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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 HEALTH AND HUMAN SERVICES

Office of the Secretary

2 CFR Part 382

45 CFR Part 82

Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or the Department) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, and issuing a new regulation to adopt Office of Management and Budget (OMB) guidance. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in HHS policy or procedures for drug-free workplace.

DATES: This final rule is effective on January 11, 2010 without further action. Written comments must be received on or before 5 p.m. (Eastern Standard Time) on December 14, 2009 on any unintended changes this action makes in HHS policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, HHS will revise the rule.

ADDRESSES: You may submit comments by either of the following methods: E-mail: *Nancy.Weisman@hhs.gov,* or by mail: Nancy Weisman, HHS, Office of Grants Policy, Oversight and Evaluation, 200 Independence Ave., SW., Room 514–D Hubert H. Humphrey Building, Washington, DC 20201. Please state ''2 CFR part 382'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Nancy Weisman at (202) 260–4573, or e-mail her at *Nancy.Weisman@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [54 FR 4946, January 31, 1989]. The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

On November 26, 2003 [68 FR 66534], the agencies updated the common rule on drug-free workplace requirements and converted it to plain language. Each agency at that time also relocated the drug-free workplace coverage to its own CFR part and removed it from the subpart in the suspension and debarment common rule.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment [73 FR 55776, September 26, 2008] and finalized [74 FR 28149, June 15, 2009] Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it co-locates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, HHS is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 82. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 382 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation To Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive changes in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 45 CFR part 82.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the ''Background'' section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in HHS policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that ''good cause'' exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule

effective on January 11, 2010 without further action, unless we receive adverse comment by December 14, 2009. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

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

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

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

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

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

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 382

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 82

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: November 2, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, HHS amends the Code of Federal Regulations, Title 2, Subtitle B, chapter III, and Title 45 CFR, chapter I, part 82, as follows:

Title 2—Grants and Agreements

■ 1. Add part 382 in Subtitle B, Chapter III, to read as follows:

Sec.

PART 382—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

382.10 What does this part do?
382.20 Does this part apply to me?
382.30 What policies and procedures must I follow?

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

§ 382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

§ 382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

§ 382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

§ 382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

Subpart F—[Reserved]

Authority: 41 U.S.C. 701–707.

§ 382.10 What does this part do?

This part requires that the award and administration of HHS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the HHS grants and cooperative agreements; and

(b) Establishes HHS policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 382.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an HHS grant or cooperative agreement; or

(b) HHS awarding official.

§ 382.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 382.225	Whom in HHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 382.300	Whom in HHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§ 382.500	Who in HHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(4) 2 CFR 182.505	§ 382.505	Who in HHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HHS policies and procedures are the same as those in the OMB guidance.

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 382.225 Whom in HHS does a recipient other than an individual notify about a criminal conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 382, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.500.

§ 382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.505.

Subpart F—(Reserved)

Title 45—Public Welfare

CHAPTER I—DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 82—[REMOVED]

■ 2. Under the authority of 5 U.S.C. 301, remove part 82.

[FR Doc. E9–27024 Filed 11–10–09; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD; Amendment 39–16080; AD 2009–23–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

ACTION: Final rule.

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

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

* * * * *

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 17, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 17, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 18, 2009 (74 FR 41642), and proposed to supersede AD 2007–06–53, Amendment 39–15035 (72 FR 21088, April 30, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and

reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage and replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 145 products of U.S. registry.

The actions that are required by AD 2007–06–53 and retained in this AD take about 1 work-hour per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $80 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $17,162 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,569,690, or $17,722 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15035 (72 FR 21088, April 30, 2007) and adding the following new AD:

2009–23–08 Empresa Brasileira de Aeronáutica S.A. (EMBRAER): Amendment 39–16080. Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 17, 2009.

Affected ADs

(b) This AD supersedes AD 2007–06–53, Amendment 39–15035.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, –100 IGW, –200 LR, –200 STD, and –200 IGW airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft

cargo door frames at the fuselage and replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks.

Compliance

(f) Required as indicated, unless accomplished previously.

Restatement of Requirements of AD 2007–06–53, With New Service Information

Preflight Verification of Correct Door Closure

(g) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of 24 hours after May 7, 2007 (the effective date of AD 2007–06–53), before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (h) of this AD.

Inspection for Interference and Damage

(h) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 10 days after May 7, 2007, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 170–52–A036 (for Model ERJ 170 airplanes) or 190–52–A018 (for Model ERJ 190 airplanes), both dated March 12, 2007; or Revision 01, both dated March 23, 2007; as applicable. As of the effective date of this AD, use Revision 01 of Embraer Alert Service Bulletin 170–52–A036 or 190–52–A018.

(1) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(2) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If any sign of interference is detected: Rework the assembly before further flight.

(ii) If no sign of interference is detected: Rework the assembly within 150 flight cycles after the inspection.

(3) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with Embraer Alert Service Bulletin 170–52–A036 or 190–52–A018, as applicable.

(4) Actions done before May 7, 2007, in accordance with Embraer Alert Service Bulletin 170–52–A036 or 190–52–A018, both dated March 12, 2007, are acceptable for compliance with the corresponding requirements of this AD.

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

Note 2: Embraer Alert Service Bulletins 170–52–A036 and 190–52–A018 refer to Embraer Service Bulletins 170–50–0006 and 190–50–0006, respectively, as additional sources of guidance for the rework and roller fitting cover plate removal. Embraer Alert Service Bulletins 170–50–0006 and 190–50–0006 are currently at Revision 01, dated March 13, 2007.

Repetitive Inspections for Damage

(i) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Repeat the inspection specified in paragraph (h)(3) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

Parts Installation

(j) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of May 7, 2007, no person may install a roller fitting cover plate on the forward and aft cargo door frames on any airplane.

New Requirements of This AD

Actions and Compliance

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

(1) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: As of 24 hours after the effective date of this AD, before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (k)(2) of this AD.

(2) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: Within 10 days after the effective date of this AD, do the actions specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007. Repeat the inspection specified in paragraph (k)(2)(iii) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

(i) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(ii) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (k)(2)(ii)(A) or (k)(2)(ii)(B) of this AD.

(A) If any sign of interference is detected: Rework the assembly before further flight.

(B) If no sign of interference is detected: Rework the assembly within 150 flight cycles after the inspection.

(iii) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007.

(3) For all airplanes: Within 5,000 flight cycles after the effective date of this AD, do the actions specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD on the forward and aft cargo doors. Accomplishing the actions in this paragraph terminates the repetitive inspections required by paragraphs (i) and (k)(2) of this AD.

(i) Relocate the cargo door closed indication sensor in accordance with the Accomplishment Instructions of Embraer Service Bulletin 170–52–0041, Revision 01, dated June 13, 2008; or 190–52–0023, Revision 02, dated March 11, 2008; as applicable.

(ii) Modify the cargo door lock handle mechanism and replace the forward and aft cargo door roller fittings having part number (P/N) 170–92569–401 and 170–85452–401 with new fittings having P/N 170–92569–403 and 170–85452–403, as applicable. Do the modification in accordance with the Accomplishment Instructions of Embraer Service Bulletins 170–52–0044, dated January 18, 2008; or 190–52–0027, dated March 20, 2008; as applicable.

(4) Actions done before the effective date of this AD in accordance with Embraer Service Bulletin 170–52–0041, dated September 6, 2007; or 190–52–0023, dated September 6, 2007, or Revision 01, dated December 6, 2007; as applicable; are acceptable for compliance with the corresponding requirements of this AD.

(5) Within 12 months after the effective date of this AD or 12 months after accomplishing the modification required by paragraph (k)(3) of this AD, whichever occurs later: Incorporate information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors; in accordance with a method approved by the

Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (or its delegated agent). Within 6,000 flight hours after doing the actions required by paragraph (k)(3) of this AD, do the OPC and FNC checks and repeat the checks thereafter at intervals not to exceed 6,000 flight hours.

Note 3: Guidance on the OPC and FNC checks specified in paragraph (k)(5) of this AD can be found in the document specified in Table 1 of this AD, as applicable:

TABLE 1—OPC AND FNC GUIDANCE

Manual—	Task—	Date—
Embraer 170 Aircraft Maintenance Manual	52–31–00–710–801–A/500	July 15, 2008.
	52–31–20–720–801–A/500	July 15, 2008.
	52–32–00–710–801–A/500	July 15, 2008.
	52–32–20–720–801–A/500	July 15, 2008.
Embraer 190 Aircraft Maintenance Manual	52–31–00–710–801–A/500	July 15, 2008.
	52–31–20–720–801–A/500	July 15, 2008.
	52–32–00–710–801–A/500	July 15, 2008.
	52–32–20–720–801–A/500	July 15, 2008.

Note 4: For the purposes of this AD, a functional check (FNC) is: ''A quantitative check to determine if one or more functions of an item perform within specified limits.''

Note 5: For the purposes of this AD, an operational check (OPC) is: ''A task to determine if an item is fulfilling its intended purpose. Since it is a failure finding task, it does not require quantitative tolerances.''

FAA AD Differences

Note 6: This AD differs from the MCAI and/or service information as follows: Where the MCAI includes a compliance time of ''after accomplishment of the modification'' for revising the maintenance program for Model ERJ–170 airplanes, we have determined that a compliance time of ''within 12 months after the effective date of the AD or within 12 months after accomplishment of the modification, whichever occurs later'' is appropriate. This compliance time is equivalent to the compliance time required for Model ERJ–190 airplanes. The manufacturer and ANAC agree with this compliance time.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–06–53, are approved as AMOCs for the corresponding provisions of paragraph (i) of this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(m) Refer to Brazilian Airworthiness Directives 2007–03–01R1, dated June 9, 2008, and 2007–03–02R2, dated November 21, 2008; and the service information contained in Table 2 of this AD; for related information.

TABLE 2—SERVICE INFORMATION

Service bulletin	Revision	Date
Embraer Alert Service Bulletin 170–52–A036	01	March 23, 2007.
Embraer Alert Service Bulletin 190–52–A018	01	March 23, 2007.
Embraer Service Bulletin 170-52-0041	01	June 13, 2008.
Embraer Service Bulletin 170-52-0044	[1]	January 18, 2008.
Embraer Service Bulletin 190-52-0023	02	March 11, 2008.
Embraer Service Bulletin 190-52-0027	[1]	March 20, 2008.

[1] Original.

Material Incorporated by Reference

(n) You must use the applicable service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
Embraer Alert Service Bulletin 170–52–A036	01	March 23, 2007.
Embraer Alert Service Bulletin 190–52–A018	01	March 23, 2007.
Embraer Service Bulletin 170–52–0041	01	June 13, 2008.
Embraer Service Bulletin 170–52–0044	[1]	January 18, 2008.
Embraer Service Bulletin 190–52–0023	02	March 11, 2008.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision	Date
Embraer Service Bulletin 190–52–0027	[1]	March 20, 2008.

[1] Original.

(1) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*.

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

(3) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26622 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1039; Directorate Identifier 2009–CE–059–AD; Amendment 39–16085; AD 2009–23–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

It has been found the possibility of heating deactivation of Air Data System (ADS) sensors due to its inadequate automatic logic, when ADS/AOA knob is on AUTO position associated with the following messages:

—DC BUS 1 OFF displayed on Crew Alerting System—CAS in conjunction with STBY HTR FAIL (which means loss of power on DC BUS 1); or

—EMER BUS OFF displayed on CAS (which means loss of power on EMERGENCY BUS); or

—ELEC EMERGENCY displayed on CAS (which means Electrical Emergency).

The loss of airplane air data sensors heating may cause ice buildup on their surfaces, which in turn may cause wrong pressure acquisitions resulting in erroneous flight parameters indication to the flight crew. Since this condition may occur in other airplanes of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 2, 2009.

We must receive comments on this AD by December 28, 2009.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL, which is the aviation authority for Brazil, has issued AD No.: 2009–10–01R1, dated October 16, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of heating deactivation of Air Data System (ADS) sensors due to its inadequate automatic logic, when ADS/AOA knob is on AUTO position associated with the following messages:

—DC BUS 1 OFF displayed on Crew Alerting System—CAS in conjunction with STBY HTR FAIL (which means loss of power on DC BUS 1); or

—EMER BUS OFF displayed on CAS (which means loss of power on EMERGENCY BUS); or

—ELEC EMERGENCY displayed on CAS (which means Electrical Emergency).

The loss of airplane air data sensors heating may cause ice buildup on their surfaces, which in turn may cause wrong pressure acquisitions resulting in erroneous flight parameters indication to the flight crew. Since this condition may occur in other airplanes of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

This AD action requires inserting information into the Abnormal Procedures section of the FAA-approved airplane flight manual (AFM). You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information

referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the loss of airplane air data sensors heating may cause ice buildup on their surface. This condition may cause wrong pressure acquisitions, resulting in erroneous flight parameters indication to the flight crew. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1039; Directorate Identifier 2009–CE–059–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(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) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–11 Empresa Brasileira de Aeronáutica S.A. (EMBRAER): Amendment 39–16085; Docket No. FAA–2009–1039; Directorate Identifier 2009–CE–059–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EMB–500 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 30: Ice and Rain Protection.

Reason

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

''It has been found the possibility of heating deactivation of Air Data System (ADS) sensors due to its inadequate automatic logic, when ADS/AOA knob is on AUTO position associated with the following messages:

—DC BUS 1 OFF displayed on Crew Alerting System—CAS in conjunction with STBY HTR FAIL (which means loss of power on DC BUS 1); or

—EMER BUS OFF displayed on CAS (which means loss of power on EMERGENCY BUS); or

—ELEC EMERGENCY displayed on CAS (which means Electrical Emergency).

The loss of airplane air data sensors heating may cause ice buildup on their surfaces, which in turn may cause wrong pressure acquisitions resulting in erroneous flight parameters indication to the flight crew. Since this condition may occur in other airplanes of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.''

This AD action requires inserting information into the Abnormal Procedures section of the FAA-approved airplane flight manual (AFM).

Actions and Compliance

(f) Unless already done, before further flight, incorporate into the AFM the following procedures section revisions. You may insert a copy of this AD into the appropriate sections of the AFM to comply with the requirements of this AD.

(1) Revise the AFM by replacing the ELECTRICAL EMERGENCY procedures in

AFM section 4–08, Abnormal Procedures,
pages 3 and 4, with Figure 1:

BILLING CODE 4910–13–P

ELECTRICAL EMERGENCY

Reset both generators.

If message persists:

LAND AS SOON AS POSSIBLE.

ADS/AOA Knob..... ON

Exit and avoid icing conditions.

Confirm that IESI has reverted. If not, select ADSTBY on PFD.

PRESSURIZATION MODE Selector.... MAN

CABIN ALT Switch..... AS REQUIRED

Airspeed..... 250 KIAS MAXIMUM

Altitude..... 25000 ft MAXIMUM

CAUTION: BATTERIES DURATION IS 45 MINUTES MAXIMUM.

When landing maintain airspeed according to the following:

FLAPS POSITION	MINIMUM AIRSPEED
0	$V_{REF\ FULL}$ + 30 KIAS
1	$V_{REF\ FULL}$ + 15 KIAS
2	$V_{REF\ FULL}$ + 5 KIAS
3 and FULL	$V_{REF\ FULL}$

NOTE: - If flaps stop between two positions, use the minimum airspeed associated to the next retracted position and the V_{FE} associated to the next extended position.

- Disregard green circle indication, as it may indicate slower speeds.

During landing run:

Emergency/Parking Brake..... APPLY

CAUTION: WHEN APPLYING EMERGENCY BRAKES, PULL THE HANDLE PROGRESSIVELY, MONITORING THE EMERGENCY/PARKING BRAKE LIGHT.

NOTE: The emergency/parking brake accumulator allows 6 actuations.

(Continues on the next page)

(Continued from the previous page)

CAUTION: TO DETERMINE THE MINIMUM SUITABLE LANDING DISTANCE, MULTIPLY THE UNFACTORED LANDING DISTANCE FOR FLAPS FULL BY ONE OF THE FACTORS BELOW:

FLAPS POSITION	CORRECTION FACTOR
0	2.25
1	1.75
2	1.65
3 and FULL	1.50

If a go-around is required, maintain the minimum airspeed presented in the applicable flaps configuration from the table above, until the acceleration altitude is reached.

