LLC's assets to New Chrysler was completed. As discussed in more detail below, Fiat will initially own a minority 20% stake of New Chrysler with the option of taking additional equity up to a 35% stake if certain operational and capitalization goals are achieved.

Ownership of New Chrysler

Following the bankruptcy proceeding and the sale of the assets from Chrysler LLC to New Chrysler, initial ownership of New Chrysler will be broken into two classes of membership interests, Class A (800,000 interests) and Class B (200,000 interests). Fiat will initially own the 200,000 Class B membership interests, representing 20% of the voting and economic interest of New Chrysler; the United States Treasury Department will own 98,461 Class A membership interests; the Canadian Government will together own 24,615 Class A membership interests, and the VEBA Trust will own 676,924 Class A membership interests (the Class A membership interests initially owned by the Trust are referred to herein as the ''Shares''), in each case, subject to the applicable terms and conditions described below.

Initially, the Class A and Class B membership interests generally are identical except that the Class B membership interests may ultimately represent a greater percentage of the outstanding equity interest in New Chrysler upon the occurrence of certain Class B events (discussed below). Fiat has several other options to acquire additional Class A membership interests (also discussed below) except that, until the U.S. Treasury loan and the Canadian loan to New Chrysler have been repaid in full, Fiat may not acquire additional membership interests if such exercise or acquisition would cause the total interest held by Fiat and its affiliates to exceed 49.9 percent. At a future date, the earlier of January 1, 2013, or the date of any New Chrysler Initial Public Offering (IPO), each outstanding Class B membership interest will be automatically converted to Class A membership interests, thereby reducing the Class B membership to zero.

Pursuant to the New Chrysler Operating Agreement (the Operating Agreement), beginning on June 10, 2009, and ending on December 31, 2012, the occurrence of three events (the ''Class B events'') would cause the value of Class B membership interests held by Fiat to increase by 5% for each event, thereby increasing Fiat's interest up to a maximum of 15% for all three events, without any new issuance of shares. The Class B events are as follows:

(1) If New Chrysler receives government approvals for the production of an engine based on the Fiat's fully integrated robotized engine family to be manufactured in the U.S. and delivers a commitment to begin commercial production of the engine as soon as commercially practicable;

(2) if New Chrysler records cumulative revenues reported in the quarterly financial statements in an amount specified in the New Chrysler Operating Agreement attributable to the company's sales made outside of the NAFTA Countries following the date of the Operating Agreement and if New Chrysler executes one or more franchise agreements covering in the aggregate at least 90% of the total Fiat group automobile dealers in Latin America pursuant to which such dealers will carry New Chrysler products;

(3) if New Chrysler receives ecological event governmental approvals for a car based on Fiat platform technology that has fuel efficiency measured by miles per gallon of at least 40 combined miles per gallon fuel economy and delivers a commitment to begin assembly in commercial quantities in a production facility located in the U.S. as soon as commercially practicable.

According to the terms of the Operating Agreement, in the event that Fiat determines that a Class B event has occurred prior to January 1, 2013, it must submit written notice to New Chrysler. After supplying written notice, such event shall be deemed to have irrevocably occurred unless the company supplies written notice of objection. If an objection is raised, then New Chrysler and Fiat will attempt in good faith to resolve the dispute. If no agreement is reached, then the parties will enter into binding arbitration. Accordingly, the 200,000 Class B membership interests held by Fiat will increase to thirty-five percent (35%) of the voting and economic interest of New Chrysler and the 800,000 Class A membership interests held by the Treasury Department, the Canadian Government and the VEBA Trust will be diluted to sixty-five percent (65%) of the voting and economic interest of New Chrysler.

On the earlier of January 1, 2013 or any New Chrysler IPO, each outstanding Class B membership interest will be exchanged for Class A membership interests in an amount such that the proportional interest of Fiat in New Chrysler is unchanged.

Alternative and Incremental Call Options

If one or more of the Class B events does not occur prior to January 1, 2013, Fiat will have the option beginning on January 1, 2013 and ending on June 30, 2016, to purchase from New Chrysler 5% of the Class A membership interests for each Class B event that has not occurred (the Alternative Call Option). The price will be calculated pursuant to a formula, the use of which depends upon whether or not New Chrysler has completed an IPO before Fiat exercises any call options, and which has been designed to approximate the fair market value of the interests at the time of exercise. Fiat additionally has the option to purchase from the Company Class A membership interests in an aggregate amount of up to 16% of the outstanding membership interests (the ''Incremental Call Option''). The time frame for Fiat to exercise this option is the same as for the Alternative Call Option (January 1, 2013 through June 30, 2016).

Call Option Agreement

Initially, New Chrysler will not be publicly traded, though there are mechanisms for the VEBA Trust to sell the Shares under certain conditions to other parties prior to New Chrysler becoming a publicly traded company. The VEBA Trust, Fiat, the Treasury Department and the Canadian Government agreed to provide Fiat with additional incentives to encourage Fiat to take action that will increase the aggregate value of the parties' investment in New Chrysler. Thus, in accordance with the Call Option Agreement, between July 1, 2012 and June 1, 2016, Fiat has the option to purchase from the VEBA Trust up to 40% of the VEBA Trust's equity interests in New Chrysler. These interests consist of the 676,924 Class A membership interests issued to the VEBA Trust by New Chrysler on closing, less any interests that the VEBA Trust has already disposed of under the Equity Recapture Agreement (as more fully discussed below) at the time of exercise. Fiat may purchase no more than 20% of such interests within any six-month period. Fiat's ability to exercise its rights under the Call Option Agreement is limited by the requirement that, until New Chrysler has repaid its loan from the United States Treasury and the Canadian Government in full, Fiat may not own more than 49.9% of the outstanding equity interests in New Chrysler.

The exercise price will be determined pursuant to a formula which is designed to arrive at the fair market value of the interests. The exercise price may be adjusted if, upon exercise, the VEBA Trust elects to transfer to Fiat interests in one or more entities through which, for tax and administrative purposes, the VEBA Trust holds membership interests (each such entity, a ''VEBA HoldCo'').[9] Transfer of VEBA HoldCo interests, rather than direct transfer of membership interests, would prevent Fiat from obtaining a step-up in tax basis. Thus, Fiat might be required to recognize additional gain upon a subsequent disposition, beyond any gain attributable to the period in which Fiat owns the membership interests. The Call Option Agreement provides for a reduction in price to compensate for this increased tax liability, offset by any positive tax attributes for Fiat (*e.g.,* net operating losses) caused by receiving interests in the VEBA HoldCo rather than membership interests directly. If Fiat, the VEBA, and the United States Treasury cannot agree on the amount of such an adjustment, each has a right to appoint an arbitrator to a panel of three arbitrators who will determine the amount of the adjustment.

First Offer Right and Equity Recapture Agreement

In addition to the Call Options, Fiat will have the first right to purchase all or a part of the Shares (the ''First Offer Right'') if a third party has offered to purchase some or all of the Shares beginning two (2) years after the Closing Date as defined in the New Chrysler Operating Agreement. When the Committee receives the proposed Sale offer after the start of the First Offer Right period, the Committee must issue written notice to Fiat, the Treasury Department, the Canadian Government, and New Chrysler stating its intention to sell some or all of the Shares, the number of such Shares, the price and terms the Committee proposes to be paid for such Shares, and other material terms of the proposed Sale (the ''First Notice''). For thirty (30) days after the issuance of the First Notice, Fiat will have the irrevocable non-transferable First Offer Right to purchase all or a portion of the Shares subject to the proposed Sale, at the price and under the terms and conditions of such proposed Sale.

Also under the New Chrysler Operating Agreement, at any time prior to an initial public offering of New Chrysler, holders of 75% of outstanding membership interests in New Chrysler may decide to transfer a majority of membership interests to a third party. In that event, those holders may also require all holders of membership interests to transfer their interests on the same terms and for the same consideration (the ''Drag-Along Right''). The VEBA Trust may elect to transfer membership interests directly or to transfer interests in one or more VEBA Holdcos; if the VEBA Trust transfers interests in VEBA Holdcos, then

[9] VEBA Holdco means one or more Delaware limited liability companies and/or corporations to which the VEBA Trust transferred all or part of the Membership Interests issued to the VEBA Trust pursuant to the Equity Subscription Agreement.

consideration paid the VEBA Trust pursuant to such a transaction would be adjusted for the same equitable tax-related factors described above under the Call Option Agreement. On behalf of the VEBA Trust, the Independent Fiduciary would negotiate in good faith with the New Chrysler Board of Directors (the ''Board'') over the amount of any adjustment in price resulting from the transfer of interests in a VEBA HoldCo. If the Board and the Independent Fiduciary could not come to an agreed-upon resolution, the Independent Fiduciary would appoint one of the three members of a board of arbitrators who would determine the amount of the adjustment. The second arbitrator would be appointed by the Board, and the third would be agreed upon by the Board and the Independent Fiduciary, or, failing such agreement, appointed by the administering authority for the American Arbitration Association.

In addition to the above-described agreements, and as a condition to the Treasury Department's agreement to provide financing for New Chrysler, the VEBA Trust has entered into a separate agreement with the Treasury Department referred to as an Equity Recapture Agreement. Under the terms of the Equity Recapture Agreement, if the VEBA realizes from the sale of the Shares a total value of more than the threshold amount of $4.25 billion, increased at nine percent (9%) per annum starting on January 1, 2010 (the ''Threshold Amount''), the VEBA agrees to pay to the Treasury Department the proceeds received in excess of the Threshold Amount plus any remaining Shares still held by the VEBA (the ''Contingent Value Right''). The nine percent (9%) per annum cap on the increase is derived from actuarial assumptions that were used to determine the amount of appreciation required to provide the anticipated benefits under the Plan. In addition, the Treasury Department has the right, at any time, to purchase all outstanding Shares held by the VEBA Trust for an amount equal to the Threshold Amount less the amount of any proceeds already received by the VEBA Trust in respect of any of the Shares. This right expires upon the earlier of its exercise and the VEBA Trust's surrender of all remaining New Chrysler interests held by the VEBA Trust to the Treasury Department.

If on December 31, 2014, December 31, 2016, or December 31, 2018, the VEBA Trust's Shares are not equal to the value of the Threshold Amount, and the VEBA Trust or a VEBA Trust-controlled affiliate continues to hold Shares, the VEBA Trust is obligated under the Equity Recapture Agreement to transfer a portion of such Shares to the Treasury Department. The value of the transferred Shares will equal a set percentage of the Black Scholes value of the Treasury Department's Contingent Value Right. The applicable percentages of the value of the Contingent Value Right to be transferred on each of December 31, 2014, December 31, 2016, and December 31, 2018, are 33%, 50%, and 100%, respectively. The amounts transferred on prior Interim Settlement Dates are subtracted from the amount to be transferred on each Interim Settlement Date.

The Black Scholes value of the Contingent Value Right will be determined using the following assumptions: (1) A Share price based on the average over the prior 60 days of trading; (2) a time to maturity equal to ten years, seven years, or five years, on December 31, 2014, December 31, 2016, and December 31, 2018, respectively; (3) an exercise price based on an implied future stock price equivalent to the Threshold Amount on the applicable maturity date; and (4) a risk free interest rate equal to the rate for a U.S. Treasury Note for a term equal to the assumed time to maturity.

If New Chrysler stock is not publicly traded on an Interim Settlement Date, the U.S. Treasury and the VEBA will each appoint an independent nationally recognized investment bank to conduct a separate appraisal of the value of the Contingent Value Right. If the separate appraisals yield values within 10% of each other, those values will be averaged. If the separate appraisals are more than 10% apart, the VEBA and the U.S. Treasury will appoint a third independent appraiser, whose determination will be averaged with the determination closest to that of the third independent appraiser.

Establishment of the New VEBA Plan and Trust

The Modified Settlement Agreement provides that, upon the ''Implementation Date'', the retiree medical benefit obligations to the ''Covered Group'' will become fixed and such obligations will be transferred to the New Chrysler VEBA Plan and the VEBA Trust, which has been established to fund benefits under the Plan. The New Chrysler VEBA Plan and the VEBA Trust shall, as of the Implementation Date, be the employee welfare benefit plan and trust that are exclusively responsible for all retiree medical benefits with respect to the Class and the Covered Group. The UAW Chrysler Retirees Employees Beneficiary Association, an employee organization within the meaning of section 3(4) of ERISA (''Chrysler Retiree EBA''), acting through the Committee, will establish and maintain the New Chrysler VEBA Plan, subject to ERISA, to provide retiree health benefits to the Class and Covered Group after the Implementation Date, which will be December 31, 2009. Prior to the Section 363 Sale, the Old Chrysler Plan provided retiree health benefits to the Class and the Covered Group; following the closing of the Section 363 Sale, the New Chrysler Plan (''New Chrysler VEBA Plan'') assumed responsibility for the provision of the benefits with respect to claims incurred on or before the Implementation Date. The New Chrysler VEBA Plan will be responsible for benefit claims incurred after the Implementation Date. It is anticipated that there will be approximately 120,000 participants and beneficiaries of the New Chrysler VEBA Plan beginning on January 1, 2010.