The list below presents the relevant inoperative equipment. Items marked with an asterisk have dedicated failure procedures, which may have to be performed, at pilot's discretion:

- ADC 1 and 2 (*)
- AHRS 2 (*)
- Air Conditioning
- Anti-Ice/De-Ice Systems
- Audio Panel 2 (*)
- Autopilot (*)
- DMEs
- Flap System (*)
- FMS Panel
- GIA 2 (*)
- GPS 2/VOR 2/ILS 2
- Landing/Taxi Lights
- Main Brake (*)
- PFD 2
- Pitch Trim (Main) (*)
- Pressurization Auto (*)
- Roll Trim
- Stick Pusher (*)
- TCAS
- Transponder 2
- VHF 2
- Windshield Heater (*)
- WX Radar
- Yaw Damper
- Yaw Trim

Figure 1 – AFM Section 4-08, pages 3 and 4, ELECTRICAL EMERGENCY

(2) Revise the AFM by replacing the DC BUS 1 OFF procedure in AFM section 4–08, Abnormal Procedures, pages 6 and 7, with Figure 2:

DC BUS 1 OFF

ADS/AOA Knob..... ON
Icing Conditions..... EXIT/AVOID

For landing procedures:
- Maintain airspeed according to the following:

FLAPS POSITION	MINIMUM AIRSPEED	
	NO ICING	IN ICING/WITH ICE
0	$V_{REF\ FULL}$ + 25 KIAS	$V_{REF\ FULL}$ + 40 KIAS
1	$V_{REF\ FULL}$ + 15 KIAS	$V_{REF\ FULL}$ + 35 KIAS
2	$V_{REF\ FULL}$ + 5 KIAS	$V_{REF\ FULL}$ + 30 KIAS
3 and FULL	$V_{REF\ FULL}$	$V_{REF\ FULL}$ + 25 KIAS

NOTE: - If flaps stop between two positions, use the minimum airspeed associated to the next retracted position and V_{FE} associated to the next extended position.
- Disregard green circle indication, as it may indicate slower speeds.

CAUTION: TO DETERMINE THE MINIMUM SUITABLE LANDING DISTANCE, MULTIPLY THE UNFACTORED LANDING DISTANCE FOR FLAPS FULL BY ONE OF THE FACTORS BELOW:

FLAPS POSITION	CORRECTION FACTOR	
	NO ICING	IN ICING/WITH ICE
0	1.40	1.70
1	1.20	1.60
2	1.10	2.00
3 and FULL	1.00	1.95

The list below presents the relevant inoperative equipment. Items marked with an asterisk have dedicated failure procedures, which may have to be performed, at pilot's discretion:

- ADC 1 (*)
- Cockpit FCSOV
- De-Ice System (*)
- DME 1
- Engine 1 Anti-Ice (*)
- Engine 1 Flowmeter
- Flap System (*)
- Left Landing/Taxi Light
- Roll Trim
- Stick Pusher (*)
- VHF 2
- Windshield Heater 1 (*)
- WX Radar
- Yaw Trim

Figure 2 – AFM Section 4-08, Pages 6 and 7, DC BUS 1 OFF

(3) Revise the AFM by replacing the EMERGENCY BUS OFF procedure in AFM section 4–08, Abnormal Procedures, page 9, with Figure 3:

EMERGENCY BUS OFF

ADS/AOA Knob..... ON

Airspeed ..... 250 KIAS MAXIMUM

Altitude..... 25000 ft MAXIMUM

The list below presents the relevant inoperative equipment. Items marked with an asterisk have dedicated failure procedures, which may have to be performed, at pilot's discretion:

- AHRS 1 (*)
- Audio Panel 1 (*)
- Autopilot (*)
- EFCU 1
- Engines Fire Detection (*)
- Flight Director 1
- AFCS Control Unit
- Fuel Booster Pumps
- Fuel Shutoff Valves
- Fuel Transfer Valve (*)
- GIA 1 (*)
- GPS 1/VOR 1/ILS 1
- LDG Indication/Warning
- Red Beacon
- Oxygen Transducer
- Pax Mask Deploy (Auto)
- PFD 1
- Pitch Trim (Back-Up) (*)
- PRSOV 1 & 2
- Transponder 1
- Stick Pusher (*)
- Stall Warning
- WOW (*)
- Yaw Damper

Figure 3 – AFM Section 4-08, Page 9, EMERGENCY BUS OFF

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et.seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI ANAC, AD No.: 2009–10–01R1, dated October 16, 2009, for related information.

Issued in Kansas City, Missouri on November 2, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26795 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30695; Amdt. No. 3347]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic

requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 12, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination–

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1.FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2.The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on Friday, October 30, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
17–Dec–09	MI	DETROIT METROPOLITAN WAYNE COUNTY.	DETROIT	9/0505	10/23/09	ILS OR LOC Z RWY 22R, AMDT 2.
17–Dec–09	MI	DETROIT METROPOLITAN WAYNE COUNTY.	DETROIT	9/0506	10/23/09	ILS PRM RWY 22R (SIMULTANEOUS CLOSE PARALLEL), ORIG.
17–Dec–09	MI	DETROIT METROPOLITAN WAYNE COUNTY.	DETROIT	9/0507	10/23/09	ILS OR LOC Z RWY 4L, AMDT 3.
17–Dec–09	MI	DETROIT METROPOLITAN WAYNE COUNTY.	DETROIT	9/0508	10/23/09	ILS PRM RWY 4L (SIMULTANEOUS CLOSE PARALLEL), ORIG.
17–Dec–09	NC	ANDREWS–MURPHY	ANDREWS	9/1638	10/23/09	RNAV (GPS) RWY 8, ORIG.
17–Dec–09	TX	DAVID WAYNE HOOKS MEMORIAL.	HOUSTON	9/1783	10/23/09	LOC RWY 17R, AMDT 1.
17–Dec–09	CT	HURON	HURON REGIONAL	9/2314	10/23/09	RNAV (GPS) RWY 30, AMDT 1.
17–Dec–09	AL	MARION COUNTY–RANKIN FITE.	HAMILTON	9/2958	10/23/09	RNAV (GPS) RWY 18, ORIG–A.
17–Dec–09	AR	MEMORIAL FIELD	HOT SPRINGS	9/4462	10/23/09	VOR RWY 5, AMDT 4A.
17–Dec–09	TX	DENTON	DENTON MUNI	9/4809	10/23/09	NDB OR GPS RWY 17, AMDT 6C.
17–Dec–09	NH	LEBANON	LEBANON MUNI	9/4894	10/23/09	RNAV (GPS) RWY 7, ORIG.
17–Dec–09	ME	WATERVILLE ROBERT LAFLEUR.	WATERVILLE	9/5104	10/21/09	RNAV (GPS) RWY 23, ORIG.
17–Dec–09	RI	NORTH KINGSTOWN	QUONSET STATE	9/5393	10/21/09	RNAV (GPS) RWY 23, ORIG.
17–Dec–09	VA	MARKS MUNI	CLARKSVILLE	9/6483	10/9/09	GPS RWY 4, ORIG.
17–Dec–09	VA	MARKS MUNI	CLARKSVILLE	9/6484	10/16/09	RNAV (GPS) RWY 7, ORIG.

[FR Doc. E9–26976 Filed 11–10–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30694; Amdt. No 3346]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 12, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 12, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of ach SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR

sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

John M. Allen,
Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 17 Dec 2009

Galena, AK, Edward G. Pitka, Sr, ILS OR LOC/DME RWY 25, Amdt 1A, CANCELLED
Hope, AR, Hope Muni, NDB RWY 16, Amdt 5
Hope, AR, Hope Muni, Takeoff Minimums and Obstacle DP, Orig
Twentynine Palms, CA, Twentynine Palms, RNAV (GPS) RWY 26, Amdt 1A
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME OR TACAN RWY 1, Orig-C
Fort Dodge, IA, Fort Dodge Rgnl, ILS OR LOC RWY 6, Amdt 7
Fort Dodge, IA, Fort Dodge Rgnl, RNAV (GPS) RWY 6, Amdt 1
Fort Dodge, IA, Fort Dodge Rgnl, RNAV (GPS) RWY 12, Amdt 1
Fort Dodge, IA, Fort Dodge Rgnl, RNAV (GPS) RWY 24, Amdt 1
Fort Dodge, IA, Fort Dodge Rgnl, RNAV (GPG) RWY 30, Amdt 1
Fort Dodge, IA, Fort Dodge Rgnl, Takeoff and Minimum Obstacle DP, Amdt 1
Red Oak, IA, Red Oak Muni, GPS RWY 5, Orig, CANCELLED
Red Oak, IA, Red Oak Muni, GPS RWY 17, Orig, CANCELLED
Red Oak, IA, Red Oak Muni, RNAV (GPS) RWY 5, Orig
Red Oak, IA, Red Oak Muni, RNAV (GPS) RWY 17, Orig
Mc Comb, MS, Mc Comb/Pike County/John E Lewis Field, ILS OR LOC RWY 15, Amdt 1
Havre, MT, Havre City-County, RNAV (GPS) RWY 8, Orig
Havre, MT, Havre City-County, RNAV (GPS) RWY 26, Orig
Havre, MT, Havre City-County, VOR RWY 8, Amdt 7
Havre, MT, Havre City-County, VOR RWY 26, Amdt 9
Havre, MT, Havre City-County, Takeoff Minimums and Obstacle DP, Amdt 3
Hudson, NY, Columbia County, GPS RWY 3, Amdt 1A, CANCELLED
Hudson, NY, Columbia County, GPS RWY 21, Orig-B, CANCELLED
Hudson, NY, Columbia County, NDB–A, Amdt 4
Hudson, NY, Columbia County, RNAV (GPS) RWY 3, Orig
Hudson, NY, Columbia County, RNAV (GPS) RWY 21, Orig
Ogdensburg, NY, Ogdensburg Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Oklahoma City, OK, Clarence E Paige Muni, RNAV (GPS) RWY 17R, Amdt 2
Oklahoma City, OK, Clarence E Paige Muni, RNAV (GPS) RWY 35L Amdt 2
Oklahoma City, OK, Clarence E Paige Muni, VOR–B, Amdt 3
Lancaster, PA, Lancaster, ILS OR LOC RWY 8, Amdt 1
Lancaster, PA, Lancaster, RNAV (GPS) RWY 8, Amdt 2
Lancaster, PA, Lancaster, Takeoff Minimums and Obstacle DP, Amdt 1
Lancaster, PA, Lancaster, VOR RWY 8, Amdt 21
Lancaster, PA, Lancaster, VOR/DME RWY 8, Amdt 6
Selinsgrove, PA, Penn Valley, RNAV (GPS)-B, Orig-A, CANCELLED
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Orig
Selinsgrove, PA, Penn Valley, Takeoff Minimums and Obstacle DP, Amdt 3
Selinsgrove, PA, Penn Valley, VOR–A, Amdt 7
Lancaster, SC, Lancaster County-McWhirter Field, NDB RWY 24, Amdt 5
Lancaster, SC, Lancaster County-McWhirter Field, RNAV (GPS) RWY 6, Amdt 1
Lancaster, SC, Lancaster County-McWhirter Field, RNAV (GPS) RWY 24, Amdt 1
Lancaster, SC, Lancaster County-McWhirter Field, Takeoff Minimums and Obstacle DP, Amdt 1
Lancaster, SC, Lancaster County-McWhirter Field, VOR/DME–A, Amdt 1
Pickens, SC, Pickens County, Takeoff Minimums and Obstacle DP, Orig
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, GPS RWY 12, Orig-A, CANCELLED
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, GPS RWY 16, Orig-A, CANCELLED
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, GPS RWY 30, Orig, CANCELLED
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, GPS RWY 34, Orig-C, CANCELLED
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, RNAV (GPS) RWY 12, Orig
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, RNAV (GPS) RWY 16, Orig
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, RNAV (GPS) RWY 30, Orig
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, RNAV (GPS) RWY 34, Orig
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, RADAR–1, Amdt 8, CANCELLED
Fort Hood/Killeen, TX, Robert Gray AAF, COPTER VOR RWY 33, Amdt 2
Fort Hood/Killeen, TX, Robert Gray AAF, ILS OR LOC RWY 15, Amdt 6
Fort Hood/Killeen, TX, Robert Gray AAF, ILS OR LOC RWY 33, Amdt 1
Fort Hood/Killeen, TX, Robert Gray AAF, NDB RWY 15, Amdt 6

Fort Hood/Killeen, TX, Robert Gray AAF, RNAV (GPS) RWY 15, Amdt 1
Fort Hood/Killeen, TX, Robert Gray AAF, RNAV (GPS) RWY 33, Amdt 1
Fort Hood/Killeen, TX, Robert Gray AAF, VOR–A, Amdt 2
Fort Hood/Killeen, TX, Robert Gray AAF, VOR/DME RWY 15, Amdt 3
Georgetown, TX, Georgetown Muni, GPS RWY 11, Orig, CANCELLED
Georgetown, TX, Georgetown Muni, GPS RWY 18, Orig, CANCELLED
Georgetown, TX, Georgetown Muni, GPS RWY 29, Orig, CANCELLED
Georgetown, TX, Georgetown Muni, GPS RWY 36, Orig, CANCELLED
Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 11, Orig
Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 18, Orig
Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 29, Orig
Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 36, Orig
Georgetown, TX, Georgetown Muni, Takeoff Minimums and Obstacle DP, Orig
Killeen, TX, Skylark Field, ILS OR LOC RWY 1, Amdt 3
Killeen, TX, Skylark Field, RNAV (GPS) RWY 1, Orig
Killeen, TX, Skylark Field, VOR–A, Amdt 4
Lampasas, TX, Lampasas, RNAV (GPS) RWY 34, Orig
Lampasas, TX, Lampasas, VOR–A, Amdt 4
Lampasas, TX, Lampasas, Takeoff Minimums and Obstacle DP, Orig
Llano, TX, Llano Muni, GPS RWY 17, Amdt 1, CANCELLED
Llano, TX, Llano Muni, GPS RWY 35, Amdt 1A, CANCELLED
Llano, TX, Llano Muni, RNAV (GPS) RWY 17, Orig
Llano, TX, Llano Muni, RNAV (GPS) RWY 35, Orig
Llano, TX, Llano Muni, Takeoff Minimums and Obstacle DP, Orig
Odessa, TX, Odessa-Schlemeyer Field, Takeoff Minimums and Obstacle DP, Amdt 2
Renton, WA, Renton Muni, NDB RWY 16, Amdt 6
Renton, WA, Renton Muni, RNAV (GPS) Y RWY 16, Amdt 3
Renton, WA, Renton Muni, RNAV (GPS) Z RWY 16, Amdt 1
Renton, WA, Renton Muni, Takeoff Minimums and Obstacle DP, Amdt 7
Wenatchee, WA, Pangborn Memorial, VOR/DME–A, Amdt 8
Wenatchee, WA, Pangborn Memorial, VOR/DME–C, Amdt 4
Wenatchee, WA, Pangborn Memorial, VOR OR GPS–B, Amdt 4, CANCELLED
Sheboygan, WI, Sheboygan County Memorial, Takeoff Minimums and Obstacle DP, Amdt 1
Pinedale, WY, Pinedale/Ralph Wenz Field, RNAV (GPS) RWY 11, Amdt 1
Pinedale, WY, Pinedale/Ralph Wenz Field, RNAV (GPS) RWY 29, Amdt 1

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–60946; IA–2946; IC–28990; File No. S7–29–04]

RIN 3235–AJ24

Regulation S–AM: Limitations on Affiliate Marketing; Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission is extending the compliance date for Regulation S–AM (74 FR 40398 (Aug. 11, 2009)), which limits a person's use of certain information received from an affiliate to solicit a consumer for marketing purposes unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations.

DATES: The effective date for Regulation S–AM (17 CFR 248.101 through 248.128) remains September 10, 2009. The compliance date for Regulation S–AM is extended from January 1, 2010 to June 1, 2010.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulation as it relates to brokers, dealers, or transfer agents, contact Brice Prince, Special Counsel, or Ignacio Sandoval, Attorney, Office of Chief Counsel, Division of Trading and Markets, (202) 551–5550, or regarding the regulation as it relates to investment companies or investment advisers, contact Penelope Saltzman, Assistant Director, or Thoreau Bartmann, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On August 9, 2009, the Commission adopted Regulation S–AM to implement Section 624 of the Fair Credit Reporting Act, as amended by Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'').[1] Section 624 required the Commission and other federal agencies to adopt rules implementing limitations on a person's use of certain information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S–AM implements the requirements of Section 624 with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers, and investment companies (collectively ''Covered Persons''). The release adopting Regulation S–AM established an effective date of September 10, 2009, and a compliance date of January 1, 2010.[2]

Two associations representing institutions that are subject to Regulation S–AM have expressed, on behalf of their members, concerns regarding the difficulties that their members are facing in complying with the regulation.[3] Specifically, the associations assert that the period for compliance does not provide enough time to design, implement and test the system changes that will be necessary to accommodate, monitor and maintain opt out requests.

While we have some concerns about the effect of an extension in delaying the anticipated benefits of the regulation, the Commission is persuaded that a limited extension of the compliance date for Regulation S–AM is appropriate. Our judgment is based on the representations made by the associations (whose members are required to comply with the regulation and thus are in a position to assess the level of difficulty and time involved in such compliance) and our experience in overseeing the industry. We also believe that the additional period for compliance would allow more Covered Persons to combine or coordinate notices required under Regulation S–AM with privacy notices required under the Gramm-Leach-Bliley Act and Regulation S–P, which is specifically permitted under Section 624 of the FCRA Act.[4] Accordingly, the Commission believes it is appropriate to extend the compliance date for Regulation S–AM to June 1, 2010. The

[1] Regulation S–AM: Limitations on Affiliate Marketing, Securities Exchange Act Release No. 60423 (Aug. 9, 2009) [74 FR 40398 (Aug. 11, 2009)].

[2] *Id.*

[3] *See* Comment Letters from the Investment Adviser Association (Sept. 24, 2009) and the Investment Company Institute (Sept. 8, 2009). The comment letters are available for public 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. (File No. S7–29–04), and also are available on the Commission's Internet Web site: *http://www.sec.gov/rules/proposed/s72904.shtml*).

[4] *See* 15 U.S.C. 1681s-3(b). *See also* 15 U.S.C. 6801–6809 (Gramm-Leach-Bliley Act privacy provisions); 17 CFR Part 248 (Regulation S–P).

regulation's effective date of September 10, 2009 remains unchanged.

The Commission finds that, for good cause and the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for Regulation S–AM are impracticable, unnecessary, or contrary to the public interest.[5] In this regard, the Commission also notes that Covered Persons need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly.

By the Commission.

Dated: November 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27126 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (''APA'') (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest). The change to the compliance date is effective upon publication in the **Federal Register.** This date is less than 30 days after publication in the **Federal Register**, in accordance with the APA, which allows effectiveness in less than 30 days after publication for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' *See* 5 U.S.C. 553(d)(1).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 528

New Animal Drugs in Genetically Engineered Animals

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 500–599, revised as of April 1, 2009, on page 359, the heading for part 528 is corrected to read ''NEW ANIMAL DRUGS IN GENETICALLY ENGINEERED ANIMALS''.

[FR Doc. E9–27305 Filed 11–10–09; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0033; RIN 0790–AI26]

32 CFR Part 311

Office of the Secretary of Defense and Joint Staff Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: On October 30, 2009 (74 FR 56114), the Department of Defense published a final rule revising 32 CFR part 311 to update Office of the Secretary of Defense (OSD) and Joint Staff (JS) policy, assign responsibilities, and prescribe procedures for the effective administration of the Privacy Act (PA) Program in OSD and JS. In the published rule, the section on procedures for exemptions was inadvertently dropped. This rule amendment is being published to add this section back to 32 CFR part 311.

DATES: *Effective Date:* This rule is effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, 703–588–6830.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been certified that 32 CFR part 311 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal 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 this Executive Order 12866, as amended by Executive Order 13422.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 311 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 311 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the procedures for the effective administration of the Privacy Act Program in OSD and the JS.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 311 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 311 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 311 Privacy Act.

■ Accordingly, 32 CFR part 311 is amended as follows:

PART 311—[AMENDED]

■ 1. The authority citation for part 311 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 311.8 is added to read as follows:

§ 311.8 Procedures for exemptions.

(a) *General information.* The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 311.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions.* The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by law enforcement activities. Certain functional records of such activities are

not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any stage of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System identifier and name:* DWHS P42.0, DPS Incident Reporting and Investigations Case Files.

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c)(3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reason:* The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provisions of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(2) *System identifier and name:* JS006.CND, Department of Defense Counternarcotics C4I System.

(i) *Exemption:* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c) (3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(4)(G) and (e)(4)(H); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5) of the Act.

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reason:* From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede USSOUTHCOM's criminal law enforcement.

(iv) For subsections (c)(4) and (d) because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(v) From subsections (e)(4)(G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsection (j).

(vi) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(vii) For compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to this record system. Information gathered in criminal investigations is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(viii) From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to USSOUTHCOM's close liaison and working relationships with the other Federal, as well as state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(ix) From subsection (e)(2) because collecting information to the greatest extent possible directly from the subject individual may or may not be practicable in a criminal investigation. The individual may choose not to provide information and the law enforcement process will rely upon significant information about the subject from witnesses and informants.

(x) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat inimical to established investigative methods and techniques.

(xi) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal investigative process. It is the nature of criminal law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significant as further investigation brings new details to light.

(xii) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(c) *Specific exemptions.* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, 'National Security Information,' dated June 28, 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under E.O. 11265, 'National Security Information,' dated June 28, 1979, as amended, and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD system of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(1) *System identifier and name:* DGC 16, Political Appointment Vetting Files.

(i) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source.

(2) *System identifier and name:* DWHS P28, The Office of the Secretary of Defense Clearance File.

(i) *Exemption.* This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* This exemption is required to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) *System identifier and name:* DGC 04, Industrial Personnel Security Clearance Case Files.

(i) *Exemption.* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of title 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* This system of records is exempt from subsections (c)(3) and (d) of section 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) *System identifier and name:* DWHS P32, Standards of Conduct Inquiry File.

(i) *Exemption.* This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: Investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (5).

(iii) *Reasons.* These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability, eligibility or qualifications for Federal civilian employment, military service, or Federal contracts of those alleged to have violated or caused others to violate the Standards of Conduct regulations of the Department of Defense.

(5) *System identifier and name:* DUSDP 02, Special Personnel Security Cases.

(i) *Exemption:* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(6) *System identifier and name:* DODDS 02.0, Educator Application Files.

(i) *Exemption.* All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information

necessary to make determinations involving applicants suitability for DoDDS teaching positions.

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reason:* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(8) *System identifier and name:* DWHS P29, Personnel Security Adjudications File.

(i) *Exemption:* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(9) *System identifier and name:* JS004SECDIV, Joint Staff Security Clearance Files.

(i) *Exemption:* Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(10) *System identifier and name:* DFMP 26, Vietnamese Commando Compensation Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1–R, may cause damage to the national security.

(11) *System identifier and name:* DUSP 11, POW/Missing Personnel Office Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1–R, may cause damage to the national security.

(12) *System identifier and name:* DFOISR 05, Freedom of Information Act Case Files.

(i) *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(13) *System identifier and name:* DFOISR 10, Privacy Act Case Files.

(i) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative

actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(14) System identifier and name: DHRA 02, PERSEREC Research Files.

(i) *Exemption:* (A) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) Reasons: (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source, but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decisionmaking by the Department when making required suitability, eligibility, and qualification determinations.

(15) System identifier and name: DCIFA 01, CIFA Operational and Analytical Records.

(i) *Exemptions:* This system of records is a compilation of information from other Department of Defense and U.S. Government systems of records. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, OSD hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (1) such provisions have been identified and an exemption claimed for the original record and (2) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions are claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: November 6, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–27148 Filed 11–10–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0952]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge at mile 3.1, across the Hackensack River, at Jersey City, New Jersey. Under this temporary deviation a two-hour advance notice for bridge opening shall be required at the Witt Penn Bridge to facilitate bridge repairs.

DATES: This deviation is effective from November 12, 2009 through November 21, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0952 and are available online at *http://www.regulations.gov,* inserting USCG–2009–0001 in the ''Keyword'' 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 Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Witt Penn Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation to facilitate the emergency replacement of the crash gates that stop vehicular traffic during bridge openings.

Under this temporary deviation the Witt Penn Bridge, mile 3.1, across the Hackensack River may require a two-hour advance notice for bridge openings from October 21, 2009 through November 21, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge 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: October 23, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–27132 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0940]

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 replacement of the lift span motors. This deviation provides for the bridge to remain closed to navigation for 12 consecutive hours on November 17 and 18, 2009, from 7 a.m. to 7 p.m. each day.

DATES: This deviation is effective from 7 a.m. on Tuesday, November 17, 2009 until 7 p.m. on Wednesday, November 18, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0940 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0940 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 12 consecutive hours between 7 a.m. and 7 p.m. each day on November 17 and 18, 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 replacement of the lift span motors 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: October 19, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–27133 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0960]

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 one phase of an on-going maintenance project to replace the lift span motors and brakes. This deviation provides for the bridge to remain closed to navigation for 12 consecutive hours on November 23 and 24, 2009, from 7 a.m. to 7 p.m. each day.

DATES: This deviation is effective from 7 a.m. on Monday, November 23, 2009 until 7 p.m. on Tuesday, November 24, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0960 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0960 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 12 consecutive hours between 7 a.m. and 7 p.m. each day on November 23 and 24, 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 for one phase of an on-going maintenance project to replace the lift span motors and brakes 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: October 27, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–27134 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0595]

RIN 1625–AA00

Safety Zone; Munitions and Explosives of Concern (MEC); Seal Island, ME

AGENCY: Coast Guard, DHS.

ACTION: Final rule; removal of interim rule.

SUMMARY: This document removes the interim rule published on September 8, 2009 (74 FR 46011), which announced a permanent safety zone around Seal Island, Maine from the shoreline out to the 60 foot depth curve. The September 8, 2009 interim rule is being removed because a comprehensive survey of Munitions and Explosives of Concern (MEC) in the area has not been completed therefore the Coast Guard is unable to determine if the risk posed warrants permanent establishment of the safety zone. Given the potential negative economic impact of the safety zone created by the Interim Rule and the limited reporting of MECs, this rule cancels the safety zone by removing it as a regulation.

DATES: This rule is effective November 12, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0595 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0595 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Laura VanDerPol, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207–741–5421, e-mail *Laura.K.VanDerPol1@uscg.mil*.

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 8, 2009, we published an Interim Rule in the **Federal Register** (74 FR 46011), which announced a permanent safety zone around Seal Island, Maine from the shoreline out to the 60 foot depth curve. We received five comments as well as separate congressional communications on the interim rule. A public meeting was requested in two of the comments; those comments were also opposed to the interim rule; therefore, based upon this action removing the interim rule the Coast Guard does not now plan to hold a public hearing.

Due in part to the comments received and congressional inquiries, the Safety Zone created by the Interim Rule is being removed by this Final Rule. The Coast Guard intends to pursue public education about the MEC and conduct further analysis of both the risk to mariners and the economic impact of a safety zone around Seal Island.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the unexpected economic impacts on the fishing industry of the safety zone as expressed through the comments received on the Interim Rule and the concern expressed through the congressional communication indicates that it is in the public's interest to remove the safety zone regulation promptly without providing notice and an opportunity to comment. Further, as the Coast Guard has determined not to enforce the safety zone prior to a final rule, it is impractical and unnecessary to conduct a notice and comment section prior to issuing this final rule removing the safety zone regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This Final Rule removes the previously created Interim Rule published in the **Federal Register** on September 8, 2009 (74 FR 46011), effectively cancelling the safety zone established around Seal Island. As this rule removes a regulation, the Coast Guard finds that a delay in the effective date would be contrary to the public's interest in removing the restrictions in the regulation as soon as practical. Further, we have determined that a delay in the effective date to allow for public notification is unnecessary as the regulation created by the Interim Rule is no longer being enforced.

Background and Purpose

Seal Island is an uninhabited island of approximately 65 acres located to the east of Matinicus Island off of the coast of Maine. Seal Island was used as an aerial bombing and target range by the United States Government until the late 1960s. Seal Island was transferred to the U.S. Department of Interior in 1972. In the mid-1980s, Congress established the Formerly Used Defense Sites (FUDS) Program to clean up properties formerly owned, leased, possessed or used by the military services. Seal Island is designated a FUDS due to its prior military use. The Department of Defense established the Military Munitions Response Program (MMRP) to address DOD sites suspected of containing Munitions and Explosives of Concern (MEC). Under the MMRP, the U.S. Army Corps of Engineers is conducting environmental response activities at designated FUDS locations. As part of the environmental response activities of the MMRP, the U.S. Army Corps of Engineers is conducting site inspections

of FUDS. A site inspection (SI) for Seal Island was completed under the MMRP, Project No. D01ME003202. This site inspection is not a full scale study of the nature and extent of the MECs, rather it is limited to a terrestrial surface inspection only for MEC along with samplings in the areas most likely to contain munitions constituents. The SI concluded that a Remedial Investigation and Feasibility Study be performed at the site due to the past discovery of munitions and explosives of concern as well as the presence of munitions constituents, particularly heavy metals. Past MEC discoveries included an 8-inch live round artillery projectile and several 5-inch rocket warheads; additionally there was a report of an explosion(s) of MEC during a past brush-fire on the island. The Remedial Investigation and Feasibility Study has not been conducted, and given the remote location of Seal Island and the control of the island by the U.S. Fish and Wildlife Service, who restricts access, the additional study and investigation is unlikely to occur any time soon.

A danger zone currently exists around the island, but it is only to be enforced during times of active aerial bombing exercises, which no longer occur. The regulation for the danger zone can be found in 33 CFR 334.10. This Final Rule has no effect on the danger zone regulation.

In addition to Seal Island being a FUDS and the discovery of MEC on the island, in the summer of 2009 a private citizen diving near the island's shore reported observing multiple munitions on the sea floor. The type, number, and condition of munitions are unknown; however, that information along with concerns about the presence of MEC on the island led the Coast Guard to establish a safety zone for all of the navigable waters surrounding Seal Island out to the 60 foot depth curve. The Coast Guard was concerned that anchoring, fishing, trawling, diving or any other activity that could disturb the ocean floor might result in injury from MEC in the area. Following publication of the Interim Rule on September 8, 2009, which created the safety zone, comments were received from area commercial fishermen expressing concern over the considerable negative economic impact that this rule would have on them. Moreover, commercial fishermen expressed concern that the rule did not consider the fact they have not experienced any MEC.

The purpose of this Final Rule is to remove the Safety Zone around Seal Island that was created by the Interim Rule, thereby removing the restrictions on the public. In recognition that some risk remains, the Coast Guard may refocus efforts on public education of the existence of MEC on and around Seal Island and will encourage further analysis and investigation of Seal Island to better understand the risks involved.

Discussion of Comments and Changes

Thus far the Coast Guard has received five comments and two congressional communications on this Interim Rule. Four of the commenters stated that this rule will cause significant financial hardship for the lobstermen who make a living fishing the waters around Seal Island. One of the four commenters also stated that ''he has fished Seal Island now for 35 years; my father fished it before as well. He also lived on Seal with my mother and several other members of the family 1947–1950 and in the 65 years since it was last used for target practice, I know of no one ever finding an [sic] munitions or explosives''. A fifth commenter stated: ''Someone should consider contacting the Navy if not already done so the Navy can consider (stress consider) the proper course of action.'' The Coast Guard has considered this course of action and has made this recommendation to the FUDS project manager. The congressional communications requested that the Coast Guard withdraw this rule due to the fact that there is an unsubstantiated level of risk to the mariners and larger than expected economic impact on local fishermen. Removing this interim rule addresses the concerns raised through the congressional communications. The Coast Guard intends to pursue public education while encouraging other government agencies to conduct additional study and analysis of both the risk to mariners and the economic impact of a safety zone.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The Coast Guard is removing the safety zone which covered a portion of the navigable waters around Seal Island, thus, vessels may choose to operate in these previously regulated waters. The result of this Final Rule is to reduce the regulatory burden placed on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Gulf of Maine around Seal Island.

This final rule will not have a significant economic impact on a substantial number of small entities, as it removes the previously created safety zone that excluded these small entities from a portion of the navigable waters around Seal Island. As this rule removes the restriction, it will not have a significant effect on the small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the disestablishment of a safety zone. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.180 [Removed].

■ 2. Remove § 165.180.

Dated: October 27, 2009.

J.B. McPherson,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern New England.

[FR Doc. E9–27131 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. NHTSA–2007–28322; Notice 3]

RIN 2127–AK66

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This final rule delays the effective date of a final rule that reorganized and improved the structure and clarity of the Federal motor vehicle safety standard on lamps, reflective devices, and associated equipment. The final rule reorganizing the lighting standard was published on December 4, 2007 with an effective date of September 1, 2008.[1] The effective date was extended to December 1, 2009 in a final rule published on August 28, 2008.[2] The agency received fourteen petitions for reconsideration of the 2007 final rule, including two that requested a delay in the effective date of the rule,

[1] *See* 72 FR 68234.

[2] *See* 73 FR 50730.

and others that raised concerns that the reorganization of FMVSS No. 108 imposed new requirements. This rule delays the effective date further, from December 1, 2009 to December 1, 2012, to enable the agency to fully resolve all of the issues raised in the petitions well before manufacturers are required to certify to the new requirements.