After the Implementation Date, the Committee will have sole responsibility to determine the scope and level of retiree health benefits available to the Class and Covered Group under the New Chrysler VEBA Plan. The Committee may raise or lower the level of retiree health care benefits available to the Class and Covered Group. In exercising its authority over benefit design, the Committee shall be guided by the principle that the New Chrysler VEBA Plan should provide substantial health benefits for the duration of the lives of all participants and beneficiaries in the Plan.

The UAW Chrysler Retirees EBA along with the UAW General Motors Company Retirees EBA and the UAW Ford Retirees EBA, each acting through the Committee, established the VEBA Trust on October 16, 2008. The VEBA Trust will be the funding source for the New Chrysler VEBA Plan. The VEBA Trust is the subject of a trust agreement between the trustee and the Committee, acting on behalf of the respective EBAs. The VEBA Trust is intended to be tax-exempt under section 501(c)(9) of the Internal Revenue Code, as amended, and, as a trust holding assets of plans subject to ERISA, will itself be subject to ERISA's fiduciary responsibility standards.

The VEBA Trust will have three separate retiree accounts, designed to segregate payments attributable to General Motors (GM), Ford, and Chrysler, pursuant to the terms of each company's settlement agreement with the UAW and each respective class. Each retiree account will be a separate, dedicated account, to be used for the sole purpose of funding benefits provided under the separate plans,

providing health benefits to the retirees of GM, Ford and Chrysler, and defraying the reasonable expenses of each plan. Each retiree account will contain a separate sub-account maintained to hold any employer security. Assets from one retiree account may not offset the liabilities or defray the expenses attributable to another retiree account. The VEBA Trust was structured in this way to allow for the pooled investment of assets and to provide economies of scale to the respective plans' investments, while maintaining a separate plan for each three retiree classes. Unless the Committee decides to establish segregated investment vehicles for specific separate retiree accounts, the assets of the separate retiree accounts, other than any employer security sub-account, will be invested on a pooled basis within the VEBA Trust (provided that the interest of each account remains separately accounted for).

The Modified Settlement Agreement itself contemplates three separate and distinct funding sources for the VEBA Trust: (1) Assets held under a pre-existing internal Chrysler VEBA (the ''Preexisting Internal VEBA'') that are attributable to the UAW retirees covered under the Modified Settlement Agreement—such assets were valued at $1,589,500,000 as of March 31, 2009, and those assets, plus the earnings thereon, are expected to be contributed to the VEBA Trust on or about January 1, 2010; (2) the Shares, which will represent sixty-seven and sixty-nine one-hundredths percent (67.69%) of the fully diluted ownership of New Chrysler as of the consummation of the Sale; and (3) a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the ''Note'') payable in fixed annual installments pursuant to the following schedule:

(i) Payment of $315 million on July 15, 2010
(ii) Payment of $300 million on July 15, 2011
(iii) Payment of $400 million on July 15, 2012
(iv) Payment of $600 million on July 15, 2013
(v) Payment of $650 million on July 15, 2014
(vi) Payment of $650 million on July 15, 2015
(vii) Payment of $650 million on July 15, 2016
(viii) Payment of $650 million on July 15, 2017
(ix) Payment of $823.8 million on July 15, 2018
(x) Payment of $823.8 million on July 15, 2019
(xi) Payment of $823.8 million on July 15, 2020
(xii) Payment of $823.8 million on July 15, 2021
(xiii) Payment of $823.8 million on July 15, 2022
(xiv) Final Payment of $827.1 million on July 15, 2023

The Shares and the Note were contributed to the VEBA Trust on the closing date of the Sale, which was June 10, 2009.

The Trustee, State Street Bank and Trust Company, shall hold the assets and income of the Trust in accordance with the terms of the New Chrysler VEBA Plan. According to the applicant, the Trustee has no discretionary authority with respect to the investment of assets held in the VEBA Trust, and must exercise its power in accordance with the instructions of the Independent Fiduciary with respect to any employer security, and in all other cases the instructions of the Committee or any investment manager that may be appointed by the Committee.[10] Subject to the direction of the Independent Fiduciary with respect to any employer security, the Trustee shall make payments from the VEBA Trust Fund to pay benefits under the Plans as directed by the Committee or its designee. According to the terms of the Trust agreement, the Trustee may be removed by the Committee at any time upon thirty (30) days' advance written notice.

The Committee

The Committee will serve as Plan Administrator and will be a named fiduciary of the New Chrysler VEBA Plan. The Committee will determine the benefits to be provided under the Plan, including, without limitation, which participants will receive benefits, in what form, and in what amount, and the contributions that the participants will be required to make to help defray the cost of their coverage. The Committee, acting on behalf of the EBAs, shall be responsible for the implementation, amendment and overall operation of the VEBA Trust and the establishment, amendment, maintenance, and administration of the Plans (*i.e.,* Chrysler, Ford and GM). Subject to the provisions of the VEBA Trust and applicable laws, the Committee shall have sole, absolute and discretionary authority to adopt such rules and provisions and take all actions that it deems desirable for the administration of the VEBA Trust, and to interpret the terms of the Plans and VEBA Trust. The Committee shall be guided by the principle that the Plans should provide substantial health benefits for the duration of the lives of all participants and beneficiaries.

The Committee consists of eleven (11) individuals, five (5) appointed by the UAW and six (6) who are Independent Members. Independent Member terms shall be for three (3)-year periods, except the initial terms of four (4) of the six (6) original Independent Members, two (2) of whom shall have an initial term of two (2) years, and two of whom shall have an initial term of one (1) year. An Independent Member may serve more than one term. Neither Chrysler LLC nor New Chrysler has any appointment power, and the Committee will function independently of both. The initial Independent Members were approved by the district court in the English case. No member of the Committee may be a current or former officer, director or employee of Old GM (*i.e.,* prior to bankruptcy), New GM, Ford, Chrysler LLC or New Chrysler, except that a retiree who was represented by the UAW in his or her employment with either Old GM, New GM, Ford, Chrysler LLC, or New Chrysler or an employee of any such company who is on leave from the company and is represented by the UAW, may be a UAW Member. None of the Independent Members nor any of their family members, employers or partners may have any financial or institutional relationship with either Old GM, New GM, Ford, Chrysler LLC, or New Chrysler if such relationship could reasonably be expected to impair such Independent Member's exercise of independent judgment.

An Independent Member may be removed or replaced, and a successor designated, at any time by an affirmative vote of nine (9) of the other members of the Committee. In the event of a vacancy of an Independent Member position, whether by expiration of a term, resignation, removal, incapacity, or death of an Independent Member, a successor Independent Member shall be elected by the affirmative vote of nine (9) Members, and when possible, such successor Independent Member shall be elected prior to the expiration of the term, resignation, removal, incapacity, or death of the Independent Member being replaced. The UAW Members shall serve at the discretion of the UAW International President, and may be removed or replaced, and a successor designated, at any time by written

[10] Under ERISA section 403(a)(1), a plan may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act. 29 U.S.C. 1103(a)(1).

notice from the UAW International President to the Committee.

A majority of the Members of the Committee then in office shall constitute a quorum for the purpose of transacting any business; provided that at least one Independent Member and one UAW Member are present. Each Member of the Committee present at the meeting shall have one vote. All actions of the Committee shall be by majority vote of the entire Committee, provided that at least one Independent Member and one Union Member must be a Member in the majority for any Committee action to take effect.

Independent Fiduciary

Pursuant to the Trust Agreement of the VEBA Trust, the Committee, in its sole discretion, will appoint an Independent Fiduciary to manage the Employer Security Sub-Account following the consummation of the Section 363 Sale.[11] The Independent Fiduciary shall be a bank, trust company or registered investment adviser under the Investment Advisers Act of 1940, as amended. The Independent Fiduciary will be a ''named fiduciary'' and ''investment manager'' as defined in ERISA and shall act on behalf of the New Chrysler VEBA Plan and VEBA Trust in connection with the discretionary management and disposition (but not the acquisition) of all employer securities contributed to the VEBA Trust by New Chrysler including, as currently relevant, the Notes and the Shares (including valuation of the Shares), the Call Option and any other employer securities held by the VEBA Trust. The exercise of any discretionary rights appurtenant to the Shares, the Note, or the Call Options (excluding the VEBA Trust's acceptance of the contribution of such Shares, and Note) shall be directed by the Independent Fiduciary. In effect, the parties anticipate that the Independent Fiduciary will ''step into the shoes'' of the VEBA Trust in connection with the Trust's exercise of its rights and responsibilities as owner of the Notes and the Shares, with the sole exception of the Trust's right to appoint (with the approval of the UAW) a director to the New Chrysler Board.[12] The appointment of the Independent Fiduciary to perform these functions is a contractual obligation of the VEBA Trust. In addition, the Committee believes it is appropriate and desirable to appoint an Independent Fiduciary with specialized expertise as investment manager for purposes of the protections afforded by ERISA section 405(d). Additionally, under the Shareholder Rights Agreement, the New Chrysler VEBA Plan must vote its Membership Interest in New Chrysler in accordance with the recommendations of the independent directors of New Chrysler, in proportion to those recommendations. Therefore, the Independent Fiduciary will have no responsibility for the voting of the Membership Interests.

The Independent Fiduciary must be independent of and unrelated to Chrysler LLC, New Chrysler, the UAW and the Committee or their affiliates. This provision will be violated if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Chrysler LLC, New Chrysler, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Chrysler LLC, New Chrysler, the UAW or any Committee member in his or her individual capacity in connection with any transaction described in this exemption (except that an independent fiduciary may receive compensation from the Committee or the New Chrysler VEBA Plan for services provided to the New Chrysler VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Chrysler LLC, New Chrysler, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.[13]

The Independent Fiduciary may be removed by the Committee on 30 days written notice only for cause.[14] The removal will be effective as specified in the written notice, provided that the Independent Fiduciary has been given notice of the appointment of a successor independent fiduciary. No successor will be appointed in the event the New Chrysler VEBA Plan ceases to hold any employer security. In the event that the New Chrysler VEBA Plan subsequently acquires or holds an employer security and no appointment of a successor independent fiduciary has been made, any court of competent jurisdiction may, upon application by the retiring independent fiduciary, appoint a successor after such notice to the Committee and the retiring independent fiduciary.

[11] The sub-account is maintained by the Trustee within each Separate Retiree Account to hold separately any Employer Security and any proceeds from the disposition of any Employer Security.

[12] Generally, the Committee will remain responsible for corporate and tax matters relating to the creation and maintenance (*e.g.,* corporate and tax filings and elections, annual reports, etc.) of one or more ''passive,'' wholly owned title-holding LLCs that will actually take legal title to the New Chrysler interests on behalf of the VEBA. These holding entities are contemplated in the various transaction documents, will elect to be taxed as ''C'' corporations, and will exist primarily for tax reasons (relating to VEBA tax qualification and unrelated business income tax considerations).

[13] The Department notes that candidates for the position of Independent Fiduciary to the New Chrysler VEBA Plan may be affiliated with entities that provide services to Old GM, New GM, Ford, Chrysler LLC or New Chrysler or their affiliates. It is the responsibility of the Committee to determine whether such affiliations are likely to affect the judgment of the candidate in performing its services as Independent Fiduciary.

[14] *Cause is defined in the Independent Fiduciary Agreement as:* (i) Any disqualifying event described in ERISA section 411; (ii) determination by any court, arbitrator or government regulatory body that the Independent Fiduciary has violated any civil or criminal law (including, but not limited to, securities, antitrust or ERISA) in connection with the performance of its responsibilities to the VEBA Trust (For purposes of avoidance of doubt in connection with this and the subsequent subparagraph, a ''determination'' shall mean any written judgment, order or decree; court-approved settlement; arbitration award; or enforcement action of a government regulatory body or SRO, in the form of a written sanction, claim, demand or opinion, whether or not appealable); (iii) determination by any court, arbitrator or government regulatory body that the Independent Fiduciary has materially breached the terms of its engagement, whether or not appealable; (iv) any action by the Independent Fiduciary that results in imposition of a civil or criminal sanction, any prohibited transaction excise tax, or any civil judgment or award of damages, on the VEBA Trust, the Committee, the trustee, or their respective employees, officers directors or owners (whether or not subject to indemnity by the Independent Fiduciary, an insurer, or any other person); (v) termination, resignation, or death of the Independent Fiduciary principal or officer assigned to serve as the relationship principal with respect to the VEBA Trust, or the inability of such person to perform his or her duties for a continuous period of more than 30 days; (vi) any change of ownership of the Independent Fiduciary that constitutes an ''assignment'' of the Independent Fiduciary's contract with the VEBA Trust, within the meaning of the Investment Advisers Act; (vii) failure of the Independent Fiduciary to qualify as an ''investment manager'' within the meaning of ERISA section 3(38); (viii) any change in the clientele, business or ownership of the Independent Fiduciary that results in an actual conflict of interest; (ix) failure of the Independent Fiduciary to take into account the legitimate needs of the VEBA Trust for liquidity to pay benefits; (x) violation of any conditions imposed on the Independent Fiduciary under the terms of the prohibited transaction exemption issued by the Department; (xi) any other action or inaction of the Independent Fiduciary that the Committee determines to be a material breach of the Independent Fiduciary's agreement or any law, or is likely to result in an irreconcilable conflict; (xii) any circumstance that leads the Committee to reasonably conclude that the termination of the Independent Fiduciary and replacement by a successor Independent Fiduciary is in the financial interest of the VEBA Trust, provided that the Committee documents the reasons for the termination.

Following the second anniversary of the Closing Date, under the New Chrysler Operating Agreement, the VEBA Trust and other holders of Shares may transfer their interests in New Chrysler to third parties. Under the Trust Agreement, the Independent Fiduciary would exercise the VEBA Trust's right to make such transfers. Before transferring New Chrysler Membership Interests to a third party, non-Fiat holders must afford Fiat a right of first offer, and other holders a right of second offer, whereby Fiat or the other holders could purchase the interests to be transferred on the same terms as the terms offered to the third party. With respect to employer securities held by the VEBA Trust, the Independent Fiduciary would have the responsibility to afford Fiat the right of first offer and other holders the right of second offer according to the terms of the New Chrysler Operating Agreement.

The rights of the VEBA Trust under the Shareholders Agreement and the Registration Rights Agreement are rights concerning the management and disposition of employer securities, and as such, according to the terms of the VEBA Trust, will be exercised by the Independent Fiduciary. The Independent Fiduciary will determine when and whether to exercise certain registration rights.

The Committee delegated to a subcommittee (*i.e.,* three Committee members) the responsibility to retain an Independent Fiduciary on behalf of the New Chrysler VEBA Plan. The subcommittee initially determined to proceed with the assumption that the interests of each plan whose assets are held by the VEBA Trust would be best served by seeking to retain a single qualified Independent Fiduciary to represent all three plans (providing health benefits, respectively, to retirees of Chrysler, GM, and Ford). However, the subcommittee recognizes the possibility that engaging multiple Independent Fiduciaries may turn out to be the better option.

The subcommittee intends, as part of the interview process for potential candidates for the Independent Fiduciary appointment, to question the candidates on the nature and likelihood of potential conflicts of interest, the appropriate means of monitoring and communicating actual or potential conflicts, including whether the candidates currently have formal conflict monitoring procedures, and mechanisms for dealing with actual or potential conflicts as they are identified. After reviewing the candidates' qualifications, capacity to represent all three plans, willingness to do so, and other relevant factors, in consultation with counsel, the subcommittee anticipates making a final determination as to whether to hire one Independent Fiduciary or multiple Independent Fiduciaries.

The subcommittee will work with the Independent Fiduciary candidate(s) to develop procedures to identify, minimize and address conflicts of interest as they arise. Specifically, in the event that a single Independent Fiduciary is appointed, the subcommittee will engage a ''conflicts monitor'' to (i) develop a process for identifying potential conflicts, (ii) to regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict, and (iii) further question the Independent Fiduciary when appropriate.

Additionally, the subcommittee will be prepared to replace the Independent Fiduciary in the event of an actual and irreconcilable conflict of interest.

Finally, the subcommittee will require the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy will require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflict.

A separate investment bank will be retained with respect to each of the three plans comprising the VEBA Trust. The investment bank's initial recommendations would be made solely with the goal of maximizing the returns for the single plan that owns the securities for which the investment bank is responsible. If the Independent Fiduciary deviated from such initial recommendations, it would find it necessary to explain why it deviated from a recommendation; additionally, such a deviation would be a way for the Committee or its designee to flag possible conflicts of interest in advance. Any contract between the Independent Fiduciary and an investment banker will include an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

Board of Directors

In addition to the VEBA Trust's ownership interest in New Chrysler, for so long as the VEBA Trust remains a member of, and retains at least a fifteen percent (15%) interest in, New Chrysler, the VEBA Trust shall have the right exercised by the Committee to designate one representative to the New Chrysler Board of Directors (the ''Board''), subject to the prior written consent of the UAW. Pursuant to the New Chrysler Operating Agreement, the Board will initially consist of nine (9) members; three (3) of whom will be appointed by Fiat, three (3) of whom will be appointed by the Treasury Department (which three directors will in turn appoint a fourth director (the ''Final Director'')), one (1) of whom will be appointed by the Canadian Government, and one (1) of whom will be appointed by the VEBA Trust (as described above). In addition, for so long as the VEBA Trust owns any membership interests in New Chrysler, the VEBA Trust has agreed to vote its membership interests in accordance with the recommendations of the independent directors of the Board, in proportion to such recommendations. Fiat will have the right to appoint four (4) directors once it obtains an aggregate ownership interest of thirty-five percent (35%) or more in New Chrysler and the Final Director will resign once Fiat obtains the right to appoint a fourth director.

Administrative Exemptive Relief

New Chrysler's financial circumstances preclude it from paying cash to the New Chrysler VEBA Plan. As explained above, the Bankruptcy Proceeding and related Sale were vital for the survival of the business previously conducted by Chrysler and this exemption request is critical to the larger overall transaction. Certain transactions called for or necessitated by the Settlement Agreement between New Chrysler and the New Chrylser VEBA Plan are prohibited by the restrictions of 406 of ERISA.[15] Accordingly, the Applicant requests an administrative exemption from the Department with respect to: (1) The acquisition by the New Chrysler VEBA Plan of the Shares and the Note from New Chrysler; (2) the holding by the New Chrysler VEBA Plan of the Shares and the Note; (3) the management of the Shares and Note by an Independent Fiduciary; and (4) the asset transfers to and from the New Chrysler VEBA Plan necessitated by the transition of benefits payment responsibility from one plan to another, or due to mistaken deposits into the New Chrysler VEBA Plan. The Applicant explains that the contribution of the Shares and the Note to the VEBA

[15] Unless otherwise indicated, all references herein to regulations are to regulations found in 29 CFR and all references to statutory sections are to provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), as codified in Title 29 of the United States Code.

Trust would violate sections 406(a)(1)(A), (B), and (E), 406(a)(2), and 407(a), and 406(b) of the Act. In addition, the Applicant requests exemptive relief from the prohibitions of sections 406(a)(1)(B) and 406(a)(1)(D) of ERISA for certain payments and reimbursements between New Chrysler, the Existing Internal VEBA, and the New Chrysler VEBA Plan, and for the return of mistaken deposits to the New Chrysler VEBA Plan.

Section 406(a)(1)(E) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of the plan, of any employer security in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretionary control of plan assets to permit the plan to hold any employer security if he knows or should know that holding such security violates section 407(a).

Section 407(a)(1) of the Act states that a plan may not acquire or hold any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act states that a plan may not acquire any qualifying employer security (or qualifying employer real property) if immediately after such acquisition the aggregate fair market value of the employer securities (and employer real property) held by the plan exceeds 10% of the fair market value of the assets of the plan. Section 407(d)(5) of the Act defines the term ''qualifying employer security'' to mean an employer security which is a stock, a marketable obligation, or an interest in certain publicly traded partnerships. After December 17, 1987, in the case of a plan, other than an eligible individual account plan, an employer security will be considered a qualifying employer security only if such employer security satisfies the requirements of section 407(f)(1) of the Act. Section 407(f)(1) of the Act states that stock satisfies the requirements of this paragraph if, immediately following the acquisition of such stock no more than 25% of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and at least 50% of the aggregate amount of such stock is held by persons independent of the issuer.

In this regard, since the New Chrysler Note and Shares are not qualifying employer securities within the meaning of § 407(d)(5) [16] of ERISA, New Chrysler is applying for a prohibited transaction exemption to permit the New Chrysler VEBA Plan to acquire and hold such New Chrysler Note and Shares. Similarly, if employer securities and employer real property would exceed 10% of the total assets in the New VEBA immediately after transfer of the New Chrysler Shares and Note to the New Chrysler VEBA Plan, the applicant requests an exemption for the acquisition and holding of such Note and Shares. Thus, an exemption is specifically needed because the transactions that are intended to adequately fund the New Chrysler VEBA Plan will result in violations of sections 406(a)(1)(E), 406(a)(2), 406(b)(1) and (2) of the Act.

Additionally, the Department has proposed relief from section 406(a)(1)(A) for the disposition of the Shares, in the event that the Shares are sold in a transaction involving a party in interest. Section 406(a)(1)(A) prohibits the sale, exchange or leasing of any property between a plan and a party in interest.

Benefit Payments and Reimbursements

The Applicant requests exemptive relief from the prohibitions of sections 406(a)(1)(B) and 406(a)(1)(D) of ERISA for certain payments and reimbursements between New Chrysler, any affiliate of New Chrysler, the Existing Internal VEBA and the New Chrysler VEBA Plan.

ERISA section 406(a)(1)(B) prohibits a fiduciary from causing a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect lending of money or other extension of credit between a plan and a party in interest. ERISA section 406(a)(1)(D) prohibits a fiduciary from causing a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

Prior to the Implementation Date, New Chrysler will provide benefits to, among others, individuals who ultimately will be covered by the New Chrysler VEBA Plan. The New Chrysler VEBA Plan will have sole responsibility and be the exclusive source of funds for the payment of retiree medical benefits to the Class and Covered Group, with respect to benefit claims incurred on and after the Implementation Date.

Under certain circumstances connected to the transition, New Chrysler, any affiliate of New Chrysler, the Existing Internal VEBA and the New Chrysler VEBA Plan may arguably extend credit or transfer plan assets to one another in order to pay benefit claims that are the legal responsibility of the other party (the ''Responsible Party'').[17] The Applicant asserts that mispayments and reimbursements are likely to occur in the normal course due to the administrative realities of health care payments and the shifting of medical benefit responsibilities between New Chrysler, any affiliate of New Chrysler, the Existing Internal VEBA and the New Chrysler VEBA Plan in a short period of time.

In the event of a mispayment, the Responsible Party will reimburse the payor for such benefits, plus interest. According to the Applicant, payment by a payor of benefits for claims incurred after benefit responsibility has been transferred arguably is an extension of credit between the payor and the responsible party that is prohibited under section 406(a)(1)(B). Payment by the Responsible Party to the payor as reimbursement for these paid claims arguably is a transfer of plan assets to a party in interest that is prohibited under 406(a)(1)(D).

Deposits by Mistake

The Applicant likewise seeks relief from section 406(a)(1)(D) of ERISA for return of mistaken deposits to the New Chrysler VEBA Plan, with interest.

Under the last paragraph of section 9 of the Modified Settlement Agreement, any deposit made to the New Chrysler VEBA Plan by mistake will be returned (with earnings) within 30 days of notice to the Committee of the mistake, to the extent permitted by law. The Applicant is concerned that this could be viewed as involving a prohibited transfer of plan assets to a party in interest. Accordingly, the Applicant requests exemptive relief for this transaction.

Statutory Findings

The Applicant makes the following statements regarding the Department's required findings under section 408(a) of ERISA that the exemption is administratively feasible, in the interests of the New Chrysler VEBA

[16] An Employer Security is any obligation, note, warrant, bond, debenture, stock or other security within the meaning of section 407(d)(1) of ERISA issued by an employer or an affiliate that is acquired or held by the VEBA Trust (or arising from any such security through conversion) pursuant to a deposit or transfer under one of the Settlements with Chrysler, GM, and Ford, the acquisition or holding of which (i) is not prohibited by sections 406(a)(1)(E) or 406(a)(2) of ERISA, or (ii) is the subject of a prohibited transaction exemption provided under section 408(a) of ERISA.

[17] Under sections 5 and 6 of the Modified Settlement Agreement, claims incurred before the Implementation Date will be paid by New Chrysler, an affiliate of New Chrysler or the Preexisting Internal VEBA, as applicable, in accordance with the terms of the New Chrysler VEBA Plan.

Plan and of its participants and beneficiaries, and protective of the rights of New Chrysler VEBA Plan participants and beneficiaries.

The exemption transactions are administratively feasible because they are relatively simple and straight-forward, easy to monitor, and involve the management of the Securities by the Independent Fiduciary.