DATES: The effective date of the final rule amending 49 CFR parts 564 and 571 published at 72 FR 68234, December 4, 2007, and delayed at 73 FR 50730, August 28, 2008, is further delayed until December 1, 2012. The incorporation by reference of certain publications listed in the rule is approved by the director of the Federal Register as of December 1, 2012. Optional early compliance continues to be permitted. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than December 28, 2009.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. David Hines, Office of Crash Avoidance Standards (Phone: 202–493–0245; FAX: 202–366–7002). For legal issues, you may call Mr. Ari Scott Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps reflective devices, and associated equipment,* specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The purpose of FMVSS No. 108 is to reduce traffic accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility.

On December 4, 2007, NHTSA published a final rule amending FMVSS No. 108 to reorganize the standard and provide a more straightforward and logical presentation of the applicable regulatory requirements (*see* 72 FR 68234). Related amendments were made to 49 CFR part 564, *Replacement Light Source Information.* While the final rule greatly reduced the number of third-party standards incorporated by reference, it did not impose any new substantive requirements on manufacturers. Along with the changes made, the final rule specified an effective date of September 1, 2008 for these amendments and permitted voluntary early compliance immediately upon publication.

II. Petitions for Reconsideration

In response to the December 2007 final rule, the agency received fourteen petitions for reconsideration.[3] Petitions for reconsideration were submitted by Grote Industries, LLC, Alliance of Automobile Manufacturers (Alliance), Motor and Equipment Manufacturers Association (MEMA)[4], Nissan North America, Inc., Valeo Sylvania, Calcoast Industrial Testing Laboratory, Harley-Davidson Motor Company, Koito Manufacturing Co, Ltd., Ford Motor Company, Toyota Motor North America, Inc., GE Consumer & Industrial Automotive Lighting, SABIC Innovative Plastics, Valeo Lighting Systems, and Vehicle Services Consulting, Inc. The petitions addressed a wide range of FMVSS No. 108 subjects, including technical amendments to the rule, concern that the reorganization imposed new requirements, and requests to change the effective date of the final rule. On August 28, 2008, NHTSA published a subsequent final rule changing the effective date to December 1, 2009 (*see* 73 FR 50730). This was done in order to allow for more time for the agency to analyze the petitions prior to the rule taking effect.

III. Agency Response to Petitions

When the agency issued the 2008 final rule extending the effective date to December 1, 2009, it believed that the additional time was sufficient to allow NHTSA time to consider and respond fully to all aspects of the numerous petitions for reconsideration. However, NHTSA's consideration of the petitions has taken longer than expected and is not yet concluded. Given the imminence of the December 1, 2009 effective date, the agency has determined that more time is needed to fully respond to petitions concerning the technical and substantive issues of the December 2007 final rule.

We are extending the mandatory effective date of the rewrite of Standard No. 108 for three years to allow sufficient time for the agency to analyze the issues raised by the petitioners in relationship to the version of the SAE standards that are referenced. In many cases, the referenced version of the SAE standard is not the most current. The agency would also like to carefully review issues the petitioners have raised in the context of past interpretations.

This additional delay in the effective date will enable the agency to fully resolve all of the issues raised in the petitions well before manufacturers are required to certify to the new requirements. The various technical and substantive issues in the petitions for reconsideration will be addressed by the agency in separate documents.

We note that, as indicated above, some petitioners have argued that the reorganization imposed new requirements. We will specifically address the arguments and specific requirements at issue in separate documents, and why we are accepting or not accepting each of the petitioners' arguments and requests. We recognize, however, that one consequence of a major rewriting of a regulation as complex as Standard No. 108 is that some regulated parties may discover that they have been interpreting some provisions of the earlier version of the standard incorrectly. One of the reasons we are extending the effective date of the new standard for three years is so that manufacturers will have a period of time after the agency has responded to the petitions for reconsideration in which they can continue to certify their products to the earlier version of the standard.

IV. Effective Date of This Document

Because December 1, 2009 (the effective date for the amendments to FMVSS No. 108, set in the August 2008 final rule) is fast approaching, NHTSA finds for good cause that this action delaying the effective date should take effect immediately. Today's final rule makes no substantive changes to FMVSS No. 108, but further delays the effective date of the December 4, 2007 final rule until December 1, 2012.

[3] We note that the American Association for Justice (AAJ) submitted a document objecting to the agency's discussion of implied preemption. The agency does not consider this to be a petition for reconsideration, as NHTSA's preemption discussion is not a rule. For a further discussion of this, in a different context, see 73 FR 54536; September 22, 2008.

[4] MEMA submitted a petition for reconsideration collectively with the Transportation Safety Equipment Institute and the Motor Vehicle Lighting Council.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action delays the effective date of an administrative rewrite of FMVSS No. 108. It was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them.

This final rule delays the effective date of a December 4, 2007 final rule (which, pursuant to the August 28, 2008 final rule, was scheduled to become effective December 1, 2009), to December 1, 2012. Neither that rule nor today's action will have any measurable effect on costs or benefits since the rule merely reorganizes and clarifies existing requirements.

B. 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) or you may visit *http://docketsinfo.dot.gov/.*

C. Other Rulemaking Analyses and Notices

In the December 2007 final rule, the agency discussed relevant requirements related to the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Reform Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, the Paperwork Reduction Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). Since that final rule was an administrative rewrite of existing requirements and since today's action simply delays the effective date of that final rule, today's rule does not affect the agency's analyses in those areas.

Therefore, the effective date of the final rule amending 49 CFR Parts 564 and 571 published at 72 FR 68234, December 4, 2007, and delayed at 73 FR 50730, August 28, 2008, is further delayed until December 1, 2012.

Authority: 49 U.S.C 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 501.8.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–27075 Filed 11–5–09; 4:15 p.m.]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 74, No. 217
Thursday, November 12, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AO–FV–08–0174; AMS–FV–08–0085; FV08–920–3]

Kiwifruit Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This is a recommended decision regarding proposed amendments to Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. Four amendments were proposed by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would redefine the districts into which the production area is divided and reallocate committee membership positions among the districts, revise the committee nomination and selection procedures, authorize the committee to conduct research and promotion programs, and revise committee meeting and voting procedures. The proposals are intended to improve the operation and administration of the order. This recommended decision invites written exceptions on the proposed amendments.

DATES: Written exceptions must be filed by December 14, 2009.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200, Fax: (202) 720–9776 or via the Internet at *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this rule will be included in the record and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

To the extent practicable, all documents filed with the hearing clerk should also be submitted electronically to Laurel May at the email address noted for her in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov*. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 24, 2008, and published in the November 19, 2008, issue of the **Federal Register** (73 FR 69588).

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

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 920 regulating the handling of kiwifruit grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Laurel May, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held December 9, 2008, in Modesto, California. Notice of this hearing was published in the **Federal Register** on November 19, 2008 (73 FR 69588). The notice of hearing contained four proposals submitted by the committee.

The proposed amendments were recommended by the committee following deliberations at public meetings on January 30, 2008; April 22, 2008; and July 9, 2008. The proposed amendments were submitted to the Agricultural Marketing Service (AMS) on August 15, 2008. After reviewing the recommendation and other information submitted by the committee, AMS determined to proceed with the formal rulemaking process and schedule the matter for hearing.

The committee's proposed amendments to the order would: (1) Redefine the districts into which the production area is divided and reallocate committee membership positions among the districts; (2) revise committee nomination and selection procedures; (3) add authority for research and promotion programs; and (4) revise the committee's meeting and voting procedures.

In addition to the proposed amendments, AMS proposed to make any such changes to the order as may be necessary to conform to any amendment to the order that may result from the hearing.

Seven industry witnesses testified at the hearing. The witnesses represented kiwifruit producers and handlers in the production area, as well as the committee, and they all supported the recommended changes. The witnesses emphasized the need to modernize and update committee representation and procedures as well as equip the industry with additional tools to address the research and promotion needs of California kiwifruit.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of February 6, 2009, for

interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No briefs were filed.

Material Issues

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

(1) Whether to amend the order by redefining the production area's district boundaries and by reallocating committee membership positions among the districts;

(2) Whether to amend the order by requiring that nomination meetings be held by June 1 in each year when nominations are to be made and by specifying that mid-term committee vacancies may be filled by the Secretary based upon recommendations from the committee;

(3) Whether to amend the order by adding authority for the committee to establish and conduct research and promotion programs, by adding authority to accept voluntary contributions for use in such programs, and by requiring a supermajority approval for all committee actions pertaining to research and promotion; and

(4) Whether to amend the order by authorizing substitute alternates to represent absent members and alternates at meetings, by authorizing the committee to conduct meetings through telephone or other means of communication, and by specifying the voting procedures for various meeting formats.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Districts and Representation

Section 920.12, District, should be amended to redefine the districts into which the production area is divided. Section 920.20, Establishment and Membership, should also be amended to provide for flexible allocation of the eleven grower member and alternate seats among the districts and to remove the limitation of no more than two members and two alternates per district. Finally, § 920.21, Term of Office, should be amended to specify that the two-year terms of office of all members and alternates would begin and end simultaneously and to provide for the nomination of a new committee following the amendment process.

Currently, the production area, which comprises the state of California, is divided into eight districts. Eight of the eleven grower member committee seats are allocated to the eight districts, with one additional seat assigned to each of the three districts with the highest volume production. No more than two members and alternates may represent any district. Witnesses testified that this structure was appropriate at the time the order was promulgated because kiwifruit acreage and growers were widely distributed throughout California.

Evidence provided at the hearing shows that most kiwifruit acreage and growers are now concentrated in two areas of the State. According to witnesses, under current order provisions, representation on the committee is no longer equitably distributed and does not reflect the concentration of growers and production in these two areas. Witnesses stated that the areas with greater production are under-represented on the committee. Witnesses further testified that it has become increasingly difficult in the past few years to fill committee positions to represent districts with fewer growers and lower production.

Hearing testimony supported amending the order by redefining the district boundaries and adding greater flexibility for the committee to recommend district boundaries and committee membership allocations. Witnesses testified that these changes would provide more equitable representation for all growers and production within the production area.

Specifically, witnesses supported amending the order by dividing the production area into three districts as follows: District 1 would include Butte, Sutter, and Yuba Counties; District 2 would include Tulare County; and District 3 would include all other California counties not included in Districts 1 and 2. The record shows that this district alignment would better serve the interests of the industry as it is currently distributed within the production area.

Witnesses also supported amending the order's membership allocation provisions. Allocation of the eleven grower member positions on the committee would be based upon five-year production averages for each district, or upon some other basis approved by the Secretary, to provide equitable representation for each district. Witnesses explained that the committee's staff would review production averages prior to each nomination period and would recommend a membership allocation that would reflect the then current proportion of total kiwifruit production from each district. After its approval by the committee, the recommendation would be forwarded to USDA for review and approval prior to the beginning of the nomination period.

Currently, terms of office are staggered so that part of the committee is nominated and selected each year. Members and alternates are limited to three consecutive two-year terms in one position. Additionally, as explained above, current order provisions require the committee to reallocate three member and alternate seats each year, based on production for each of the districts. Witnesses testified that conducting the nominations process, reallocating some of the seats, and seating new members every year has become burdensome to the industry and disruptive to the administration of the order. Witnesses supported the proposal to synchronize all the terms of office to begin and end biannually. All eleven grower member and alternate seats would be assigned to represent the districts for the entire two-year term of office. Witnesses testified that if the districts are realigned as proposed under Material Issue Number 1, there would be ample candidates available from each district to fill committee seats.

Witnesses also supported adding a provision to the order that would provide that the terms of office for all current members would end on the last day of the fiscal period in which the amendment becomes effective and specify that nominations be conducted for new terms of office for all members as soon as practicable following implementation of the amendments. Under this proposal, terms of office for members or alternates who have served for less than two years at the time the current terms of office are terminated would not count toward tenure.

No testimony opposing the proposed amendments was given at the hearing. For the reasons stated above, it is recommended that § 920.12, District, be amended to define three districts into which the kiwifruit production area is divided. Further, it is recommended that § 920.20, Establishment and Membership, be amended to specify that the eleven grower member seats on the committee shall be allocated on the basis of five-year production history, or on some other basis recommended by the committee and approved by the Secretary, to provide for equitable representation on the committee. Finally, § 920.21, Term of Office, should be amended to provide for concurrent terms of office for all members that would begin and end every other year.

Section 920.21 should also provide that all current terms of office would end on the last day of the fiscal period in which the amendment becomes effective, and a new committee would be nominated as soon as practicable after that date. The section would be further amended to specify that terms of office for members or alternates who have served less than two years at the time the current terms of office are terminated would not count toward tenure. Additionally, references to three districts with additional seats in §§ 920.20 and 920.21 would be removed. Finally, a clarifying conforming change is made to the order language in § 920.20 that cross references § 920.31(l).

Material Issue Number 2—Nominations and Vacancies

Section 920.22, Nomination, of the order should be amended to specify that nomination meetings should be conducted in the grower districts by June 1 of each year in which nominations are made. Currently, the order requires that such nomination meetings be held by July 15 each year. Witnesses explained that the committee has found it necessary to conduct nomination meetings earlier than currently prescribed in the order to ensure that the selection process is completed prior to the August 1 beginning of the terms of office. According to witnesses, the order should be amended to codify what has become a regular practice for the committee. Additionally, as described under Material Issue Number 1, the committee proposed amending the order to provide for concurrent terms of office for all members that would begin and end every other year. Witnesses noted that if that proposed amendment is implemented, there would be no need to conduct nomination meetings every year.

Section 920.26, Vacancies, should also be amended to authorize the Secretary to select a successor to fill mid-term committee vacancies that may occur after consideration of recommendations from the committee. Currently, the order specifies that vacancies must be filled by following the same procedures described for annual committee nominations and selections. Witnesses testified that conducting the entire nomination and selection process to fill mid-term vacancies is burdensome to the industry. Witnesses stated that the committee is aware of qualified growers from each district who would be available to serve out the unexpired terms of members who have vacated their seats. Testimony supported amending the order to provide that mid-term vacancies may be filled by selections made by the Secretary after consideration of recommendations that may be submitted by the committee unless such selection is deemed unnecessary by the Secretary.

No testimony or evidence opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that § 920.22, Nomination, be amended to specify that grower district nomination meetings should be held by June 1 of each year in which nominations are to be made. Further, it is recommended that § 920.26, Vacancies, be amended to authorize the Secretary to select members to fill mid-term vacancies based upon recommendations from the committee.

Material Issue Number 3—Research and Promotion

A new section 920.47, Production research, marketing research and development, providing authority to establish and conduct research and promotion programs, should be added to the order. An additional section, § 920.45, Contributions, authorizing the committee to accept voluntary contributions for research and promotion projects, should also be added to the order. Finally, paragraph (a) of § 920.32, Procedure, should be amended to specify that actions of the committee with respect to research and promotion activities should require at least eight concurring votes.

Currently, the committee is not authorized to conduct research or promotion programs, and it is not authorized to accept voluntary contributions for any purpose. Research and promotion programs for the California kiwifruit industry are currently conducted under a state marketing order, and the state program is authorized to accept contributions for its research programs.

Witnesses at the hearing supported amending the order by adding research and promotion authority. Although they did not identify specific projects that the committee is considering at this time, those testifying about this proposed amendment explained that the committee should have authority to conduct research and promotion programs if the need arises. Further, witnesses stated that the committee does not intend to duplicate the efforts of the state program.

Hearing witnesses testified in support of the proposed amendment to add authority to accept voluntary contributions for use in research and promotion projects. The record shows that industry members have made voluntary financial contributions in the past to support research projects such as the improvement of maturity testing methods and the lengthening of kiwifruit shelf life, both of which were considered critical to the industry. Witnesses testified that such financial support from the industry would be likely to continue if the committee is authorized to accept voluntary contributions.

The record shows that contributions could supplement assessment funds earmarked for research and promotion projects. Witnesses stated that the declining California kiwifruit production would eventually erode the base upon which assessments are collected, and the committee would be limited as to the number and type of projects it could support. Additionally, § 920.41 of the order specifies a cap on the assessment rate that the committee can levy on handlers. With such a cap on the assessment rate, witnesses could foresee a time when the committee might be unable to collect enough assessment revenue to fund extensive research or promotion projects. Voluntary contributions could augment the committee's available funds and allow the committee to conduct important projects.

One witness suggested that voluntary contributions could also bolster the committee's share of projects requiring matching funds. For example, the California kiwifruit industry is interested in raising the demand for its product in the export market. Voluntary contributions could boost the committee's efforts to raise matching funds for participation in USDA's Market Access Program, which helps domestic producers develop and expand their international markets.

The hearing record supports specifying that voluntary contributions would be free of any encumbrances by the donor and would be used at the committee's discretion. Expenditure of contributed funds would be subject to the committee's annual financial audits.

Under the order, eight members constitute a quorum, and most committee actions require the concurrence of the majority of those in attendance. Supermajorities of eight concurring votes are currently required for actions with respect to expenses, assessments, and recommendations for shipping and inspection regulations. The committee proposed amending the order by requiring eight concurring votes for actions with respect to research and promotion if the order is amended to authorize such activities.

Witnesses supported the addition of this supermajority voting requirement to ensure widespread support for any research or promotion projects the committee may undertake.

No testimony or evidence opposing this proposal was offered at the hearing. For the reasons stated above, it is recommended that a new § 920.47, Production research, marketing research and development, be added to the order to authorize the committee to recommend and conduct research and promotion programs. It is also recommended that a new § 920.45, Contributions, be added to the order to authorize the committee to accept financial contributions for use in their research and promotion programs and to specify that the committee will retain complete control of any such contributions. Finally, it is recommended that § 920.32(a) be amended to specify that eight concurring votes are required for all committee actions with respect to research and promotion.

Material Issue Number 4—Meeting and Voting Procedures

Section 920.27 should be revised to specify that grower members and their respective alternates may be represented by any other alternates from the same district at committee meetings if necessary to obtain a quorum. Section 920.32(b) should also be amended to authorize the committee to meet via telephone, video conference, or other means of communication.

Currently, the order authorizes a member's own alternate to represent him or her at meetings during the member's absence. In the case of the three districts allocated two members, an alternate may act in the stead of the other member of that district and his or her alternate, if necessary.

If membership allocation is amended as described under Material Issue Number 1, some districts could be represented by more than two members. This proposal would revise the language of § 920.27 to authorize the committee to designate any available alternate to represent any absent grower member and his or her alternate from the same district, if necessary to obtain a quorum.

Witnesses at the hearing noted that, due to increased demands on their time, growers have found it increasingly difficult to attend meetings that are held at great distances from their districts. Citing recent examples, witnesses described occasions when the committee was unable to conduct business in a timely manner because they were unable to meet quorum requirements.

Witnesses supported amending the order to authorize the committee to appoint any available alternates to represent absent members and alternates from the same district in order to obtain a quorum. Witnesses agreed that substitute alternates from the same districts as the absent members are likely to have similar views regarding industry issues and could represent the views of their districts, as well as the entire industry, appropriately.

Currently, the order authorizes the committee to vote by telephone or other means of communication, but if an assembled meeting is held, all votes must be cast in person. This proposal would enable the committee to hold meetings through other means of communication when appropriate.

As noted above, hearing witnesses testified that time and distance constraints make attendance at assembled meetings difficult for committee members as well as other interested persons. Consequently, meeting attendance has dropped. According to witnesses, meeting attendance could improve if the meetings were more accessible to as many participants as possible. Witnesses expected that providing more meeting options would improve the likelihood that quorum requirements could be met, and that committee business could be conducted in a timely manner.

According to evidence provided at the hearing, teleconference meetings are currently used by other kiwifruit industry organizations. Witnesses testified that teleconferencing has greatly enhanced the efficiency and effectiveness of those other groups.

Witnesses explained that the committee holds approximately three meetings per year. Subcommittees meet more frequently, as needed. If the authority to conduct research and promotion activities, as described under Material Issue Number 3, is added to the order, witnesses anticipate that many more meetings could be needed to discuss and recommend potential projects. Witnesses stated that the work of the committee and subcommittees would be facilitated by adding the flexibility to meet by telephone or other means of communication.

Witness testimony indicates that the committee would provide for assembly of interested persons at sites such as county farm bureau offices, where all could participate in videoconference meetings. As well, the committee would continue to publicize meeting information and provide relevant materials and call-in instructions on its Web site or by mail to those requesting it. Witnesses stated that all interested persons would have access to committee meetings and would be encouraged to participate.

Section 920.32(b) should be further amended to specify that videoconferences would be considered assembled meetings, and that votes cast at such meetings would be considered as cast in person. However, votes cast by members participating in meetings through other methods of communication should be by roll call. Currently, the order provides that votes by telegraph or other means of communication shall be confirmed in writing.

No opposing testimony regarding this proposal was offered at the hearing. For the reasons stated above, it is recommended that § 920.27 should be amended to authorize the committee to appoint substitute alternates to act in the stead of absent members from the same district, if necessary to obtain a quorum. Further, § 920.32(b) should be amended to allow the committee to meet by telephone and other means of communication, to specify that videoconference meetings shall be considered assembled meetings and that votes cast at such meetings shall be considered in-person, and to require votes cast at non-assembled meetings to be taken by roll call.

Conforming Changes

AMS also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. Any such changes have been previously identified.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural growers have been defined

as those with annual receipts of less than $750,000.

There are approximately 30 handlers of kiwifruit subject to regulation under the order and approximately 220 growers of kiwifruit in the regulated area. Information provided at the hearing indicates that the majority of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of growers would be considered small entities according to the SBA's definition.

The order regulates the handling of kiwifruit grown in the state of California. Total bearing kiwifruit acreage has declined from a peak of approximately 7,300 acres in 1992–93 to about 4,000 acres in 2007–08. Approximately 24,500 tons of kiwifruit were produced in California during the 2007–08 season—a decline of approximately 27,800 tons compared to the 1992–93 season. According to evidence provided at the hearing, approximately 30 percent of the 2007–08 California kiwifruit crop was shipped to export markets, including Canada, Mexico, Central American, and Asian destinations.

Under the order, outgoing grade, size, pack, and container regulations are established for kiwifruit shipments, and shipping and inventory information is collected. Program activities administered by the committee are designed to support large and small kiwifruit growers and handlers. The 12-member committee is comprised of eleven grower representatives from the production area, as well as a public member. Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

Following several discussions within the kiwifruit industry, the committee considered adding authority to conduct research and promotion programs to provide maximum flexibility to the order. An amendment subcommittee was appointed to develop recommendations for this and other possible order revisions. The subcommittee developed a list of proposed amendments to the order, which was then presented to the committee.

The committee met to review and discuss the subcommittee's proposals at its meetings on January 30, 2008, April 22, 2008, and July 9, 2008. At those meetings, the committee voted unanimously to support the four proposed amendments that were forwarded to AMS and subsequently considered at the hearing.

The proposed amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing California kiwifruit. Record evidence indicates that the proposals are intended to benefit all growers and handlers under the order, regardless of size.

All grower and handler witnesses supported the proposed amendments at the hearing. Several witnesses commented on the implications of implementing research and promotion programs under the order. In that context, witnesses stated that they expected the benefits to growers and handlers to outweigh any potential costs.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

Proposal 1—Districts and Representation

Proposal 1 would amend the order by redefining the districts into which the production area is divided and providing for the allocation of committee membership positions between the districts. Such allocation would be based upon five-year production averages, or upon another basis approved by the Secretary. This proposal would also provide for concurrent terms of office for all committee members, who would be selected biannually.

At the time the order was promulgated, kiwifruit acreage was more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

The concentration of planted acreage into two main regions and the decline in the number of growers over time has prompted the committee to evaluate the appropriateness of the current committee structure. The committee believes that consolidating the districts and providing for reallocation of grower seats as proposed would better reflect the current composition of the industry. The revisions would ensure that the interests of all large and small entities are represented appropriately during committee deliberations. Synchronizing all the terms of office to begin and end at the same time would simplify administration of the order and reduce disruptions to committee business. Adoption of the proposed amendment would have no economic impact on growers or handlers of any size.

Proposal 2—Nominations and Vacancies

Proposal 2 would amend the order by specifying that grower nomination meetings be held by June 1 of each nomination year and that mid-term vacancies may be filled by selections made by the Secretary after consideration of recommendations that may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary.

Currently, the order requires that nomination meetings be held by July 15 of each year, but that deadline does not allow for timely processing of the nominations and selections of new members prior to the August 1 beginning of the terms of office. The committee has been conducting nomination meetings earlier than prescribed by the order and proposed this revision to codify what has become normal practice.

Any vacancies that occur under the current order provisions must be filled by repeating the nomination and selection process outlined for new members. Allowing the Secretary to fill vacancies as proposed would streamline the process of filling vacancies and reduce disruption to committee business.

Adoption of this proposal would have no economic impact upon growers or handlers of any size.

Proposal 3—Research and Promotion

Proposal 3 would amend the order by adding authority for the committee to conduct research and promotion projects and to accept voluntary contributions to assist with funding those projects. This proposal would also amend the order by requiring the concurring vote of eight members for any action with respect to research and promotion. Currently, the committee is not authorized to conduct research or promotion programs, and it is not authorized to accept voluntary contributions for any purpose.

Historically, kiwifruit research has been conducted by other industry organizations and funded through private as well as public revenues. Currently, the California Kiwifruit Commission, a state marketing program,

is authorized to conduct research and promotion projects for the industry. According to the hearing record, the committee has not identified any specific projects that it wants to conduct at this time, nor does it intend to duplicate the efforts of the state program. However, it would like to add authority to conduct such projects in the event that a need for new projects arises.

Further, the committee proposed adding authority to accept voluntary funds to conduct research and promotion projects to augment the assessment revenues they might budget for such purposes. The order specifies a cap on the rate handlers may be assessed to support the committee's programs and activities. According to witnesses, the current assessment rate is well below the established cap, but supporting research and promotion projects in the future could require more money than what the shrinking industry is likely to collect through assessments. Voluntary contributions could also augment matching funds required from the committee for participation in USDA-sponsored market development programs.

Finally, the committee recommended adding a provision that all actions with respect to research and promotion would require eight concurring committee votes. Witnesses explained that this supermajority approval would ensure that research and promotion projects undertaken by the committee would benefit the industry as a whole. Adding authority to conduct research and promotion projects would not, of itself, have any economic impact on growers or handlers of any size. If research and promotion projects were implemented under this authority in the future, the assessment rate for handlers would likely increase to cover the cost of those expenditures. The value of any proposed projects, as well as recommendations for increased assessment rates, would be evaluated by the committee and approval would require the concurring vote of eight members. Any increases in cost would be borne proportionately by handlers according to the volume of kiwifruit they ship. Those costs could be offset by voluntary contributions. Witnesses testified that any increases in cost due to implementation of this proposal would be offset by benefits expected to accrue to growers and handlers as improved production and post-harvest handling methods and new market opportunities are developed. Any increased costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

Proposal 4—Meeting and Voting Procedures

Proposal 4 would amend the order by allowing the committee to designate substitute alternates to represent absent members from the same district at meetings if necessary to secure a quorum. Currently, under most circumstances, only a member's respective alternate may represent the member if the member is unable to attend a meeting. For districts with only one member, there is no provision for when both the member and his or her alternate are unavailable for a meeting. In the past, meetings have been cancelled at the last minute because attendance was insufficient to meet quorum requirements.

If implemented, the proposed amendment would allow alternates not otherwise representing absent members to represent other members at committee meetings in order to secure a quorum. This would help ensure that quorum requirements could be met and that committee business could be addressed in a timely manner.

This proposal would further authorize the committee to meet by telephone or other means of communication. Video conference meetings would be considered assembled meetings and votes taken at such meetings would be considered in-person. Votes by telephone or other types of non-assembled meetings would be by roll call.

Witnesses testified that this amendment would provide the committee with greater flexibility in scheduling meetings and would be consistent with current practices in other kiwi industry settings. The use of telephone and other means of communication would allow greater access to committee meetings for members as well as other interested persons. Additionally, administration of the order would be improved as urgent committee business could be addressed in a timely manner.

This amendment is expected to benefit growers and handlers of all sizes by improving committee efficiencies and encouraging greater participation in industry deliberations. The amendment is not expected to result in any significant increased costs to producers or handlers.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the production and marketing of California kiwifruit.

Committee meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the kiwifruit industry, and all interested persons were invited to attend the meetings and the hearing and to participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Paperwork Reduction Act

Current information collection requirements for Part 920 are approved by the Office of Management and Budget (OMB), under OMB Number 0581–0189—''Generic OMB Fruit Crops.'' No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to Marketing Order No. 905 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

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

no later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs and proposed findings and conclusions based on the record evidence were solicited in this proceeding. No briefs were filed.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of kiwifruit grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area are as necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because the 2009–2010 fiscal period has already begun, and it would be preferable to have these changes, if adopted, in place for this fiscal period. All written exceptions timely received will be considered, and a grower referendum will be conducted, before any of these proposals are implemented.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 920.12 to read as follows:

§ 920.12 District.

District means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) *District 1* shall include Butte, Sutter, and Yuba Counties.

(b) *District 2* shall include Tulare County.

(c) *District 3* shall include all counties within the production area not included in Districts 1 and 2.

3. Revise § 920.20 to read as follows:

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate), and eleven members (and alternates). With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers. In accordance with § 920.31(l), district representation on the committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts. The committee may, with the approval of the Secretary, provide such other allocation of membership as may be necessary to assure equitable representation.

4. Revise § 920.21 to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. *Provided,* That the terms of office of all members and alternates currently serving will end on the last day of the fiscal period in which this amended provision becomes effective, with nominations for new terms of office to be conducted as soon as practicable after the effective date of the amendment. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members. *Provided,* That any term of office less than two years as a result of the amendment will not count toward tenure.

5. In § 920.22, revise the first sentence of paragraph (a) to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than June 1 of each year in which nominations are made, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. * * *

* * * * *

6. Revise § 920.26 to read as follows:

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be selected by the Secretary after consideration of recommendations which may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary. The selection shall be made on the basis of representation provided for in § 920.20.

7. Revise § 920.27 to read as follows:

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate

any other alternate member from the same district to serve in such member's place and stead if necessary to secure a quorum. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

8. Revise § 920.32 to read as follows:

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, research and promotion activities, or recommendations for regulations pursuant to §§ 920.50 through 920.55 of this part shall require at least eight concurring votes.

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided,* That a video conference shall be considered an assembled meeting, and votes by those participating through video conference shall be considered as cast in person.

9. Add a new § 920.45 to read as follows:

§ 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

10. Add a new § 920.47 to read as follows:

§ 920.47 Production research, marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of kiwifruit. The expense of such projects shall be paid from funds collected pursuant to §§ 920.41 and 920.45.

Dated: November 5, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–27135 Filed 11–10–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 161 and 165

[Docket No. USCG–1998–4399]

RIN 1625–AA58 (Formerly RIN 2115–AF75)

Vessel Traffic Service Lower Mississippi River

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Vessel Traffic Service (VTS) on the Lower Mississippi River and transfer certain vessel traffic management (VTM) provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. The proposed rule would implement current practices and operating procedures appropriate to an Automatic Identification System (AIS)-based VTS and facilitate vessel transits, enhance good order, promote safe navigation, and improve existing waterway operating measures. The rule also proposes minor conforming revisions to the existing VTM provisions and related regulations.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 11, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–1998–4399 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. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Commander Jim Larson, Office of Shore Forces (CG–7413), Coast Guard; telephone 202–372–1554, e-mail *James.W.Larson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–1998–4399), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–1998–4399'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–1998–4399'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting 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.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

The Coast Guard held a public meeting on October 24, 1998, in New Orleans, Louisiana. We announced this meeting in a notice published in the **Federal Register** on September 18, 1998 (63 FR 49939). This meeting provided the Coast Guard with the opportunity to discuss the Vessel Traffic Service (VTS) concept and the envisioned impact of the Automatic Identification System (AIS) technology to the VTS program.

This meeting also afforded us an opportunity to report the preliminary results of AIS tests conducted on the Lower Mississippi River (LMR). Advances in the use of AIS technology and its impact on the established VTS are not discussed in depth in this rulemaking; however, AIS requirements were the subject of a separate rulemaking published on October 22, 2003 (68 FR 60559).

In addition, the Coast Guard discussed the VTS concept at various Lower Mississippi River Waterways Safety Advisory Committee (LMRWSAC) meetings. LMRWSAC is a federally-chartered advisory committee, chaired by the Eighth Coast Guard District Commander, and is charged with making recommendations to the Coast Guard on matters relating to the transit of vessels and products on the LMR. These open forums have allowed the public the opportunity to comment on both VTS and AIS issues. The public's input has been, and will be, taken into account prior to the final rulemaking.