The exemption transactions are in the interest of the New Chrysler VEBA Plan's participants and beneficiaries and protective of their rights because a retiree welfare plan with assets consisting of employer securities is preferable to a plan that is unfunded or underfunded. The Independent Fiduciary will represent the interests of the participants and beneficiaries of the New Chrysler VEBA Plan by exercising the sole discretion regarding the management and disposition of the New Chrysler Shares and Note.

Notification of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), as follows:

Section I. Covered Transactions

(a) If the exemption is granted, the restrictions of sections 406(a)(1)(A), (B), and (E), 406(a)(2), 406(b)(1) and (2), and 407(a) of the Act shall not apply, effective June 10, 2009 to:

(1) The acquisition by the UAW Chrysler Retiree Medical Benefits Plan (New Chrysler VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) of 676,924 New Chrysler Shares (the Shares) and a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the Note) transferred by New Chrysler and deposited in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(2) The holding of the Shares and the Note by the New Chrysler VEBA Plan in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(3) The disposition of the Shares and the Note;

(4) The sale by the New Chrysler VEBA Plan to Fiat S.p.A (Fiat) of Shares pursuant to the exercise by Fiat of the Call Option Agreement and/or the First Offer Right described in the New Chrysler Operating Agreement.

(b) If the exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of ERISA shall not apply, effective June 10, 2009, to:

(1) The payment by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph; and

(2) The reimbursement by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest.

(c) If the exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of ERISA shall not apply, effective June 10, 2009, to the return to New Chrysler of assets deposited or transferred to the New Chrysler VEBA Plan by mistake, plus interest.

Section II. Conditions Applicable to Section I(a)

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the New Chrysler VEBA Plan for all purposes related to the transfer of the Shares and Note to the Plan for the duration of the Plan's holding of the Shares and Note, except for the voting of the Shares. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, disposition and ongoing management of the Shares and the Note. The Independent Fiduciary will determine, before taking any of the actions regarding the Shares and the Note, that each such action or transaction is in the interest of the New Chrysler VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.,* the UAW General Motors Retiree Medical Benefits Plan and/or the UAW Ford Retiree Medical Benefits Plan) with respect to employer securities deposited into the Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(i) The Committee appoints a ''conflicts monitor'' to: (1) Develop a process for identifying potential conflicts; (2) regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (3) further question the Independent Fiduciary when appropriate.

(ii) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(iii) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflict.

(c) The Independent Fiduciary authorizes the Trustee of the New Chrysler VEBA Plan to dispose of the Shares and the Note only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the New Chrysler VEBA Plan, and protective of the participants and beneficiaries of the Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the New Chrysler VEBA Plan any transactions between the New Chrysler VEBA Plan and any party in interest involving the Shares or the Note that may be necessary in connection with the subject transactions (including but not limited to the registration of the securities contributed to the New Chrysler VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the New Chrysler VEBA Plan, the Trust Agreement, the Independent Fiduciary Agreement, and any other documents governing the employer securities, such as the registration rights agreement.

(g) The New Chrysler VEBA Plan incurs no fees, costs or other charges (other than described in the VEBA Trust agreement and the Modified Settlement Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the New Chrysler VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

Section III. Conditions Applicable to Section I(b)

(a) The Committee and the New Chrysler VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the VEBA Trust's independent auditor. The results of this review will be made available to New Chrysler.

(b) New Chrysler and their respective plans' third party administrator(s) will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the respective plans' independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable OPEB discount rate.[18]

(e) If there is a dispute as to the amount of a reimbursement requested, the parties will enter into an alternative dispute resolution procedure as defined in section VI.(e) of this exemption.

Section IV. Conditions Applicable to Section I(c)

(a) New Chrysler must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the New Chrysler VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VI(s) of this exemption.

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken payment to the date of the repayment.

(d) Interest will be determined using the applicable OPEB discount rate.

(e) If there is a dispute as to the amount of a mistaken payment, the parties will enter into an alternative dispute resolution procedure as defined in section VI.(e) of this exemption.

Section V. Conditions Applicable to Section I(a), (b), (c)

(a) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the date the Note or any Shares are transferred to the New Chrysler VEBA Plan the records necessary to enable the persons described in paragraph (b) below to determine whether conditions of this exemption have been met, except that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections Section (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) the UAW or any duly authorized representative of the UAW;

(C) New Chrysler or any duly authorized representative of New Chrysler; and

(D) Fiat or any duly authorized representative of Fiat; and

(E) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(F) The Committee or any duly authorized representative of the Committee; and

(G) Any participant or beneficiary of the New Chrysler VEBA Plan, or any duly authorized representative of such participant or beneficiary.

Section VI. Definitions

(a) The term ''affiliate'' means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of ERISA) of such other person; or (3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) The term ''Class'' or ''Class Members'' shall mean all persons who are: (i) New Chrysler-UAW Represented Employees who, as of October 29, 2007, were retired from Chrysler LLC with eligibility for Retiree Medical Benefits under the Chrysler Plan, and their

[18] OPEB means Other Post-Employment Benefits, and typically includes retiree healthcare benefits, life insurance, tuition assistance, day care, legal services and the like. The OPEB discount rate is a rate used to discount projected future OPEB benefits payment cash flows to determine the present value of the OPEB obligation.

eligible spouses, surviving spouses and dependents; (ii) surviving spouses and dependents of any New Chrysler-UAW Represented Employees who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from Chrysler and/or the Chrysler Plan; (iii) former New Chrysler-UAW Represented Employees or UAW-represented employees who, as of October 29, 2007, were retired from any previously sold, closed, divested or spun-off Chrysler LLC business unit with eligibility to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan by virtue of any agreement(s) between Chrysler LLC and the UAW, and their eligible spouses, surviving spouses, and dependents; and (iv) surviving spouses and dependents of any former Chrysler LLC–UAW Represented Employee or UAW-represented employee of a previously sold, closed, divested or spun-off Chrysler LLC business unit, who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan.

(c) The term ''Committee'' shall mean the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the New Chrysler VEBA Plan.

(d) The term ''Covered Group'' shall mean:

(i) All New Chrysler Active Employees who had attained seniority as of September 14, 2007, and who retire after October 29, 2007 under the Chrysler LLC–UAW National Agreements, or any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and who upon retirement are eligible for Retiree Medical Benefits under the Chrysler Plan or the New Chrysler VEBA Plan, as applicable, and their eligible spouses, surviving spouses and dependents; (ii) all former New Chrysler-UAW Represented Employees and all UAW-represented employees who, as of October 29, 2007, remained employed in a previously sold, closed, divested, or spun-off Chrysler LLC business unit, and upon retirement are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan by virtue of any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and their eligible spouses, surviving spouses and dependents; and (iii) all eligible surviving spouses and dependents of New Chrysler Active Employees, or of former New Chrysler-UAW Represented Employees or UAW-represented employees identified in (ii) above, who attained seniority on or prior to September 14, 2007 and die after October 29, 2007 but prior to retirement under circumstances where such employee's surviving spouse and/or dependents are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan, as applicable.

(e) The term ''Alternative Dispute Resolution Procedure'' shall mean, notwithstanding anything in Section 23 of the Modified Settlement Agreement to the contrary, the following process for the resolution of any dispute or controversy arising under Section 5 of the Modified Settlement Agreement for the reimbursement of benefit claims or in Section 9 of the Modified Settlement Agreement for the mistaken deposits. Such disputes shall be resolved in the following manner:

(i) While the parties agree that each of the disputes with respect to mistaken deposits and reimbursement of benefit claims referred to in the Settlement Agreement may be submitted to arbitration, they first shall endeavor to resolve the dispute through the following procedures:

(1) The aggrieved party shall provide the other party with written notice of such dispute;

(2) The written notice shall include a description of the alleged violation and identify the Section(s) of the Settlement Agreement allegedly violated;

(3) The party receiving the notice shall respond in writing within 21 calendar days of receipt of notice; and

(4) Within 21 calendar days of that response the parties shall meet in an effort to resolve the dispute.

All the time periods in this definition may be extended by agreement of the parties to the particular dispute.

(ii) Should the parties be unable to resolve the dispute within 30 calendar days from the date of the meeting set forth in this definition, either party may send written demand to the other party that the issue be resolved by arbitration. The failure to demand arbitration within 60 calendar days from the date of the meeting as set forth in this definition shall waive any right to such arbitration over the issue, absent mutual written agreement to the contrary by the parties. If a party fails to make a timely demand for arbitration pursuant to this definition, such party may not pursue the dispute in court, and the dispute will be resolved on the basis of the position taken by the opposing or answering party.

(iii) In the event that New Chrysler, the UAW, or the Committee proceed to arbitration in accordance with this definition, that dispute shall be submitted to an arbitrator (the ''Arbitrator'') who will not have the authority to modify or amend the Modified Settlement Agreement, but only to apply the Modified Settlement Agreement, as written, to particular factual situations based on a preponderance of the evidence. The Arbitrator shall not have the authority to award punitive or exemplary damages. Interest shall be paid on any delayed payments as a result of the arbitration process. The interest will be calculated daily at a rate equal to the OPEB Discount Rate for each day that amounts remain outstanding. Such arbitration shall take place in Auburn Hills, Michigan unless otherwise agreed upon in writing by the parties. Any award shall be in writing and issued within 30 days from the close of the hearing, unless the parties otherwise agree. The award shall be final, conclusive and binding on New Chrysler, the UAW, and the Committee. The award may be reduced to judgment in any appropriate court having jurisdiction in accordance with the provisions of the applicable law.

(iv) In the event that a dispute arising under this definition is taken to arbitration, the Arbitrator shall be the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under the then applicable New Chrysler-UAW National Agreement; *provided that,* if within 15 days of receipt of the written arbitration demand referred to in (ii) above, the parties agree in writing that the dispute requires an arbitrator with actuarial expertise, then the Arbitrator shall be a person with actuarial expertise upon whom the parties mutually agree in writing, but failing such mutual agreement with 30 days of receipt of the written arbitration demand referred to in (ii) above, the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under then applicable New Chrysler-UAW National Agreement shall select a person with actuarial expertise to serve as the Arbitrator.

(v) New Chrysler, the UAW, and the Committee shall cooperate in setting a hearing date for the arbitration as soon as possible following selection of the Arbitrator.

(f) The term ''Existing Internal VEBA'' shall mean the Chrysler VEBA Trust between Chrysler and State Street Bank and Trust Company, which will be

maintained by New Chrysler from June 10, 2009.

(g) The term ''Independent Fiduciary'' means a fiduciary that is (i) independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates, and (ii) appointed to act on behalf of the New Chrysler VEBA Plan with respect to the holding, management and disposition of the Shares and the Note. In this regard, the fiduciary will not be deemed to be independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Chrysler LLC, New Chrysler, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Chrysler LLC, New Chrysler, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an independent fiduciary may receive compensation from the Committee or the New Chrysler VEBA Plan for services provided to the New Chrysler VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Chrysler LLC, New Chrysler, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.

(h) The term ''Implementation Date'' shall mean the later of January 1, 2010 or (ii) the ''Final Effective Date,'' as defined in the Modified Settlement Agreement.

(i) The term ''New Chrysler'' shall mean a Delaware Limited Liability Company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A., a manufacturer of automobiles and automotive parts in Turin, Italy. New Chrysler is the company that acquired certain assets and liabilities from Chrysler LLC pursuant to the Section 363 Sale.

(j) The term ''Note'' shall mean a note issued by New Chrysler with a principal amount of $4,587 billion and an implicit interest rate of nine (9%) payable in fixed annual installments pursuant to the Indenture Agreement. Payments, consisting of accrued and unpaid interest and amortized principal shall be due on July 15 of each year, commencing July 15, 2010 and ending on July 15, 2023.

(k) The term ''Shares'' means the membership interests issued by New Chrysler.

(l) The term ''New Chrysler VEBA Plan'' refers to the newly created retiree medical employee welfare benefit plan. The plan is an employee welfare benefit plan established and maintained by the Committee, and shall provide retiree medical benefits to the Class and the Covered Group established pursuant to the Modified Settlement Agreement.

(m) The term ''Registration Rights Agreement'' means the Equity Registration Rights Agreement by and among New Chrysler, the U.S. Treasury, Canada, the VEBA Trust and Chrysler LLC, entered into on June 10, 2009.

(n) The term ''Section 363 Sale'' means a sale under section 363 of Title 11 of the U.S. Code, by which on June 10, 2009, New Chrysler succeeded to certain assets and liabilities of Chrysler LLC.

(o) The term ''Modified Settlement Agreement'' means the UAW Retiree Settlement Agreement between New Chrysler and the UAW dated June 10, 2009.

(p) The term ''Treasury Department'' shall mean the United States Department of the Treasury.