We are still considering whether to have another public meeting on this issue. The Coast Guard would like your comments on the reasons why another meeting would be beneficial. Send your comments requesting a public meeting to the Docket Management Facility at the address under **ADDRESSES**. If we determine that another public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

II. Abbreviations

Abbreviation/Explanation

AHP Above Head of Passes
AIS Automatic Identification System
CH Channel
COTP Captain of the Port
GPS Global Positioning System
IEC International Electrotechnical Commission
ITU International Telecommunications Union
LMRWSAC Lower Mississippi River Waterways Safety Advisory Committee
MHz Megahertz
NDG National Dialogue Group
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
PAWSS Port and Waterways Safety Systems
PWSA Ports and Waterways Safety Act
PWSSC Ports and Waterways Safety Systems Committee
VMRS Vessel Movement Reporting System
VTC Vessel Traffic Center
VTM Vessel Traffic Management
VTS Vessel Traffic Service
VTS LMR Vessel Traffic Service Lower Mississippi River

III. Background

A. Regulatory History

On April 26, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Vessel Traffic Service Lower Mississippi River'' in the **Federal Register** (65 FR 24616) and requested comments during a 90-day comment period. Due to several requests for additional time to comment, on August 18, 2000, the Coast Guard published a notice in the **Federal Register** (65 FR 50479) reopening the comment period until December 1, 2000, and announcing that the Coast Guard would hold a public meeting. On September 20, 2000, the Coast Guard published a notice of meeting in the **Federal Register** (65 FR 56843) announcing that the Coast Guard would hold a public meeting in New Orleans, Louisiana, on October 24, 2000, to receive public comments on the NPRM.

On October 24, 2000, the Coast Guard held a public meeting in New Orleans on Vessel Traffic Service Lower Mississippi River (VTS LMR). Twenty-four people attended the meeting, and two individuals provided comments.

This proposed rule would amend vessel traffic measures within the Mississippi River Regulated Navigation Area and require vessels as defined in 33 CFR 161.2 to participate in a vessel traffic service (VTS) that will serve the Lower Mississippi River (LMR). Additionally, this proposed rule would update certain operating practices, adopt standard traffic management procedures, and inform mariners of certain services provided by a Coast Guard VTS.

B. Vessel Traffic Services

The Coast Guard operates 12 VTSs in the United States. A VTS provides navigation and safety information so mariners can make informed decisions during their voyage. In the past, the Coast Guard operated variations of a VTS in the New Orleans area.

Unfortunately, these efforts were plagued by budgetary constraints, the limitations of voluntary participation, and the temporary or part-time nature of the VTS operation. Since disestablishment of the VTS in New Orleans in the 1980s, the Coast Guard, as directed by the Oil Pollution Act of 1990 (OPA 90, Pub. L. 101–380), has:

(1) Validated the need for a VTS in certain ports;

(2) Made participation mandatory in all VTS ports; and

(3) Invested in infrastructure improvement to VTS equipment and standardized operating procedures across all United States VTSs.

The Coast Guard has long recognized the potential benefits of properly established VTSs in U.S. ports and waterways. As a result, the Coast Guard established the Ports and Waterways Safety System (PAWSS) acquisition project to address waterway users' needs and place a greater emphasis on partnerships with industry to reduce risk in the marine environment. As part of PAWSS, the Coast Guard immediately convened a national dialogue group (NDG) comprised of maritime and waterway community stakeholders to identify the needs of waterway users with respect to Vessel Traffic Management (VTM) and VTS systems. The Coast Guard sponsored these discussions, which were hosted by the Committee on Maritime Advanced Information Systems (MAIS) under the auspices of The Marine Board of the National Research Council. Those stakeholders, representing all major sectors of the U.S. and foreign-flagged maritime industry, port authorities, pilots, the environmental community, and the Coast Guard, were tasked to: (1) Identify the information needs of waterway users to ensure safe passage; (2) assist in establishing a process to identify candidate waterways for VTM improvements and VTS installations; and (3) identify the basic elements of a VTS. The goal of the NDG was to provide a foundation for the development of an approach to VTM that would meet the shared government, industry, and public objective of ensuring the safety of vessel traffic in U.S. ports and waterways in a technologically sound and cost effective way.

A federally-operated and locally-adopted VTM facility has been in place in New Orleans Harbor since the 1930s. In an effort to assist the mariner, safeguard the port, ensure good order, and improve safety, the local maritime community implemented the Algiers Point Control Lights. This system evolved from local river pilots standing watch using lanterns and whistle signals to a 24-hour, federally-staffed communication station with twin control light towers at Governor Nicholls Street Wharf and Gretna Lights. Although not formally recognized as a VTS, the communication station has provided longstanding traffic management services from its inception.

The Algiers Point/Crescent area is currently subject to regulatory provisions established in 33 CFR 165.810(c). The procedures and practices proposed in this rule are essentially the same as those currently used in the Algiers Point/Crescent area, but are being moved to 33 CFR 161.65(c) to consolidate all VTS regulations under one section.

The primary objective of the existing regulatory system is providing an orderly traffic flow around Algiers Point. Algiers Point is one of the most challenging bends to safely navigate on the Mississippi River, particularly in high water conditions. In one of the busiest industrial harbors in the world, vessels must negotiate a 120-degree bend in the river amidst constantly changing hydrographic conditions, congested waters, and various bridges and piers. Mandatory vessel traffic measures, represented by the light signals, are utilized to lessen the potential for mishap during periods of high water. The consequences of improper navigation in this segment of the river are both significant and well-documented. Since 1991, there have been multiple reportable marine casualties within the area covered by this rulemaking. The failure to safely transit this area can quickly lead to a mishap that causes substantial property damage, serious environmental and economic consequences, or loss of life.

The Coast Guard and local mariners recognize that this segment of the waterway warrants great vigilance. The nature of vessel traffic within this area and the anticipated increase in traffic requires that certain vessel traffic measures are active at all times or at least available at a moment's notice. These measures can best be assured by operating a Vessel Traffic Center (VTC) within the framework of a VTS. A VTC is a shoreside facility from which the VTS operates and has the communications capability to interact with marine traffic and respond to developing situations. The existing Control Light operation in the LMR and around Algiers Point has proven valuable in some measures of VTM; however, these measures are narrow in scope, limited to a small area, and only operated during periods of high water. Historically, limitations of equipment, staffing, and site location hampered the light operator's ability to provide overall safety and efficiency of anticipated vessel traffic beyond the immediate vicinity of Algiers Point. Through implementation of a continuously-operating VTS, the Coast Guard has enhanced system capabilities and improved navigation on the entire LMR.

C. Stakeholder Involvement

The Coast Guard has long recognized that a VTS on the LMR is a valuable asset to all entities, the ''stakeholders'', that may be impacted by the waterway either directly or indirectly. In addition, many of the stakeholders who regularly utilize the waterway have advised us that to achieve success, the VTS must meet the needs of the waterway users while imposing the least burden.

In 1997, the Coast Guard formed the Ports and Waterways Safety Systems Committee (PWSSC). The Coast Guard created this ad-hoc committee, a subcommittee under LMRWSAC, of maritime, port community, government, and public stakeholders to define user requirements for a VTS that would accomplish the overall goals of safety and efficiency. Since its formation, PWSSC has met several times, and the product of these meetings was a conceptual baseline VTS plan (see document USCG–1998–4399–0003 at *http://www.regulations.gov*) endorsed by LMRWSAC. Key recommendations of this plan involved the need to implement AIS technology and to incorporate AIS as a key component of any VTS implementation.

D. Automatic Identification System Concept

AIS technology relies on Global Positioning System (GPS), navigation sensors, and digital communication equipment operating according to standardized protocols (*i.e.,* AIS transponders) that permit the voiceless exchange of navigation information between vessels and shoreside VTCs. The AIS transponders on vessels can broadcast information about the vessel, such as its name or call sign, dimensions, type, position (derived from a GPS input), course, speed, and navigation status. This information is continually updated and received by all AIS-equipped vessels in its vicinity. An AIS-based VTS is able to augment this broadcast with additional safety and navigation information such as weather, tides, currents, and status of navigational aids. This additional information can be relayed to all VTS users for consideration in voyage planning and execution. The advantage of this automatic exchange of

information is that it can be accessed by all mariners, tailored to the mariners' needs and desires, and greatly reduce voice radio exchanges. The ease of operation of the VTS and the reduction of voice interactions should greatly enhance mariners' ability to navigate, improve their situational awareness, and assist them in the performance of their duties, thus reducing the risk of collisions.

The Coast Guard recognizes the importance of AIS and has led the way on various international fronts for acceptance and adoption of this technology. Through its national representation role in the International Maritime Organization (IMO), International Telecommunications Union (ITU), and participation in various other international working groups, including groups within the International Electrotechnical Commission (IEC), the Coast Guard has been a leader in the drafting and/or adoption of various technical standards (*e.g.,* ITU–R M.1371–3, IEC 61993–2, IEC 62320–1). Through comprehensive field testing and based on feedback received from test participants and other interested parties in the area, the Coast Guard established a voluntary-participation VTS on the LMR that incorporated full use of AIS technology in 2004.

In 2003, the USCG published a final rule that harmonized the AIS carriage and standardization requirements contained in the Maritime Transportation Security Act of 2002, Section 102, Public Law 107–295, 116 Stat. 2064, 46 U.S.C. 70114 (November 25, 2002) (MTSA) with the requirements of the International Convention for the Safety of Life at Sea (SOLAS) that established AIS carriage requirements for commercial vessels (33 CFR 164). Because of this prior regulation, all U.S.-flagged commercial vessels required to carry AIS equipment for operation in the VTS under this proposed rule have been in compliance since 2004. Similarly, foreign-flagged vessels have been required to carry AIS equipment under the SOLAS Convention since 2004.

This rulemaking proposes establishing mandatory-participation in the current voluntary VTS on the LMR. This effort is part of a comprehensive safety improvement initiative being implemented by the Coast Guard in consultation with various maritime entities in the area, including LMRWSAC.

The Coast Guard completed a capitalization program in 2004 that provided Coast Guard Sector New Orleans with additional Coast Guard personnel and a modernized VTC. From this VTC, we have the capability to monitor the movement of VTS users and provide navigation services that will help all requesting mariners plan their transits of the LMR. Because the bend at Algiers Point remains an area of great concern and warrants extra precaution, we also designated the segment of the river between 93.5 and 95 miles Above Head of Passes (AHP) as a VTS Special Area, and provisions formerly set forth in 33 CFR 165.810(c) continue to apply in periods of high water. Due to added concerns with a high number of vessel casualties in the vicinity of Eighty-one Mile Point as a result of unique river conditions, an additional VTS Special Area is being designated on the river between 167.5 and 187.9 miles AHP. Provisions formerly set forth in 33 CFR 165.810(g) continue to apply.

This rule also proposes extending the area of operation of VTS LMR to the area between 20 miles above Baton Rouge to the outer limit of the 12-mile territorial sea boundary.

IV. Summary of Changes Between NPRM and SNPRM

The Coast Guard made the following changes to the notice of proposed rulemaking (NPRM) and incorporated them in this supplemental NPRM (SNPRM):

- In the NPRM, we proposed to revise § 26.03 by deleting Table 26.03(f) and revising paragraph (f). We did not make those changes in this proposed rule because the changes were completed in a different rulemaking (68 FR 60559).
- In the NPRM, we discussed the federalism implications of this rule and determined that the proposed rule would have preemptive effect over any State laws or regulations on the same subject matter. We have restated that determination elsewhere in this rule. In addition, we have created a new § 161.6 to explicitly state that this rule has preemptive effect over state law on this subject.
- In the NPRM, we proposed to revise Table 161.12(b) by adding a new entry that describes the LMR VTS area. We did not make those changes in this proposed rule because they were completed in a different rulemaking (68 FR 60559). That rulemaking also redesignated Table 161.12(b) as Table 161.12(c). However, in the table currently designated Table 161.12(c), we propose to revise footnote 6 to indicate the operation of the VTS LMR. In addition, two VTS monitoring areas were proposed for VTS LMR in the NPRM, utilizing VHF channels 12 and 14. Based on the operational experience of VTS LMR, we now propose three VTS monitoring areas, utilizing VHF channels 11, 12, and 05A. VHF channel 14 is being utilized by the U.S. Army Corps of Engineers for lock operations in the VTS LMR area, and the use of CH 14 by VTS LMR would interfere with lock operations. In lieu of CH 14, the Coast Guard is proposing to utilize VHF CH 11 (156.550 MHz) in the southern section of the VTS LMR area, which is currently designated as a VTS protected frequency for the VTS LMR area in 47 CFR 80.383. The Coast Guard is also proposing to establish an additional northern monitoring area, within the VTS area originally proposed in the NPRM, utilizing VHF Channel 05A. This channel is not currently designated as a VTS protected frequency, but the Coast Guard will be petitioning the FCC for protection status for this channel and has already made frequency use applications through appropriate Federal agencies. Field tests have been conducted on CH 05A during which little other marine traffic was identified, indicating that little impact will result from the Coast Guard's use of this channel.
- Since publishing the NPRM, Coast Guard District Eight established operating requirements in § 165.810 to cover the vicinity of Eighty-one Mile Point (72 FR 41624). The operating requirements for this area are now included in this proposed rule as a new VTS Special Area in § 161.65(e).
- In the NPRM, we proposed to remove § 165.810(c) and redesignate the remaining paragraphs. However, we instead propose to remove and reserve paragraph (c) to preserve the original designations for the remaining paragraphs.

V. Discussion of Comments

The Coast Guard received 21 letters commenting on the original proposed rule (65 FR 24616). We held one public meeting where we received two public comments. Many of the public's comments in response to the April 2000 notice of proposed rulemaking (NPRM) have been overtaken by subsequent events. As a result, we summarize below those actions that have taken place since the original round of public comments and this supplemental NPRM (SNPRM). The public will have an opportunity to comment on the current state of VTS LMR operations as addressed in this proposed rulemaking.

Since April 26, 2000, the Coast Guard has installed and operationally tested a Vessel Traffic Management (VTM) system to monitor the Lower Mississippi River (LMR) area addressed in this rulemaking. The system is a computer-based VTM system that

utilizes Automatic Identification System (AIS), closed circuit television cameras (CCTV), radar, and VHF radio communications to monitor and advise vessel traffic on the Mississippi River. Computer-based VTM systems have been operationally proven as a reliable VTM system in seven U.S. ports and are maintained and supported through Coast Guard efforts.

The VTS is now fully staffed by Coast Guard civilian employees, who have undergone a rigorous selection, training, and qualification process. As part of this training and qualification process, we have developed a National VTS Certification Course, based upon the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) VTS Training Curriculum, that each VTS watch stander must complete. In addition to Coast Guard employees, the VTS watch is augmented by two onsite Pilot Advisors, who bring additional knowledge and experience to the VTS operation. The Coast Guard has two Memorandums of Understanding with (1) the Crescent River Port Pilots Association and the Independent River Pilots and (2) the New Orleans and Baton Rouge Steamship Pilots and the Independent New Orleans and Baton Rouge Steamship Pilots, which address the staffing of the VTS with pilot advisors.

In addition to the installation of the VTM system, remote traffic control light tower operations from Governor Nichols Street Wharf and Gretna Light have been safely transitioned to the Coast Guard VTS center. Many of the original public comments expressed concern with the ability of the Coast Guard to safely transition to and monitor the traffic control towers from a consolidated VTS center utilizing an AIS based VTS system. Remote tower operation is further enhanced through the use of CCTV coverage of the river in critical areas. These remote operations have been in place since 2004.

Many of the original public comments addressed concerns with AIS equipment carriage requirements associated with the proposed rule. Since we published the NPRM in the **Federal Register** in 2000, the Coast Guard separated the VTS LMR and AIS rulemaking projects into two separate rulemaking projects (see USCG–2005–21869 for the AIS rulemaking). AIS is now fully integrated with the Coast Guard traffic management systems and has proven to be an effective traffic management tool in LMR, as well as the other U.S. VTS ports.

We feel that the current state of VTS operations on the LMR increases the safety and efficiency of traffic in the VTS area as proposed in this rulemaking and look forward to addressing new public comments received regarding the proposed rulemaking.

VI. Discussion of Supplemental Notice of Proposed Rulemaking

This proposed rule would revise regulations in 33 CFR parts 161 and 165 as follows:

A. Section 161.2 Definitions

We propose to clarify the term ''Hazardous Vessel Operating Condition'' to make it clear that, in addition to equipment and manning shortcomings, any vessel condition that ''may affect the positive control or safe handling'' of a vessel, towing vessels in particular, is deemed a ''Hazardous Vessel Operating Condition.''

B. Section 161.6 Preemption

We propose to add this section to explicitly state that this rule has preemptive effect over state law on this subject.