(q) The term ''VEBA'' means the UAW Chrysler Retiree Medical Benefits Plan (the New Chrysler VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(r) The term ''UAW'' means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

(s) The term ''Verification Time Period'' means: (i) With respect to all Shares, the period beginning on the date of publication of the final exemption in the **Federal Register** and ending 60 calendar days thereafter; (ii) with respect to each payment pursuant to the Note, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (iii) with respect to the UAW-Related Account of the Existing Internal VEBA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the UAW-Related Account to the New Chrysler VEBA Plan) and ending 180 calendar days thereafter.

Signed at Washington, DC, this 29th day of September 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–23849 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,808]

Invista, S.A.R.L., Nylon Apparel Filament Fibers Group, a Subsidiary of Koch Industries, Inc., Chattanooga, TN; Notice of Revised Determination on Remand

On June 18, 2009, the U.S. Court of International Trade (USCIT) remanded to the Department of Labor's motion for further investigation into the matter of *Former Employees of Invista, S.A.R.L.* v. *U.S Secretary of Labor,* Court No. 07–00160.

On December 15, 2006, an official of Invista, S.A.R.L, Nylon Apparel Filament Fibers Group, A Subsidiary of Koch Industries, Inc., Chattanooga, Tennessee (Invista) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers at Invista engaged in activity related to the production of nylon fiber. AR 1. The petition stated that the separations were due to a shift in production to Mexico that was the basis for a certification that expired on August 20, 2006 (TA–W–55,055). AR 2. The company official stated that, as of February 1, 2007, all workers of Invista would be terminated from employment. AR 7.

On February 7, 2007, the Department of Labor (Department) issued a negative determination regarding workers' eligibility to apply for TAA/ATAA. AR 30–32. On February 21, 2007, the Department's Notice of determination was published in the **Federal Register** (72 FR 7909). AR 43.

In support of a request for administrative reconsideration (dated February 18, 2007), a worker stated that the workers' separations are ''a direct result of the textile industry going to developing countries.'' AR 38.

In a letter dated March 15, 2007, the Department stated that the request for reconsideration was being dismissed because insufficient evidence was furnished to warrant reconsideration pursuant to 29 CFR 90.18(c) and that the shift in production that was the basis for the certification of TA–W–55,055 occurred outside the relevant period. AR 45. The Dismissal of Application for Reconsideration was issued on March 21, 2007. AR 47. The Department's Notice of dismissal was published in the **Federal Register** on March 30, 2007 (72 FR 15169). AR 48.

On May 11, 2007, Plaintiffs sought review by the USCIT. The Plaintiffs

assert that the worker separations are due to Invista's shift in production to Mexico.

On March 27, 2008, the USCIT granted the Department's motion for voluntary remand and directed the Department to conduct further investigation to determine whether workers of Invista are eligible to apply for TAA and ATAA.

On June 2, 2008, the Department issued a Notice of Negative Determination on Remand based on the finding that there was no causal nexus between the worker separations and an earlier shift in production to Mexico of articles like or directly competitive with nylon fiber produced at Invista. SAR 35. The Department's Notice of determination was published in the **Federal Register** on June 10, 2008 (73 FR 32739). SAR 42.

On June 18, 2009, the USCIT ordered the Department to conduct further investigation to determine whether workers of Invista are eligible to apply for TAA and ATAA.

The group eligibility requirements for directly-impacted (primary) workers under Section 222(a) of the Trade Act of 1974, as amended, can be satisfied in either of two ways:

I. Section (a)(2)(A)—all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B)—both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the second remand investigation, the Department obtained additional information regarding Invista's shift in production of nylon fiber to Mexico, Invista's business decisions related to the post-shift reorganization, and the subsequent worker separations at Invista. SAR 67–71.

Following a careful review of the information obtained during its investigations, the Department determined that a significant portion or number of workers at Invista was separated and that there was a shift in production to Mexico of articles like or directly competitive with nylon fiber produced at Invista. Therefore, the Department determines that the group eligibility requirements under Section 222(a)(2)(B) the Trade Act of 1974, as amended, have been met.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts generated through the first and second remand investigations, I determine that a shift in production by Invista to Mexico of articles like or directly competitive to nylon fiber produced at Invista contributed to the total or partial separation of a significant number or proportion of workers at Invista.

In accordance with the provisions of the Act, I make the following certification:

All workers of Invista, S.A.R.L, Nylon Apparel Filament Fibers Group, A Subsidiary of Koch Industries, Inc., Chattanooga, Tennessee, who became totally or partially separated from employment on or after August 21, 2006, through two years from the issuance of this revised determination are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of September 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–23902 Filed 10–2–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of permit applications received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 4, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2010–017, Juan M. Lopez-Bautista, Department of Biological Sciences, The

University of Alabama, 425 Scientific Collections Bldg., Tuscaloosa, AL 35487–0345.

Activity for Which Permit Is Requested

Take. The applicant plans to collect 3 samples of *Prasiola crispa,* a terrestrial alga widespread in Antarctica. The samples are required for studies of molecular systematics of the order *Prasiolales.* Part will be used for DNA extraction and the rest of the samples will be deposited as voucher specimens in the herbarium of the University of Alabama. The DNA sample will be used for PCR and DNA sequencing.

Location: Palmer Station area, Anvers Island.

Dates: December 1, 2009 to July 31, 2010.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–23839 Filed 10–2–09; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28933; File No. 812–13628]

Charles Schwab Investment Management, Inc., et al.; Notice of Application

September 28, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain open-end management investment companies and their series to issue shares (''Shares'') that can be redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Schwab Strategic Trust (''Trust'') and Charles Schwab Investment Management, Inc. (''Adviser'').

FILING DATES: The application was filed on January 30, 2009, and amended on June 30, 2009, and September 25, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Charles Schwab Investment Management, Inc., 101 Montgomery Street, SF120 KNY–14–101, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel at (202) 551–6868, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company that will offer multiple series and is organized as a Delaware statutory trust. The Trust will initially offer Shares of eight series (the ''Initial Funds'').[1] Applicants request that the order apply to any future series of the Trust or of other open-end management companies, advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser, that comply with the terms and conditions of this application whose performance will closely correspond to the price and yield performance of securities indices (collectively with the Initial Funds, the ''Funds'').[2]

2. The Adviser or an entity controlling, controlled by or under common control with the Adviser will serve as the investment adviser to the Funds. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). In the future, the Adviser may enter into sub-advisory agreements with one or more additional investment advisers to act as subadvisers to Funds (''Subadvisers''). Any Subadviser will be registered under the Advisers Act. A broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') will act as distributor and the principal underwriter of the Funds (a ''Distributor''). The Distributor will not be affiliated with the Adviser or a national securities exchange as defined in section 2(a)(26) of the Act (''Exchange'').

3. Each Fund will consist of a portfolio of securities and other instruments (''Portfolio Securities'') selected to correspond to the price and yield performance of a specified securities index (each securities index is an ''Underlying Index'').[3] Certain of the Funds may invest in equity securities or fixed income securities traded in foreign markets and seek investment results that closely correspond to the price and yield performance of Underlying Indices whose component securities include

[1] The Initial Funds are the: Schwab U.S. Broad Market ETF ™, Schwab U.S. Large-Cap ETF ™, Schwab U.S. Large-Cap Growth ETF ™, Schwab U.S. Large-Cap Value ETF ™, Schwab U.S. Small-Cap ETF ™ (collectively, the ''Domestic Initial Funds''), Schwab International Equity ETF ™, Schwab International Small-Cap Equity ETF ™ and Schwab Emerging Markets Equity ETF ™.

[2] All entities that intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in the Funds and not in any other registered investment company.

[3] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') and depositary receipts representing such securities. ''Depositary Receipts'' will typically be American Depositary Receipts, but may also include Global Depositary Receipts and European Depositary Receipts. Each Fund also may invest up to 20% of its assets in futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser or Subadviser believes will help the Fund track its Underlying Index.

such securities (''International Funds''). No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, a promoter, the Adviser, a Subadviser, or a Distributor.[4]

4. The investment objective of each Fund will be to provide investment returns that closely correspond to the price and yield performance of its Underlying Index.[5] The value of an Underlying Index will be updated at regular intervals throughout the trading day. For Domestic Initial Funds, the Underlying Index value will be disseminated every 15 seconds, and for International Funds the underlying index value will be disseminated every 60 seconds throughout the trading day. Each Fund's prospectus (''Prospectus'') will indicate whether the Fund will follow a replication or representative sampling strategy.[6] A Fund using a replication strategy will invest in substantially all of the securities comprising its Underlying Index in the same approximate proportions as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in compiling an entire Underlying Index or when a Component Security of an Underlying Index is illiquid, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all of the Component Securities of its Underlying Index.[7] Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent.

5. The initial price of Shares is expected to range between $25 and $100, and the initial price of Creation Units is expected to range from $625,000 to $10,000,000. Creation Units will be aggregations of least 25,000 Shares. Orders to purchase Creation Units must be placed with the Distributor, by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''). Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser (the ''Deposit Securities''), together with the deposit or refund of a specified cash payment (''Cash Component''). The Cash Component is an amount equal to the difference between, if any, (a) the net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the market value (per Creation Unit) of the Deposit Securities.[8] Each Fund may permit or require, under certain circumstances, an in-kind purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities if the Adviser believes such method would substantially minimize the Fund's transactional costs or would enhance the Fund's operational efficiencies.[9]

6. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[10] The Transaction Fees relevant to each Fund and the method of calculating these Transaction Fees, which will be the same for purchase and redemption transactions, will be fully disclosed in the Prospectus of such Fund or statement of additional information (''SAI''). The Distributor will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

7. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of an Exchange on which the Shares are listed will be designated to act as a specialist or a market maker and maintain a market for Shares trading on such Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A specialist or market maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[11] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material

[4] The Index Providers to the Initial Funds are Dow Jones & Company, the Financial Times Limited and the London Exchange plc.

[5] The Underlying Indices for the Initial Funds are the: Dow Jones U.S. Broad Stock Market Index SM, Dow Jones U.S. Large-Cap Total Stock Market Index SM, Dow Jones U.S. Large-Cap Growth Total Stock Market Index SM, Dow Jones U.S. Large-Cap Value Total Stock Market Index SM, Dow Jones U.S. Small-Cap Total Stock Market Index SM, FTSE Developed ex-US Index, FTSE Developed Small Cap ex-US Liquid Index and FTSE All-Emerging Index.

[6] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[7] Using the sampling strategy, the Adviser or Subadviser will select each security for inclusion in the Fund's portfolio to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index, taken in its entirety.

[8] Each Fund will sell and redeem Creation Units on each day that a Fund is open, which includes any day that a Fund is required to be open under Section 22(e) of the Act (''Business Day''). Each Business Day, prior to the opening of trading on the Exchange, the list of names and amount of each security constituting the current Deposit Securities and the Cash Component will be made available. Any Exchange on which Shares are listed will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Component.

[9] When a rebalancing of a Fund's portfolio is required, the Adviser might prefer to receive cash rather than in-kind stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing. Additionally, in some circumstances or in certain countries, it may not be practicable or convenient, or permissible under the laws of certain countries or the regulations of certain foreign stock exchanges for an International Fund to operate exclusively on an in-kind basis.

[10] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing a portion of the Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing those securities including operational processing and brokerage costs, and part or all of the spread between the bid and the offer side of the market.

[11] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

discount or premium in relation to their NAV.

9. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a particular portfolio of securities designated to be delivered for Creation Unit redemptions (''Fund Securities'') on the Business Day that the request for redemption is submitted [12] and (b) a ''Cash Redemption Amount,'' consisting of an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.

10. Neither the Trust nor any Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The same approach will be followed in the Prospectus, SAI, shareholder reports and any marketing or advertising materials. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust or a Fund to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of

[12] As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to a Fund's portfolio, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. A Fund will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions of Creation Units of the International Funds is contingent not only on the settlement cycle of the United States securities markets, but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Securities held by the International Funds. Applicants state that in certain circumstances delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to twelve calendar days for certain International Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the International Funds to pay redemption proceeds up to twelve calendar days after a redemption request is received and in proper form. Except as disclosed in the relevant International Fund's Prospectus and/or SAI, applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.[13]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays in a given year that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to twelve calendar days, needed to deliver the proceeds for the relevant International Fund. Applicants are not seeking relief from section 22(e) with respect to International Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies and unit investment trusts registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds and that have entered into a participation agreement with a Fund (such agreement, a ''FOF Participation Agreement,'' such management investment companies, the ''Investing Management Companies,'' such unit investment trusts, the ''Investing Trusts,'' and the Investing Trusts, together with the Investing Management Companies, the ''Investing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). Investing Funds do not include the Funds. In addition, applicants seek relief to permit the Funds, the Distributor and any other broker or dealer that is registered under the Exchange Act to sell Shares to an Investing Fund in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund Adviser'') and may be subadvised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund Subadviser''). Each Investing Fund Adviser and any Investing Fund Subadviser will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.[14] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with an Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by an Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with an Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadviser, any person controlling, controlled by, or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by, or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board,

[13] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of Section 22(e) will affect any obligations applicants may have under Rule 15c6–1.

[14] An ''Investing Fund Affiliate'' is an Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of these entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Investing Fund Adviser, Investing Fund Subadviser, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that several proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, except as provided in condition B.5, an Investing Fund Adviser or a trustee of an Investing Fund (''Trustee'') or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Investing Fund Adviser or Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, from the Fund in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the National Association of Securities Dealers (''NASD'').[15]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in a Fund in reliance on the requested order will enter into a FOF Participation Agreement requiring the Investing Fund to adhere to the terms and conditions of the requested order. The FOF Participation Agreement also will include an acknowledgement from the Investing Fund that it may rely on the requested order only to invest in the Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of in Creation Units by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act in order to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of the Trust or one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with Adviser.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Units through ''in-kind'' transactions. The composition of the basket of securities and cash for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchasers and redeemers. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Investing Fund to sell its Shares to and redeem its Shares from an Investing Fund, and to engage in the accompanying in-kind transactions with the Investing Fund.[16] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Shares.[17] Applicants believe that any proposed transactions directly between the Funds and Investing Funds will be consistent with the policies of each Investing Fund. The proposed transactions will comply with the investment restrictions of the Investing Fund and be consistent with its investment policies as set forth in its registration statement. The FOF Participation Agreement will require any Investing Fund that relies on the relief to purchase Shares directly from a Fund to represent that its purchases are permitted under its investment restrictions and consistent with the investment policies described in its registration statement.

[15] Any references to NASD Conduct Rule 2830 include any successor or replacement Rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

[16] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

[17] Applicants believe that an Investing Fund generally will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. However, the requested relief would apply to direct sales of Creation Units by a Fund to an Investing Fund and in-kind redemptions of those Shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions: [18]

A. Exchange-Traded Fund Relief

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a registered investment company and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a FOF Participation Agreement with the Fund regarding the terms of the investment.

2. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition A.4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Shares of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding Shares of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Fund Shares exceeds the limit in section l2(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

[18] *See* note 6, *supra.*

7. The Board of the Fund, including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Fund Shares in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23891 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–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, October 8, 2009 at 11 a.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. 552b(c)(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 Casey, 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, October 8, 2009 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings; 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: September 30, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24026 Filed 10–1–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60739; File No. SR–NYSEAMEX–2009–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Permitting Affiliation With NYFIX Millennium L.L.C. and NYFIX Securities Corporation

September 29, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (''NYFIX''), NYFIX Millennium L.L.C. (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations relating to the relationship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is making this submission in connection with the proposed acquisition of NYFIX by NYSE Technologies. On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (as it may be amended from time to time, the ''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (the ''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext and affiliates.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently comprised of two U.S. registered broker-dealer subsidiaries, NYFIX Millennium, which is also an alternative trading system registered under SEC Regulation ATS, and NYFIX Securities.[4] Each has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority. Neither broker-dealer is a member of the Exchange. The Exchange notes that there is competition in the market to provide introducing broker services to the Exchange and the Exchange believes that there will continue to be effective competition after the Merger.

For purposes of this proposed rule change, Routing Services shall mean any of the activities of NYFIX Millennium and NYFIX Securities which relate to routing to marketplaces that are not operated by NYFIX, orders (including NYFIX Millennium ''pass through'' orders) which flow through the matching facility on their way to an exchange, electronic communications network, or ATS,[5] and NYFIX Securities' direct electronic market access and algorithmic trading products.

The Exchange is currently exploring various alternatives for the Transaction Services Division. Because of the manner in which the Transaction Services Division may interact with the Exchange and its affiliates, which gives rise to concerns regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to the terms and conditions set out below.

a. Conditions

Accordingly, the Exchange represents as follows, in each case for so long as the Exchange is affiliated with NYFIX Millennium and NYFIX Securities, with respect to the Routing Services:

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange.

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission.

(3) NYFIX will not engage in proprietary trading.

(4) NYFIX will not accept any new clients for its Routing Services after the Merger.

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities.

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.,* no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or their facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b–4 of the Securities Exchange Act of 1934.[6]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the

[4] Outside of the U.S., the NYFIX Transaction Services Division also operates the desk agency execution business of NYFIX International in the U.K. and Euro Millennium, a multi-lateral trading facility for non-displayed liquidity in pan-European listed equities housed within NYFIX International. These services are not within the scope of the Exchange's Proposed Rule Change.

[5] These orders are only executed if they find a match at or within the national best bid and offer by guaranteeing customers the best available ask price when buying securities, and the best available bid price when selling securities. If there is not a match, these orders are immediately routed to their ultimate destination.

[6] 15 U.S.C. 78a.

Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) [7] of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(1),[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) [10] of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78a, *et seq.*

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

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

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 the 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–NYSEAMEX–2009–63 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–NYSEAMEX–2009–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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–2009–63 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23850 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60720; File No. SR–NYSEAmex–2009–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Commentary .06 to Rule 903, Series of Options Open for Trading

September 25, 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 September 23, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Commentary .06 to Rule 903, Series of Options Open for Trading in order to establish strike price intervals of $0.50, beginning at $1, for certain options classes whose underlying security closed at or below $3 in it s primary market on the previous trading day. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is based on a filing submitted by NASDAQ OMX PHLX Inc (''Phlx'') that was recently noticed for comment and approved by the Commission.[3]

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under $3. Currently, Commentary .05 to NYSE Amex Rule 903 provides that the interval of strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less. Additionally, Commentary .06 to Rule 903 allows the Exchange to establish $1 strike price intervals (the ''$1 Strike Program'') on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the $1 Strike Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the $1 Strike Program, the Exchange may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar $1 Strike Program its own rules.[4] The Exchange is restricted from listing any series that would result in strike prices being within $0.50 of a strike price set pursuant to Rule 903 Commentary .06(b).

The Exchange is now proposing to establish strike prices of $1, $1.50, $ 2, $2.50, $3 and $3.50 for certain stocks that trade at or under $3.00.[5] The listing of these strike prices will be limited to options classes whose underlying security closed at or below $3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange would also be able to list $0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar $0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at $3 at strike prices of $1, $2, $3, $4, $5, $6, $7 and $8 if they are designated to participate in the $1 Strike Program.[6] If these stocks have not been selected for the Exchange's $1 Strike Program, the Exchange may list strike prices of $2.50, $5, $7.50 and so forth as provided in Commentary .05, but not strike prices of $1, $2, $3, $4, $6, $7 and $8.[7] The Exchange is now proposing to amend Commentary .06 to Rule 903 by adding new sub-paragraph (d) to list strike prices on options on a number of qualifying stocks that trade at or under $3.00, not simply those stocks also participating in the $1 Strike Program, in finer intervals of $0.50, beginning at $1 up to $3.50. Thus, a qualifying stock trading at $3 would have option strike prices established not just at $2.50, $5.00, $7.50 and so forth (for stocks not in the Exchange's $1 Strike Program) or just at $1, $2, $3, $4, $5, $6, $7 and $8 (for stocks designated to participate in the $1 Strike Program), but rather at strike prices established at $1, $1.50, $2, $2.50 $3 and $3.50.[8]

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below $3.00 has increased dramatically.[9] Unless the underlying stock has been selected for the $1 Strike Program, there is only one possible in-the-money call (at $2.50) to be traded if an underlying stock trades at $3.00. Similarly, unless the underlying stock has been selected for the $1 Strike Program, only one out-of-the-money strike price choice within 100% of a stock price of $3 is available if an investor wants to purchase out-of-the-money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the $5 strike price become in-the-money. If the stock is selected for the $1 Strike Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the $3 stock price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock,

[3] *See* Exchange Act Release No. 60466 (August 10, 2009), 74 FR 41475 (August 17, 2009) (SR–Phlx–2009–65). Approved in Exchange Act Release No. 60694 (September 18, 2009).

[4] The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program.

[5] The Exchange recently amended NYSE Amex Rule 916, Withdrawal of Approval of Underlying Securities or Options, to eliminate the $3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3. The Exchange explained in that proposed rule change that the market price for a large number of securities has fallen below $3 in the current volatile market environment. *See* Securities Exchange Act Release No. 59348, SR–NYSEALTR–2009–08 (February 3, 2009), 74 FR 6683 (February 10, 2009).

[6] Additionally, market participants may be able to trade $2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar $1 Strike Program.

[7] Again, market participants may also be able to trade the option at $1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar $1 Strike Program.

[8] The option on the qualifying stock could also have strike prices set at $5, $7.50 and so forth at $2.50 intervals (pursuant to Commentary .05 to Rule 903) or, if it has been selected for the $1 Strike Program, at $4, $5, $6, $7 and $8.

[9] As of July 31, 2009, stocks trading at or below $3 include E*Trade Financial Corporation, Ambac Financial Group, Inc., Alcatel-Lucent, Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae). A number of these stocks are widely held and actively traded equities, and the options overlying these stocks also trade actively on NYSE Amex.

that would be required in order for strikes set at $1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than $2.50 (or $1 for stocks in the $1 Strike Program) for options on stocks trading at or below $3, could have a negative affect on investors. The Exchange believes that the proposed $0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of stocks decline below $3 or even $2, the availability of options with strike prices at intervals of $0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, NYSE Amex has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [11] in particular in that it is designed to promote just and equitable principles if trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by expanding the ability of investors to hedge risks associated with stocks trading at or below $3. The proposal should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with Phlx by being able to list the same strike prices as Phlx. The Commission recently approved SR–Phlx–2009–65,[14] and therefore finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.[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–NYSEAmex–2009–64 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–2009–64. 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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 prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange is deemed to have satisfied this requirement.

[14] *See* Securities Exchange Act Release No. 60694 (September 18, 2009) (SR–Phlx–2009–65) (order approving a $0.50 strike program substantially the same as the $0.50 Strike Program proposed by NYSE Amex).

[15] 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).

submissions should refer to File Number SR–NYSEAmex–2009–64 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23851 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60727; File No. SR–CBOE–2009–067]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Bid/Ask Differentials

September 28, 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 September 21, 2009, Chicago Board Options Exchange, Incorporated (''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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[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 amend its rules relating to bid/ask differentials. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules pertaining to the bid/ask differential requirements. Currently, Rule 8.7(b)(iv) specifies the bid/ask differential requirements applicable to Market-Makers when bidding and offering in open outcry, during opening rotations and when quoting electronically on the Hybrid Trading System.[5] With respect to bidding and offering in open outcry and during opening rotations, the requirements vary depending on the price of the bid. For example, Rule 8.7(b)(iv)(A) states that the quote widths shall not be more than: $0.25 if the bid is less than $2; $0.40 where the bid is at least $2 but does not exceed $5; $0.50 where the bid is more than $5 but does not exceed $10; $0.80 where the bid is more than $10 but does not exceed $20; and $1 where the bid is more than $20. With respect to electronic quoting on the Hybrid Trading System, the bid/ask differential requirement is $5. Rule 8.7(b)(iv) also provides that CBOE may establish quote width differences other than those set forth above for one or more option series. Some or all of these quote width differentials are also applicable to LMMs in Hybrid 3.0 classes (see Rule 8.15), LMMs in Hybrid classes (see Rule 8.15A), DPMs (see Rule 8.85), and e-DPMs (see Rule 8.93), depending on the manner in which the market participant functions.

CBOE proposes to amend its rules to allow the Exchange to set the bid/ask differential requirements on a class by class basis, and delete from its rules the specific differentials identified in Rule 8.7(b)(iv). CBOE would announce the bid/ask differentials to its members via circular. Although CBOE at this time does not anticipate materially changing the bid/ask differentials from their current levels, it believes that this change provides it with additional flexibility to tailor the bid/ask differential requirements to particular option classes and to take into consideration the market conditions and the trading and liquidity in a particular option class and its underlying security when setting the bid/ask differentials. Under its existing rules, CBOE from time to time grants bid/ask relief in various option classes based on market conditions and it has not experienced any negative effects from such actions. CBOE believes that the proposed rule change will allow CBOE to continue to set the bid/ask differentials at an appropriate level which may be different than the existing bid/ask differentials, rather than waiting for market participants to request bid/ask relief as it traditionally has been done. CBOE notes that the rules of the Nasdaq Options Market do not contain any bid/ask differential requirements, even though CBOE does not anticipate mimicking that market structure. Accordingly, CBOE believes that this proposed change is consistent with the Act.

In connection with this proposal, CBOE proposes to make related changes to Rules 6.2B, 6.13, 6.25, 6.53C, 8.14, 8.15, 8.15A, 8.85, and 8.93, which currently reference the bid/ask differentials in Rule 8.7(b)(iv).