C. Section 161.12 Vessel Operating Requirements

The Coast Guard proposes to revise Table 161.12(c). Specifically, we modify the VTS LMR entry in the table by changing from two to three monitoring areas and updating the designated frequencies. Additionally, we revise the text in footnote 6 by deleting the reference to VTS LMR.

D. Section 161.65 Vessel Traffic Service, Lower Mississippi River

The Coast Guard proposes to add a new entry that describes the Lower Mississippi River Vessel Traffic Service area. The VTS area extends from 20 miles north of Baton Rouge to the outer limit of the territorial sea, seaward of Southwest Pass. Within this VTS, there will be two VTS Special Areas.

The Algiers Point VTS Special Area will consist of those waters of the LMR between 93.5 and 95.0 miles Above Head of Passes (AHP). Special operating requirements are proposed to mirror the existing Control Light operations and would be in effect during periods of high water.

The Eighty-one Mile Point VTS Special Area will consist of those waters of the LMR between 167.5 and 187.9 miles AHP. Special operating requirements are proposed to mirror the existing operating requirements and would be in effect at all times.

E. Section 165.810 Mississippi River, LA—Regulated Navigation Area

The Coast Guard proposes to remove and reserve paragraph (c), the existing Mississippi River, LA–RNA provisions on Control Lights. The core of these provisions would be added to the special operating requirements of the Algiers Point VTS Special Area in § 161.65(c).

Additionally, we propose to remove and reserve paragraph (g), the existing Mississippi River, LA–RNA provisions around Eighty-one Mile Point. The core of these requirements would be added to the special operating requirements of the Eighty-one Mile Point VTS Special Area in § 161.65(e).

Finally, we propose adding a note at the end of this section alerting the reader that we would move the information previously located in paragraphs (c) and (g) of this section to § 161.65.

VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This proposed rule would establish a VTS on the Lower Mississippi River and transfer certain VTM provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. The proposed rule would implement current practices and procedures appropriate to an AIS-based VTS.

Based on data from the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) database, we estimate the proposed rule would affect 1,796 U.S.-flagged vessels with hailing ports from mile 242.4 Above Head of Passes (AHP) (near Baton Rouge) to the territorial sea boundary and an estimated 2,294 foreign-flagged vessels.

The requirements for compliance with this proposed rule include:

- Certain classes of commercial vessels would be required to carry functioning AIS equipment and to employ the AIS equipment while operating within the VTS.
- Commercial vessels not required to carry AIS equipment would be required to follow established reporting procedures via radiotelephone when operating within the VTS area.

• Coast Guard would maintain an operational Vessel Traffic Center (VTC) to monitor and direct traffic within the VTS.

While this proposed rule would establish a mandatory participation Vessel Traffic Service (VTS), its principal effect will be to codify current practices. The requirements of this proposed rule have been implemented through prior regulations and we expect that there would not be additional costs to either industry or government resulting from this proposed rule.

In 2003, the USCG published a final rule that harmonized the AIS carriage and standardization requirements contained in the Maritime Transportation Security Act of 2002 (MTSA) with the requirements of the International Convention for the Safety of Life at Sea (SOLAS) that established AIS carriage requirements for commercial vessels (33 CFR part 164). Because of this prior regulation, all U.S.-flagged commercial vessels required to carry AIS equipment for operation in the VTS under this proposed rule have been in compliance since 2004. Similarly, foreign-flagged vessels have been required to carry AIS equipment under the SOLAS Convention since 2004. A list of the categories of commercial vessels and the dates of compliance for AIS carriage are shown in Table 1.

TABLE 1—COMMERCIAL VESSELS: AIS CARRIAGE REQUIREMENTS

Class of vessel	AIS currently required	Compliance date
Self propelled vessels 65 feet or more in length in commercial service and on an international voyage (excludes passenger and fishing vessels).	Yes	December 31, 2004.
Passenger Vessels of 150 gross tons or more on an international voyage	Yes	July 1, 2003.
Tankers on international voyages, regardless of tonnage	Yes	July 1, 2003.
Vessels of 50,000 gross tons or more, other than tankers or passenger ships, on international voyages.	Yes	July 1, 2004.
Vessels of 300 gross tons or more but less than 50,000 gross tons, other than tankers or passenger ships.	Yes	December 31, 2004.
Self propelled vessels of 65 feet or more in length in commercial service (excludes fishing vessels and passenger vessels certificated to carry less than 151 passengers for hire).	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Towing Vessels 26 feet or more in length and more than 600 horsepower in commercial service.	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Passenger Vessels certificated to carry more than 150 passengers for hire	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Fishing Vessels	No.	

Commercial vessels that are not required to carry AIS equipment must maintain radiotelephone communication with the VTC while traversing the VTS. These requirements have been in place since July of 1982, when the Coast Guard established specific radiotelephone frequencies and reporting procedures for vessels operating in the Mississippi River, LA-Regulated Navigation Area.

The Coast Guard has operated a VTC from a shoreside facility in downtown New Orleans since late 1999. This VTC provides the core communications and monitoring functions for the VTS.

The procedures and practices proposed in this proposed rule are the same as those currently in use at the Algiers Point/Crescent area of the VTS. Currently, commercial vessel movements in the VTS traverse the Algiers Point/Crescent area and current compliance with the rules of this area fulfills the requirements of the larger VTS.

As with the costs of the proposed rule, the benefits were also realized through vessel compliance with the prior regulations that established AIS and radiotelephone carriage requirements and the VTC operations center. The principal benefit of changing VTS participation from voluntary to mandatory is to codify current practices which increase the efficiency of vessel operations on the Lower Mississippi River by consolidating and standardizing vessel operating procedures.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As previously discussed, the requirements for vessel operation in the Algiers Point and Eighty-one Mile Point special areas were implemented in prior regulations, and most vessels which will be required to participate in the VTS are currently equipped to follow regulations already established in those two areas. As a result, we expect that this rule would not impose additional costs on any of the vessels operating in the VTS LMR.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments, and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it has implications for federalism. A summary of the impact of federalism in this rule follows.

Title I of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et. seq.*) authorizes the Secretary to issue regulations to establish and maintain vessel traffic services consisting of measures for controlling or supervising vessel traffic to protect the marine environment. In enacting PWSA in 1972, Congress learned that advance planning and consultation with the affected States and other stakeholders was necessary to develop and implement a VTS. The Coast Guard, throughout the development of the VTS on the Lower Mississippi River, has consulted with the State of Louisiana, the affected state and Federal pilot's associations, vessel operators, users, and all affected stakeholders.

The Coast Guard has determined, after considering the factors developed by the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000), that by enacting Chapter 25 of the Ports and Waterways Safety Act, Congress intended to preempt the field of vessel traffic services in United States ports and waterways. Therefore, the regulations proposed in this rulemaking for operation and equipment required on vessels have preemptive impact over any State laws or regulations that may be enacted on the same subject matter.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the States (see *U.S.* v. *Locke,* above), the Coast Guard recognizes the key role state and local governments may have in making regulatory determinations. The State of Louisiana and the Coast Guard have worked closely throughout the development of these regulations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by state or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the states.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule involves regulations changing Regulated Navigation Areas and regulations in aid of navigation. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 165

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 161 and 165 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 161.2 [Amended]

2. In § 161.2, revise paragraph (3) of the definition of *Hazardous Vessel Operating Condition* to read as follows:

§ 161.2 Definitions.

* * * * *

Hazardous Vessel Operating Condition

* * * * *

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo or tow arrangement, trim, loaded condition, underkeel or overhead clearance, speed capabilities, power availability, or similar characteristics, which may affect the positive control or safe handling of the vessel or the tow.

* * * * *

3. Add a new § 161.6 to read as follows:

§ 161.6 Preemption.

The regulations in part 161 of this subchapter as to vessels have preemptive impact over State law on the same subject. The Coast Guard has determined after considering the factors developed by the Supreme Court in *U.S.* v *Locke,* 529 U.S. 89 (2000), that by enacting Chapter 25 of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et. seq.*), Congress intended to preempt the field of vessel traffic services in United States ports and waterways.

§ 161.12 [Amended]

4. In § 161.12, in Table 161.12(c)—

a. In footnote 6, remove the words ''VTS Lower Mississippi River and''; and

b. Amend Table 161.12(c) by revising the entries for New Orleans Traffic, to read as follows:

§ 161.12 Vessel operating requirements.

* * * * *

TABLE 161.12(C)—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Center MMSI [1] *Call Sign*	Designated frequency (Channel designation)-purpose [2]	Monitoring Area [3,4]
* * *	* * *	* * *
Lower Mississippi River—0036699952		
New Orleans Traffic	156.550 MHz (Ch. 11)	The navigable waters of the Lower Mississippi River below 29°55.3′ N 089°55.6′ W (Saxonholm Light at 86.0 miles Above Head of Passes (AHP)), extending down river to Southwest Pass, and, within a 12 nautical mile radius around 28°54.3′ N 089°25.7′ N (Southwest Pass Entrance Light at 19.9 miles Below Head of Passes.
New Orleans Traffic	156.600 MHz (Ch. 12)	The navigable waters of the Lower Mississippi River bounded on the north by a line drawn perpendicular on the river at 29°55′ 30″ N and 090°12′46″ W (Upper Twelve Mile Point at 109.0 miles AHP) and on the south by a line drawn perpendicularly at 29°55.3′ N 089°55.6′ W (Saxonholm Light at 86.0 miles AHP).
New Orleans Traffic	156.250 MHz (Ch. 05A)	The navigable waters of the Lower Mississippi River below 30°38.7′ N 091°17.5′ W (Port Hudson Light at 255.0 miles AHP) bounded on the south by a line drawn perpendicular on the river at 29°55′30″ N and 090°12′46″ W (Upper Twelve Mile Point at 109.0 miles AHP).
* * *	* * *	* * *

Notes to Table161.12(c):

[1]Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned that identifies ship stations, ship earth stations, coast stations, coast earth stations, and group calls for use by a digital selective calling (DSC) radio, an INMARSAT ship earth station or AIS. AIS requirements are set forth in §§ 161.21 and 164.46 of this subchapter. The requirements set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number.

[2]In the event of a communication failure, difficulties or other safety factors, the Center may direct or permit a user to monitor and report on any other designated monitoring frequency or the bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13) or 156.375 MHz (Channel 67), to the extent that doing so provides a level of safety beyond that provided by other means. The bridge-to-bridge navigational frequency, 156.650 MHZ (Ch. 13) is used in certain monitoring areas where the level of reporting does not warrant a designated frequency.

[3]All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

[4]Some monitoring areas extend beyond navigable waters. Although not required, users are strongly encouraged to maintain a listening watch on the designated monitoring frequency in these areas. Otherwise, they are required to maintain watch as stated in 47 CFR 80.148.

* * * * *

5. Add a new § 161.65 to read as follows:

§ 161.65 Vessel Traffic Service Lower Mississippi River.

(a) The Vessel Traffic Service (VTS) area consists of navigable waters of the Lower Mississippi River (LMR) below 30°38.7′ N, 91°17.5′ W (Port Hudson Light at 255.0 miles Above Head of Passes (AHP)), the Southwest Pass, and those within a 12 nautical mile radius around 28°54.3′ N, 89°25.7′ W (Southwest Pass Entrance Light at 19.9 miles Below Head of Passes (BHP)).

(b) The Algiers Point VTS Special Area consists of the navigable waters of the LMR bounded on the north by a line drawn from 29°57.62′ N, 90°02.61′ W to 29°57.34′ N, 90°02.60′ W and on the south by a line drawn from 29°56.89′ N, 90°03.72′ W to 29°56.93′ N, 90°03.34′ W (95.0 and 93.5 miles AHP) during periods of high water—that is, when the Carrolton Gage reads 8.0 feet or above on a rising stage or 9.0 feet or above on a falling stage, or under any other water conditions the Captain of the Port (COTP) deems necessary.

(c) *Additional Algiers Point VTS Special Area Operating Requirements.* The following additional requirements are applicable in the Algiers Point VTS Special Area:

(1) A vessel movement reporting system (VMRS) user must abide by the signals of the Governor Nicholls Street Wharf, 29°57.6′ N, 90°03.4′ W, and Gretna, 29°55.5′ N, 90°03.7′ W, Control Lights (94.3 and 96.6 miles AHP, respectively) in the following manner:

(i) *Green Light*—May proceed as intended.

(ii) *Red Light*—Do not proceed, unless otherwise directed by the VTS.

(iii) *No Light*—Do not proceed, immediately notify VTS and await further directions.

Note to § 161.65(c)(1): To provide advance notification to downbound vessels, a traffic repeater signal of Gretna Light is located at Westwego, LA, 29°54.8′ N 90°08.3′ W (101.4 miles AHP).

(2) A vessel awaiting a signal change or VTS directions must keep clear of other vessels transiting the area.

(d) The Eighty-one Mile Point VTS Special Area consists of navigable waters of the LMR between 167.5 miles AHP and 187.9 miles AHP.

(e) *Additional Eighty-one Mile Point VTS Special Area Operating Requirements.* The following additional requirements are applicable in the Eighty-one Mile Point VTS Special Area:

(1) Prior to proceeding upriver past 167.5 miles AHP, Sunshine Bridge, vessels must contact VTS New Orleans on VHF Channel 5A to check-in. Vessels must provide name and destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46, and, if applicable, size of tow and number of loaded and empty barges. At 173.7 miles AHP, Bringier Point Light, ascending vessels must contact VTS New Orleans and provide a follow-on position check. At both check-in and follow-on position check, VTS New Orleans will advise the vessel on traffic approaching Eighty-one Mile Point.

(2) Prior to proceeding downriver past 187.9 miles AHP COS–MAR Lights, vessels must contact VTS New Orleans on VHF Channel 5A to check-in. Vessels must provide name and destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46, and, if applicable, size of tow and number of loaded and empty barges. At 183.9 miles AHP, Wyandotte Chemical Dock Lights, descending vessels must contact VTS New Orleans and provide a follow-on position check. At both check-in and follow-on position check, VTS New Orleans will advise the vessel on traffic approaching Eighty-one Mile Point.

(3) All vessels getting underway between miles 167.5 and 187.9 AHP must check-in with VTS New Orleans on VHF Channel 5A immediately prior to getting underway and must comply with the respective ascending and descending check-in and follow-on points listed in paragraphs (e)(1) and (2) of this section.

(4) Fleet vessels must check-in with VTS New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to check-in if they are operating exclusively within their fleet.

(f) *Reporting Points.* Table 161.65(f) lists the VTS Lower Mississippi River Reporting Points.

TABLE 161.65(f)—VTS LOWER MISSISSIPPI RIVER REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude/mile marker	Notes
A	Algiers Canal Forebay	88.0° AHP	29°56.6′ N; 90°10.1′ W	Upbound transiting Algiers Point Special Area.
B	Industrial Canal	92.7° AHP	29°57.2′ N; 90°01.68′ W	Upbound transiting Algiers Point Special Area.
C	Crescent Towing Smith Fleet.	93.5° AHP	29°57.50′ N; 90°02.62′ W	Upbound Towing vessels transiting Algiers Point Special Area.
D	Marlex Terminal (Naval Ships).	99.0° AHP	29°54.65′ N; 90°05.87′ W	Downbound transiting Algiers Point Special Area.
E	Huey P. Long Bridge	106.1° AHP	29°55.40′ N; 89°57.7′ W	Downbound transiting Algiers Point Special Area.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

6. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.810 [Amended]

7. In § 165.810—

a. Remove and reserve paragraph (c);

b. Remove and reserve paragraph (g); and

c. Add a note at the end of the section to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

* * * * *

Note to § 165.810: Control Light provisions (previously referenced in paragraph (c) of this section) used to manage vessel traffic during periods of high waters in the vicinity of Algiers Point are located in 33 CFR 161.65(c). The special operating requirements (previously referenced in paragraph (g) of this section) used to manage vessel traffic in the vicinity of Eighty-one Mile Point are located in 33 CFR 161.65(e).

Dated: October 27, 2009.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E9–26572 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN33

Claim-Related Documents or Supporting Evidence Not of Record

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to add a new section to its adjudication regulations to establish temporary VA procedures for when claimants allege the submission of claim-related documents or evidence in support of a claim during the time period of April 14, 2007, through October 14, 2008, and such documents or evidence are not of record in the official VA file.

DATES: Comments must be received by VA on or before January 11, 2010.