Finally, CBOE proposes to amend Rule 8.93(iv) to state that an e-DPM is obligated to assure that its market quotations comply with the minimum size requirements prescribed by CBOE, which minimum shall be at least one contract. Last year, CBOE amended its rules to allow the Exchange to set a minimum quotation size requirement for electronic and open outcry quotes on a class by class basis, provided the minimum set by the Exchange is at least one contract.[6] In that filing, changes to Rule 8.93 were inadvertently omitted.

2. Statutory Basis

The proposed rule change would permit the Exchange to set the bid/ask differential requirements on a class by class basis. CBOE believes that this flexibility will enable the Exchange to tailor the bid/ask differential requirements to particular classes and to take into consideration the market conditions and the trading and liquidity

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii)

[4] 17 CFR 240.19b–4(f)(6).

[5] Pursuant to Rule 1.1(aaa), reference to Hybrid Trading System includes the Hybrid 3.0 Platform unless otherwise specified.

[6] *See* Securities Exchange Act Release No. 58828 (October 21, 2008), 73 FR 63749 (October 27, 2008), granting immediate effectiveness to SR–CBOE–2008–107.

in a particular option class and its underlying security. Accordingly, the Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts 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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,[9] it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2009–067 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–2009–067. 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–2009–067 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23852 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange has fulfilled this requirement.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60737; File No. SR–NYSE–2009–96]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Permitting Affiliation With NYFIX Millennium L.L.C. and NYFIX Securities Corporation

September 29, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (''NYFIX''), NYFIX Millennium L.L.C. (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations relating to the relationship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 is making this submission in connection with the proposed acquisition of NYFIX by NYSE Technologies. On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (as it may be amended from time to time, the ''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (the ''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext and affiliates.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently comprised of two U.S. registered broker-dealer subsidiaries, NYFIX Millennium, which is also an alternative trading system registered under SEC Regulation ATS, and NYFIX Securities.[4] Each has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority. Neither broker-dealer is a member of the Exchange. The Exchange notes that there is competition in the market to provide introducing broker services to the Exchange and the Exchange believes that there will continue to be effective competition after the Merger.

For purposes of this proposed rule change, Routing Services shall mean any of the activities of NYFIX Millennium and NYFIX Securities which relate to routing to marketplaces that are not operated by NYFIX, orders (including NYFIX Millennium ''pass through'' orders) which flow through the matching facility on their way to an exchange, electronic communications network, or ATS,[5] and NYFIX Securities' direct electronic market access and algorithmic trading products.

The Exchange is currently exploring various alternatives for the Transaction Services Division. Because of the manner in which the Transaction Services Division may interact with the Exchange and its affiliates, which gives rise to concerns regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to the terms and conditions set out below.

a. Conditions

Accordingly, the Exchange represents as follows, in each case for so long as the Exchange is affiliated with NYFIX Millennium and NYFIX Securities, with respect to the Routing Services:

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange.

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission.

(3) NYFIX will not engage in proprietary trading.

(4) NYFIX will not accept any new clients for its Routing Services after the Merger.

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities.

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.,* no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or their facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b–4 of the Securities Exchange Act of 1934.[6]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements.

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[7] of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(1),[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by

[4] Outside of the U.S., the NYFIX Transaction Services Division also operates the desk agency execution business of NYFIX International in the U.K. and Euro Millennium, a multi-lateral trading facility for non-displayed liquidity in pan-European listed equities housed within NYFIX International. These services are not within the scope of the Exchange's Proposed Rule Change.

[5] These orders are only executed if they find a match at or within the national best bid and offer by guaranteeing customers the best available ask price when buying securities, and the best available bid price when selling securities. If there is not a match, these orders are immediately routed to their ultimate destination.

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78a, *et seq.*

[9] 15 U.S.C. 78f(b)(1).

its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) [10] of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78f(b)(5).

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–NYSE–2009–96 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–NYSE–2009–96. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2009–96 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23853 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60738); File No. SR–NYSEARCA–2009–84]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Permitting Affiliation With NYFIX Millennium L.L.C. and NYFIX Securities Corporation

September 29, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (''NYFIX''), NYFIX Millennium L.L.C. (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations relating to the relationship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is making this submission in connection with the proposed acquisition of NYFIX by NYSE Technologies. On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (as it may be amended from time to time, the ''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (the ''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext and affiliates.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently comprised of two U.S. registered broker-dealer subsidiaries, NYFIX Millennium, which is also an alternative trading system registered under SEC Regulation ATS, and NYFIX Securities.[4] Each has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority. Neither broker-dealer is a member of the Exchange. The Exchange notes that there is competition in the market to provide introducing broker services to the Exchange and the Exchange believes that there will continue to be effective competition after the Merger.

For purposes of this proposed rule change, Routing Services shall mean any of the activities of NYFIX Millennium and NYFIX Securities which relate to routing to marketplaces that are not operated by NYFIX, orders (including NYFIX Millennium ''pass through'' orders) which flow through the matching facility on their way to an exchange, electronic communications network, or ATS,[5] and NYFIX Securities' direct electronic market access and algorithmic trading products.

The Exchange is currently exploring various alternatives for the Transaction Services Division. Because of the manner in which the Transaction Services Division may interact with the Exchange and its affiliates, which gives rise to concerns regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to the terms and conditions set out below.

a. Conditions

Accordingly, the Exchange represents as follows, in each case for so long as the Exchange is affiliated with NYFIX Millennium and NYFIX Securities, with respect to the Routing Services:

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange.

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission.

(3) NYFIX will not engage in proprietary trading.

(4) NYFIX will not accept any new clients for its Routing Services after the Merger.

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities.

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.,* no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or their facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b–4 of the of the Securities Exchange Act of 1934.[6]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[7] of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(1),[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons

[4] Outside of the U.S., the NYFIX Transaction Services Division also operates the desk agency execution business of NYFIX International in the U.K. and Euro Millennium, a multi-lateral trading facility for non-displayed liquidity in pan-European listed equities housed within NYFIX International. These services are not within the scope of the Exchange's Proposed Rule Change.

[5] These orders are only executed if they find a match at or within the national best bid and offer by guaranteeing customers the best available ask price when buying securities, and the best available bid price when selling securities. If there is not a match, these orders are immediately routed to their ultimate destination.

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78a, *et seq.*

[9] 15 U.S.C. 78f(b)(1).

associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) [10] of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78f(b)(5).

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–NYSEARCA–2009–84 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–NYSEARCA–2009–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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–NYSEARCA–2009–84 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23854 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at September 10, 2009 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on September 10, 2009, in North East, Maryland, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved and tabled certain water resources projects; (2) rescinded approval for two water resources projects; (3) approved settlements involving two water resources projects; and (4) tabled a request for an administrative hearing on a project previously approved by the Commission. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the *Supplementary Information* section of this notice.

DATES: September 10, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A report on the present hydrologic conditions of the basin indicating widespread recovery from winter precipitation deficits; (2) a panel discussion on the Chesapeake Bay and Ecosystems as two of the Commission's ''priority management areas''; (3) presentation of the William W. Jeanes Award for Environmental Excellence to The Nature Conservancy; (4) an update

on the Maryland Lt. Governor's Water Summit; (5) adoption of a final rulemaking action regarding the use of Commission-approved water sources for natural gas well development and clarifying administrative procedures; (6) adoption of an Access to Records Policy; and (7) ratification of several grants regarding surface water assessments, total maximum daily loads, the State of the Susquehanna project and the Susquehanna Flood Forecast and Warning System. The Commission also heard counsel's report on legal matters affecting the Commission.

The Commission convened a public hearing and took the following actions:

Public Hearing—Compliance Actions

The Commission approved settlements in lieu of civil penalties for the following projects:

1. Allegheny Energy Supply Company, LLC and UGI Development Company, Hunlock Creek Electric Generating Station—$35,000.

2. Chief Oil & Gas, LLC, Phelps 1H Well—$25,000.

Public Hearing—Projects Approved

1. *Project Sponsor:* Antrim Treatment Trust. Project Facility: Antrim No. 1, Duncan Township, Tioga County, Pa. Surface water withdrawal of up to 0.720 mgd.

2. *Project Sponsor and Facility:* Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Groundwater withdrawal of 0.040 mgd from Laurel Springs 1 and 2.

3. *Project Sponsor and Facility:* Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Consumptive water use of up to 0.080 mgd.

4. *Project Sponsor:* Community Refuse Service, Inc. Project Facility: Cumberland County Landfill, Hopewell and North Newton Townships, Cumberland County, Pa. Modification to increase consumptive water use from a peak day of 0.090 mgd up to 0.140 mgd (Docket No. 20050907).

5. *Project Sponsor:* Community Refuse Service, Inc. Project Facility: Cumberland County Landfill, Hopewell and North Newton Townships, Cumberland County Pa. Groundwater withdrawal of 0.053 mgd from eight wells for consumptive water use.

6. *Project Sponsor and Facility:* EXCO–North Coast Energy, Inc. (Tunkhannock Creek—Dobrinski), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.

7. *Project Sponsor and Facility:* Fortuna Energy Inc. (Towanda Creek—Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Surface water withdrawal of up to 2.000 mgd.

8. *Project Sponsor and Facility:* LHP Management, LLC (Fishing Creek—Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Surface water withdrawal of up to 0.100 mgd.

9. *Project Sponsor and Facility:* Seneca Resources Corporation (Arnot No. 5), Bloss Township, Tioga County, Pa. Surface water withdrawal of up to 0.499 mgd.

10. *Project Sponsor and Facility:* Southwestern Energy Company (Cold Creek—Giroux), Herrick Township, Bradford County, Pa. Surface water withdrawal of up to 0.249 mgd.

11. *Project Sponsor and Facility:* Southwestern Energy Company (Mill Creek—Kennedy), Stevens Township, Bradford County, Pa. Surface water withdrawal of up to 0.249 mgd.

12. *Project Sponsor and Facility:* Southwestern Energy Company (Ross Creek—Billings), Stevens Township, Bradford County, Pa. Surface water withdrawal of up to 0.249 mgd.

13. *Project Sponsor and Facility:* Southwestern Energy Company (Tunkhannock Creek—Price), Lenox Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.380 mgd.

14. *Project Sponsor and Facility:* Southwestern Energy Company (Wyalusing Creek—Ferguson), Wyalusing Township, Bradford County, Pa. Surface water withdrawal of up to 1.500 mgd.

15. *Project Sponsor and Facility:* Southwestern Energy Company (Wyalusing Creek—Campbell), Stevens Township, Bradford County, Pa. Surface water withdrawal of up to 1.500 mgd.

16. *Project Sponsor:* UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

17. *Project Sponsor:* UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Consumptive water use of up to 0.870 mgd.

18. *Project Sponsor and Facility:* Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa. Corrective modification to passby flow condition (Docket No. 20090631).

19. *Project Sponsor:* United Water Resources. Project Facility: United Water PA–Harrisburg Operation, Newberry Township, York County, Pa. Groundwater withdrawal of up to 0.121 mgd from Paddletown Well.

Public Hearing—Projects Tabled

1. *Project Sponsor and Facility:* ALTA Operating Company, LLC (Berkowitz Pond), Forest Lake Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.249 mgd.

2. *Project Sponsor and Facility:* J–W Operating Company (Abandoned Mine Pool—Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

3. *Project Sponsor and Facility:* Mansfield Borough Municipal Authority, Richmond Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.079 mgd from Well 3.

4. *Project Sponsor and Facility:* Southwestern Energy Company (Sutton Big Pond), Herrick Township, Bradford County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

Public Hearing—Rescission of Project Approvals

1. *Project Sponsor and Facility:* East Resources, Inc. (Tioga River) (Docket No. 20080609), Mansfield, Richmond Township, Tioga County, Pa.

2. *Project Sponsor and Facility:* Montrose Country Club (Docket No. 20020603), Bridgewater Township, Susquehanna County, Pa.

Public Hearing—Rescission of Project Approvals Tabled

1. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080903), Town of Tioga, Tioga County, N.Y.

2. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080906), Athens Township, Bradford County, Pa.

3. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

Public Hearing—Administrative Appeals

1. Docket No. 20090315, from petitioner Paul R. Miller allegedly on behalf of Delta Borough –The Commission tabled action on this appeal at the request of the petitioner and the Delta Borough Authority.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 25, 2009.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. E9–23840 Filed 10–2–09; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2009 Special 301 Out-of-Cycle Reviews of Fiji, Israel, the Philippines, Poland, and Saudi Arabia: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (The provisions of Section 182 are commonly referred to as the ''Special 301'' provisions of the Trade Act.) The USTR is required to determine which, if any, of these countries should be identified as Priority Foreign Countries. In addition, USTR has created a ''Priority Watch List'' and ''Watch List'' under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

In the 2009 Special 301 Report (*http://www.ustr.gov*), USTR announced that, in order to monitor progress on specific IPR issues, Out-of-Cycle Reviews would be conducted for Fiji, Israel, the Philippines, Poland, and Saudi Arabia. USTR requests written submissions from the public concerning any act, policy, or practice that is relevant to the decision regarding whether Fiji, Israel, the Philippines, Poland, and Saudi Arabia should be identified under Section 182 of the Trade Act.

DATES: Submissions from the general public must be received on or before *10 a.m. on Monday, November 9, 2009. Foreign governments who chose to make written submissions may do so on or before 10 a.m. on Monday, November 23, 2009.*

ADDRESSES: All comments should be sent electronically to *http://www.regulations.gov*, docket number USTR–2009–0001. Submissions should contain the term ''2009 Special 301 Out-of-Cycle Review'' in the ''Type comment & Upload file'' field on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: *Jennifer Choe Groves,* Senior Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, at (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. USTR may not identify a country as a Priority Foreign Country if that country is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights. In addition, USTR has created a ''Priority Watch List'' and ''Watch List'' under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice deserve special attention. Submissions may report positive or negative developments with respect to these entities.

Requirements for comments: Comments should include a description of the problems experienced by the submitter and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically to *http://www.regulations.gov*, docket number USTR–2009–0001.

To submit comments to *http://www.regulations.gov*, enter docket number USTR–2009–0001 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a comment.'' (For further information on using the *http://www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use This Site'' on the left side of the home page).

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type comment & Upload file'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type comment & Upload file'' field. However, all submissions should contain the term ''2009 Special 301 Out-of-Cycle Review'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and should indicate using brackets the specific information which is confidential. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on the 2009 Special 301 Out-of-Cycle Review, accessible to the public. The public file will include non-confidential comments received by USTR from the public, including foreign governments, with respect to the 2009 Special 301 Out-of-Cycle Review.

Public inspection of submissions: Comments will be placed in the docket and open to public inspection pursuant

to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* website by entering docket number USTR–2009–0001 in the search field on the home page.

Stanford K. McCoy,

Assistant USTR for Intellectual Property and Innovation.

[FR Doc. E9–23872 Filed 10–2–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2009–0100]

Agency Information Collection Activities: Request for Comments; Renewed Approval of Information Collection; State Right-of-Way Operations Manuals, OMB Control Number: 2125–0586

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comment regarding our intention to request the Office of Management and Budget (OMB) to approve a renewed information collection. The information we collect is provided by each State Department of Transportation (State) in its right-of-way operations manuals. The right-of-way manuals contain detailed descriptions of procedures the State will follow to show compliance with Federal regulations found in 23 CFR Part 710 and 49 CFR Part 24. 23 CFR 710.201(c) sets out the requirement for the right-of-way operations manual. Specifically, each manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The State shall update the manual periodically to reflect changes in operations and submit the updated manual for approval by the FHWA. The Paperwork Reduction Act of 1995 required the FHWA to publish notice for this information collection in the **Federal Register**.

DATES: Please submit comments by December 4, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0100 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen Facer, 785–228–2544, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

OMB Control Number: 2125–0586.

Background: It is the responsibility of each State Department of Transportation (State) to acquire, manage and dispose of real property in compliance with the legal requirements of State and Federal laws and regulations. Part of providing assurance of compliance is to describe in a right-of-way procedural (operations) manual the organization, policies and procedures of the State to such an extent that these guide State employees, local acquiring agencies, and contractors who acquire and manage real property that is used for a federally funded transportation project. Procedural manuals assure the FHWA that the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) will be met. The State responsibility to prepare and maintain an up-to-date right-of-way procedural manual is set out in 23 CFR 710.201(c). The regulation allows States flexibility in determining how to meet the manual requirement. This flexibility allows States to prepare manuals in the format of their choosing, to the level of detail necessitated by State complexities. Each State decides how it will provide service to individuals and businesses affected by Federal or federally-assisted projects, while at the same time reducing the burden of government regulation. States are required to update manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. The State manuals may be submitted to FHWA electronically or made available by posting on the State Web site.

Respondents: State Departments of Transportation (52, including the District of Columbia and Puerto Rico).

Frequency: Once initially, then States update their operations manuals for review.

Estimated Average Burden per Response: 75 hours per respondent.

Estimated Total Annual Burden Hours: 75 hours for each of the 52 State Departments of Transportation. The total is 3,900 burden hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA oversight of the right-of-way program; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 29, 2009.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–23881 Filed 10–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting—Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

DATES: The meeting will be held Tuesday, November 17, 2009 from 9 a.m.–5 p.m. and Wednesday, November 18, 2009 from 9 a.m.–5 p.m.

ADDRESSES: Hosted by SkyTerra, Reston, VA. An RSVP to SkyTerra is required by

close of business Monday, November 16, 2009; instructions and forms to RSVP, travel directions to SkyTerra, and local hotel accommodations are accessible on the SC–222 Web page or by contacting Mr. Daryl McCall at (319) 739–0858 or *dmccall@fastekintl.com.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

Note: Business Casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services. The agenda will include:

Tuesday, November 17, 2009 9 a.m. through Wednesday, November 18, 2009

- Opening Plenary (Introductions and Opening Remarks).
- Review and Approval of Summary for the Third Meeting of Special Committee 222 held at the Boeing Longacres Park, Renton, WA; SC–222/WP–028.
- Review and Approval of the Agenda for the Fourth Meeting of SC–222, WP–029.
- Old Business.
- Review of/reports for the currently active Action Items regarding SBB Safety issues.
- *Inmarsat:* Complete the tables for DO–262 and DO–270 listing in Working Paper WP–4; the action for DO–262 is complete.
- Dr. LaBerge to provide an updated MASPS (DO–270) two weeks prior to the next SC–222 meeting.
- SkyTerra and Inmarsat to jointly outline hypothetical projected schedules for SBB safety rollout and ATCt rollout.
- Roser Roca-Toha and Glenn Torgerson to outline a schedule for updating aircraft equipment once AGCS and RTCA documents are ready.
- All SC–222 attendees are requested to present future papers on thoughts of operations without doing anything to reduce ATCt interference effects.
- Dr. LaBerge and Mr. McCall to provide Orville Nyhus with a schedule for the FRAC process to be included in the minutes of the 3rd Meeting of SC–222.
- Dr. LaBerge and Mr. McCall to finalize details of the location of the next meeting of SC–222 by August 1st.
- Working Papers, Discussions, and Schedule Review regarding ATCt issues.

Note: *Working papers posted to the SC–222 Web site on before October 15, 2009 will receive first priority in review. Additional working papers will be reviewed in the order in which they were received. To obtain a new WP number, contact Dr. LaBerge at laberge.engineering@gmail.com. To post a new WP to the website, provide a PDF version to Mr. McCall at dmccall@fastekintl.com, with a copy to Dr. LaBerge.*

- *SC222/WP–027:* Review, discussion and acceptance of detailed work schedule.
- *SC222/WP–030:* Review of MASPS (DO–270) Updates—Dr. Charles LaBerge.
- *SC222/WP–031:* Introduction to MOPS (DO–262) Updates—Dr. Charles LaBerge.
- Review of working papers submitted by SC–222 members regarding Agenda Item 4e.
- Projected Schedule for ATCt Rollout—SkyTerra.
- Projected Schedule for SBB Safety Rollout –Inmarsat.
- AIRBUS Projected Aircraft Rollout for SBB Safety—Roser Roca-Toha.
- Boeing Projected Aircraft Rollout for SBB Safety—Glenn Torgerson.
- Other Business.
- Review of Assignments and Action Items.
- Date and Location for the 5th Meeting of SC–222. Tentatively scheduled for Inmarsat, London, England, week of January 18, 2010.
- Closing Plenary (Other Business, Review of Assignments and Action Items, Date and Location for the Fifth Meeting of SC–222. Tentatively scheduled for Inmarsat, London, England, week of January 18, 2010, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–23894 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0090]

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 FINNESSA.

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–2009–0090 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 November 4, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–00090. 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 FINNESSA is:

Intended Commercial Use Of Vessel: ''UPV 6 or less passengers, captained with focus on sailing for 3 or more days.''

Geographic Region: ''Alaska, Washington''.

Privacy Act

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

Dated: September 24, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–23878 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Summer 2010 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 15, 2009, for Summer 2010 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. The deadline of October 15, 2009, coincides with the schedule submission deadline for the IATA Schedules Conference for the Summer 2010 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2, Schedules Facilitated Airport, and JFK and EWR as Level 3, Coordinated Airports. The scheduled operations at JFK and EWR are currently limited by the FAA through orders that the FAA expects will continue to be in effect for the Summer 2010 scheduling season.[1]

The FAA is primarily concerned about planned operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 7 a.m. to 9 p.m. Central Daylight Time (1200–0200 UTC) and at EWR and JFK from 6 a.m. to 11 p.m. Eastern Daylight Time (1000–0300 UTC). Schedule information should include all planned commercial operations including passenger, charter, and cargo flights. Carriers must submit schedule information in sufficient detail to include at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. The FAA encourages the use of IATA standard schedule information format and data elements in the IATA Standard Schedules Information Manual.

The U.S. summer scheduling season for these airports is from March 28, 2010, through October 30, 2010, in recognition of the IATA scheduling season dates. The FAA understands there may be differences from other nations' schedule season dates due to different U.S. daylight saving time rules. The FAA will accommodate these differences to the extent that it is possible.

JFK will have runway and airfield construction during the Summer 2010 scheduling season. As a result, the primary departure runway 13R/31L will be unavailable from March 1 until July 1, and it will not be fully available until mid-November. During this time, the FAA will use alternative runway configurations and procedures in order to reduce congestion and delays; however, there will be operational impacts and additional delays under certain conditions. During spring and early summer, the closure of Runway 13R/31L is expected to result in year-over-year delay increases. Modeling suggests that peak hour spring delays will be similar to historic August levels. Regular meetings are being held to plan for the construction and mitigation efforts. These meetings include the FAA, the Port Authority of New York and New Jersey, JFK air carrier representatives, and other stakeholders.

In light of reduced airport capacity during the Summer 2010 scheduling season, the FAA anticipates allocating Operating Authorizations only for historic operations during peak hours. Carriers seeking to initiate new peak-hour service at JFK should consider their alternatives or should utilize the secondary market to obtain Operating Authorizations from other carriers.

DATES: Schedules must be submitted no later than October 15, 2009.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Associate Chief Counsel for the Air Traffic Organization, Office of the Chief Counsel, AGC–40, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–8323; fax number: 202–267–7971; e-mail: *james.tegtmeier@faa.gov.*

Issued in Washington, DC on September 29, 2009.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. E9–23892 Filed 10–2–09; 8:45 am]

BILLING CODE 4910–13–P

[1] Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 FR 3,510 (Jan. 18, 2008); 73 FR 8,737 (Feb. 14, 2008) (amendment to order). Order Limiting Scheduled Operations at Newark Liberty International Airport, 73 Fed. Reg. 29550 (May 21, 2008).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 29, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, 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, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 4, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1522.

Type of Review: Extension.

Title: Revenue Procedure 2003–1 and Revenue Procedure 2003–3 26 CFR 601–.201 Rulings and Determination Letters.

Description: The information requested in Revenue Procedure 2003–1 under sections 5.05, 6.07, 8.01, 8.02, 8.03, 8.04, 8.05, 8.07, 9.01, 10.06, 10.07, 10.09, 11.01, 11.06, 11.07, 12.12, 13.02, 15.02, 15.03, 15.07, 15.08, 15.09, and 15.11 paragraph (B)(1) of Appendix A, and Appendix C, and question 35 of Appendix C, and in Revenue Procedure 2003–3 under sections 3.01(29), 3.02(1) and (3), 4.01(26), and 4.02(1) and (7)(b) is required to enable the Internal Revenue Service to give advice on filing letter ruling and determination letter requests and to process such requests.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 513,150 hours.

OMB Number: 1545–1021.

Type of Review: Extension.

Form: 8594.

Title: Asset Acquisition Statement.

Description: Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 219,462 hours.

OMB Number: 1545–1833.

Type of Review: Extension.

Title: Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.

Description: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by Sec. 1.861–9T(g)(1)(iii). It also sets forth the procedures to be followed in the case of elections to use the fair market value method.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 625 hours.

OMB Number: 1545–0945.

Type of Review: Extension.

Title: FI–255–82 (NPRM and Temporary) Registration Requirements With Respect to Debt Obligations.

Description: The rule requires an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the IRS in connection with enforcement of the Internal Revenue laws.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 50,000 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–23847 Filed 10–2–09; 8:45 am]

BILLING CODE 4830–01–P

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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