ADDRESSES: Written comments may be submitted through ''*http://www.Regulations.gov;*'' by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20042; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN33—Claim-Related Documents or Supporting Evidence Not of Record.'' 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) 461–4923 for an appointment (this is not a toll-free number). 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: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9725 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 20, 2008, VA's Office of Inspector General (OIG) initiated an audit of select Veterans Benefits Administration (VBA) regional office (RO) mail processing procedures. VBA receives and processes approximately 25 million documents each year. The OIG audit team examined mail-handling activities and the activity that places claims under electronic control in four ROs. The audit team found 36 pieces of active mail and 93 original support documents improperly designated for destruction by shredding. Documents identified as designated for destruction included, among other things, the following: VA Form 21–526, Veteran's Application for Compensation and/or Pension; VA Form 21–686c, Declaration of Status of Dependents; VA Form 21–674, Request for Approval of School Attendance; and documents constituting informal claims.

VA recognizes that the OIG's findings may have been indicative of a document-handling or shredding problem affecting numerous ROs at the time of the OIG audit and that this problem may have adversely impacted some veterans. In response to these findings, the Secretary suspended all document-shredding activities and provided new guidance and training to all RO personnel regarding the handling and shredding of claim-related documents and evidence in support of a claim. The Secretary also decided to establish temporary claims-handling procedures for veterans who allege that they submitted claim-related documents or evidence in support of a claim during the time period of April 14, 2007, through October 14, 2008, that are not of record in official VA files. This rule would codify the temporary claims-handling procedures, which include a relaxed evidentiary standard for the adjudication of claims involving alleged submissions of documents or evidence during this 18-month time period. These temporary procedures would reflect VA's pro-veteran response to the OIG's findings of improper document handling and control at the ROs.

October 14, 2008, is the date on which the Secretary suspended all document-shredding activities following the OIG audit. To ensure that claimants who may have been affected by the former document shredding activities have an opportunity to make assertions regarding missing documents, we propose to establish an 18-month time period from April 14, 2007, through October 14, 2008, during which affected claimants may receive the benefit of certain liberalized procedures. As we describe in greater detail below, the proposed 18-month period is based upon VA's claims adjudication experience. With regard to lost claims or applications for benefits, based on our experience, VA takes on average 6 months to process a claim. VA added an additional 12 months to reflect a reasonable amount of time for a claimant to learn that a submitted claim-related document may have been lost or mishandled by the RO.

With regard to lost evidence in support of a claim, the RO most likely would have issued a decision or a supplemental statement of the case within 18 months from the date of the alleged submission of evidence. Because the RO is required to summarize the evidence that it considered in denying a claim for benefits (38 U.S.C. 5104(b)(2)), a decision would have revealed that the RO had not considered the alleged submitted evidence. Also, the RO is required to address in a supplemental statement of the case new evidence submitted subsequent to the filing of a statement of the case (38 CFR 19.31(b)).

With regard to lost notices of disagreement, the RO is required to issue a statement of the case (38 U.S.C. 7105(d)) and usually does so within a year after receiving a notice of disagreement. With regard to lost substantive appeals, the Board, as a matter of practice soon after the processing of a formal appeal, will notify a claimant that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board (38 CFR 20.1304(a)).

Thus, we believe that, if a veteran contends that he or she submitted a claim-related document or evidence in support of a claim before April 14, 2007, the veteran reasonably would have inquired about the document submission or would have been informed of its misplacement or destruction within 18 months from the asserted date of submission, or prior to October 14, 2008.

We are particularly interested in comments regarding the proposed establishment of the 18-month period of April 14, 2007, through October 14, 2008, for an alleged submission of a claim-related document or evidence that is missing from official VA files for which VA will consider the asserted date of submission as the actual date of submission.

This rule would require a claimant to notify the RO within one year of the effective date of the final rule implementing the temporary claims handling procedures of an alleged submission during the 18-month period of April 14, 2007, through October 14, 2008. The one-year deadline reasonably gives claimants time to inform ROs of alleged submissions during the 18-month period and would be consistent with the 12-month time period given to claimants to file a Notice of Disagreement. After the expiration of this one-year period, VA would amend its regulations to remove the obsolete provisions in proposed § 3.218.

For claims allegedly submitted between April 14, 2007, and October 14, 2008, the effective date would be established in accordance with the date asserted by the claimant as the date on which the Secretary received the claim.

In general practice, when a claimant asserts the submission of a claim-related document or evidence in support of a claim that was not of record in the official VA file, VA requests the claimant to submit any available secondary evidence that would support the alleged previous submission. For example, VA would ask a claimant to submit a copy of the claim-related document or evidence date stamped by VA or the claimant's representative, or a dated transmittal or cover sheet from the claimant or claimant's representative relating to the pertinent document, together with copies of any documents that were included with the alleged previous submission. Accordingly, if a claimant asserts that a document was originally filed before April 14, 2007, or after October 14, 2008 (or if a claimant asserts after the one-year period following the effective date of the final rule that a document was originally filed during the time period of April 14, 2007, through October 14, 2008) and such document is not of record in official VA files, VA would ask the claimant to submit similar secondary evidence to support the alleged previous submission, consistent with VA's general practice. If entitlement to benefits is established under this scenario, VA would assign an effective date in accordance with the facts found based on credible corroborating evidence submitted by the claimant and applicable laws and regulations.

Unfunded Mandates

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

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action'' requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or 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 entitlement recipients; 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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

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. The rule could affect only VA beneficiaries and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule would be exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: August 11, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Add § 3.218 to read as follows:

§ 3.218 Claim-Related Documents or Supporting Evidence Not of Record.

(a) *Submissions during the time period of April 14, 2007, through October 14, 2008.* If a claimant or claimant's representative asserts that a claim-related document or evidence in support of a claim was originally filed with VA during the time period of April 14, 2007, through October 14, 2008, and such document or evidence is missing from official VA files, VA will consider the asserted date of submission as the actual date of submission. VA will apply procedures under this section only for assertions made before the end of the 1-year period following [EFFECTIVE DATE OF FINAL RULE].

(b) *Additional requirements and procedures for alleged submissions under paragraph (a).* (1) If the claimant's assertion refers to an original claim, a claim for increased benefits, or a claim for reopening, the claimant must submit either a copy of the previously submitted claim form or a new claim form. VA will provide the claimant with assistance and notification of the required evidence and information upon receipt of a substantially complete application, as necessary under § 3.159 of this part, and will develop the claim pursuant to existing procedures.

(2) If the claimant's assertion refers to evidence in support of a claim, the claimant must identify the claim to which the evidence pertains and submit a copy of the evidence, or, if the evidence is no longer available, a description of such evidence or a completed VA Form 21–4142.

(3) If the claimant's assertion refers to a document relating to the appeal of an administrative decision, such as a notice of disagreement or substantive appeal, VA will follow proper appeal procedures based on date of receipt of the document, as determined under this section.

(4) If the only issue raised by the claimant's assertion concerns the effective date of an award for benefits for a claim already decided, VA will establish the proper effective date without additional development.

(c) *Effective dates*. For claims allegedly submitted between April 14, 2007, and October 14, 2008, the effective date will be established in accordance with the date asserted by the claimant as the date on which the Secretary received the claim.

(Authority: 38 U.S.C. 501(a)(1))

[FR Doc. E9–27077 Filed 11–10–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301206–91208–01]

RIN 0648–AY13

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2010 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action proposes to maintain quotas for Atlantic mackerel (mackerel), *Illex* squid (*Illex*), *Loligo* squid (*Loligo*), and butterfish at the same levels as 2009. This action also proposes to modify accounting procedures for underages of Trimester 1 quotas in the *Loligo* fishery so that Trimester 1 quota underages that are greater than 25% of the Trimester 1 quota would be allocated equally to Trimesters 2 and 3, and underages that are less than 25% of the Trimester 1 quota would be allocated to Trimester 3. Additionally, this action proposes to increase the minimum mesh size requirement for codend covers in the *Loligo* fishery from 4.5 inches to 5 inches. These proposed specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on December 14, 2009.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov*.

You may submit comments, identified by 0648–AY13, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov;*
- Fax: (978) 281–9135, Attn: Carrie Nordeen;
- Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2010 MSB Specifications.''

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 (e.g., name, address) 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 formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations at § 648.21 and 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

At its June 9–11, 2009, meeting in New York, NY, the Mid-Atlantic Fishery Management Council (Council) recommended 2010 MSB specifications. The recommended specifications for mackerel, *Illex*, *Loligo*, and butterfish are the same as those implemented in 2009. For *Loligo*, the Council recommended a modification in accounting Trimester 1 quota underages. The Council also recommended increasing the minimum mesh size requirement for codend covers in the *Loligo* fishery. The Council submitted these recommendations, along with the required analyses, for agency review on August 10, 2009.

Research Quota

Framework Adjustment 1 to the FMP established the Mid-Atlantic Research Set-Aside (RSA) Program, which allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RQ may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that 3 percent of the 2010 *Loligo*, *Illex*, butterfish, and mackerel quotas be set aside to fund projects selected under the 2010 Mid-Atlantic RSA Program.

NMFS solicited research proposals under the 2010 Mid-Atlantic RSA Program through the **Federal Register** (74 FR 75, January 2, 2009). The deadline for submission was March 3, 2009. The project selection and award process for the 2010 Mid-Atlantic RSA Program has not concluded and therefore, the research quota awards are not known at this time. When the selection process has concluded, projects requesting RQ will be forwarded to the NOAA Grants Office for award. If any portion of the RQ is not awarded, NMFS will return any un-awarded RQ to the commercial fishery

either through the final 2010 MSB specification rulemaking process or through the publication of a separate notice in the **Federal Register** notifying the public of a quota adjustment.

Vessels harvesting RQ in support of approved research projects would be issued exempted fishing permits (EFP) authorizing them to exceed Federal possession limits and to fish during Federal quota closures. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that interested parties be provided an opportunity to comment on all proposed EFPs. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RQ. Vessels harvesting RQ would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP.

2010 Proposed Specifications and Management Measures

TABLE 1. PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2010 FISHING YEAR.

Specifications	*Loligo*	*Illex*	Mackerel	Butterfish
Max OY	32,000	24,000	N/A	12,175
ABC	19,000	24,000	156,000	1,500
IOY[3]	18,430	23,280	111,550[1]	485
DAH	19,000	24,000	115,000[2]	500
DAP	19,000	24,000	100,000	500
JVP	0	0	0	0
TALFF	0	0	0	0

[1] IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.
[2] Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.
[3] Excludes 3 percent of the IOY for RQ.

Atlantic Mackerel

The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 concluded that the mackerel stock is not overfished and overfishing is not occurring. According to the FMP, mackerel ABC must be calculated using the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target fishing mortality rate (F). Based on projections from SARC 42, the yield associated with the target F of 0.12 in 2008 is 211,000 mt. SARC 42 did not project yields for 2010, but the yield projections from 2008 will be used as a proxy until new projections are calculated in the next mackerel stock assessment, currently scheduled for December 2009. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2010 will remain at the 2009 level of 55,000 mt. Thus, 211,000 mt minus 55,000 mt results in a proposed 2010 mackerel ABC of 156,000 mt.

This action proposes a mackerel IOY of 115,000 mt. The Council selected an IOY under all three alternatives that is consistent with the recent increases in processing capacity and domestic landings of mackerel. The recent increase in US processing capacity in conjunction with relatively high world demand has created conditions which are favorable for continued growth of the US mackerel fishery. Industry testimony from shore side processors indicated that the ability and intent exist to land and process well in excess of 100,000 mt of Atlantic mackerel in 2010. To reach this level, the Atlantic mackerel stock will need to be sufficiently abundant and available in the right sizes to the harvest sector (unlike the situations in 2007–2009). Industry members have testified that if stock conditions are similar to those prior to 2005, then they fully intend and expect to land the entire IOY. The proposed 115,000 mt IOY is consistent with mackerel regulations at § 648.21(b)(2)(ii), which state that IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

The Magnuson-Stevens Act provides that the specification of TALFF, if any, shall be that portion of the optimum yield (OY) of a fishery that will not be harvested by vessels of the United States. TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. While a surplus existed between ABC and DAH for many years, that surplus has disappeared due to the downward revision in the estimate of MSY and recent increases in both US and Canadian landings. The Council concluded that no surplus exists between the US portion of the sustainable yield from this stock and the IOY for 2010. As a result TALFF is specified as zero under all three alternatives considered by the Council. Based on analysis and a review of the state of the world mackerel market and possible increases in US production levels, the Council concluded that specifying an IOY resulting in zero TALFF will yield positive social and economic benefits to the mackerel fishery and to the Nation.

For these reasons, consistent with the Council's recommendation, NMFS proposes to specify IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to assist the U.S. mackerel industry to expand. This would yield positive social and economic benefits to both U.S. harvesters and processors. NMFS concurs that it is reasonable to assume that in 2010 the commercial fishery has the ability to harvest 100,000 mt of mackerel. Thus DAH would be 115,000 mt, which is the commercial harvest plus the 15,000 mt available for the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004), consistent with the Council's recommendation. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 6 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for

mackerel has expanded. The Council also heard from the industry that the availability (i.e., size, distribution, and abundance) of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. The Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel, so JVP would be specified at zero.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the NMFS Northeast Regional Administrator (Regional Administrator), in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. In 2010, as in 2009, NMFS's Northeast Fishery Statistic Office will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (*http://www.nero.noaa.gov/*). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. If, using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2010 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2010. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo

Amendment 9 to the FMP (Amendment 9) (73 FR 37382, July 1, 2008) revised the proxies for *Loligo* target and threshold fishing mortality rates, F_{Target} and $F_{Threshold}$, respectively, to reflect the analytical advice provided by the most recent *Loligo* stock assessment review committee (SARC 34). While Amendment 9 revised the formulas and values for these reference points, the function of the reference points remains unchanged. F_{Target} is the basis for determining OY and $F_{Threshold}$ determines whether overfishing is occurring.

Because *Loligo* is a sub-annual species (i.e., has a lifespan of less than 1 year), the stock is solely dependent on sufficient recruitment year to year to prevent stock collapse. The revised proxies for F_{Target} and $F_{Threshold}$ implemented in Amendment 9 are fixed values based on average fishing mortality rates achieved during a time period when the stock biomass was fairly resilient (1987 - 2000). The revised proxies are calculated as follows: F_{Target} is the 75th percentile of fishing mortality rates during 1987 - 2000 and $F_{Threshold}$ is the average fishing mortality rates during the same period. The revised proxy for F_{Target} (0.32) is used as the basis for establishing *Loligo* OY. The use of a proxy is necessary because it is currently not possible to accurately predict *Loligo* stock biomass because recruitment, which occurs throughout the year, is highly variable inter-annually and influenced by changing environmental conditions.

Based on the revised biological reference points for *Loligo*, the Council recommended that the 2010 *Loligo* Max OY, ABC, IOY, DAH, and DAP remain at the 2009 level. Therefore, the proposed *Loligo* Max OY for 2010 is 32,000 mt and the proposed ABC, IOY, DAH, DAP is 19,000 mt.

NMFS concurs with the Council's recommendation, therefore, this action proposes a 2010 *Loligo* Max OY of 32,000 mt and an ABC, IOY DAH, and DAP of 19,000 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* fishery because of the domestic industry's capacity to harvest and process the OY for this fishery.

Distribution of the *Loligo* DAH

As was done in 2007 to 2009, NMFS is proposing that the 2010 *Loligo* DAH be allocated into trimesters, consistent with the Council's recommendation. The proposed 2010 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF *Loligo* QUOTA IN 2009

Trimester	Percent	Metric Tons[1]
I (Jan–Apr)	43	7,925
II (May–Aug)	17	3,133
III (Sep–Dec)	40	7,372
Total	100	18,430

[1] Trimester allocations after 570 mt RQ deduction.

This action proposes to adjust how Trimester I underages are distributed among the remaining Trimesters. Currently any overages or underages in Trimester I or II are applied to Trimester III. The proposed action would split the distribution of Trimester I underages evenly between Trimester II and III if the underage is greater than 25% of the Trimester I quota. All other underages or overages would be applied to Trimester III, as is currently done.

In 2008, the fishery experienced a significant underage in Trimester I, which was then applied to Trimester III. However the fishery also experienced a closure during Trimester II. This resulted in the fishery being unable to harvest the total DAH in Trimester III. The proposed method of underage distribution will facilitate a reduction in small transfers that could lead to unforseable season openings or closures in Trimester II. This will prevent an underharvest of the annual quota, and distribute unharvested quota evenly throughout the year. However, as a result of both the inherent data processing time lag and late dealer reporting in the dealer reporting program, it is not possible to make the underage calculation and announce a quota adjustment until up to two months after Trimester 1 ends.

Changes to *Loligo* Codend Mesh Size Requirements

This action proposes to increase the ''net strengthener''/''codend cover'' minimum mesh requirement from 4.5 inches to 5 inches (inside stretch measurement). This would make the *Loligo* codend mesh size requirement consistent with the next highest mesh size currently required in another Mid-Atlantic fishery (Scup).

Illex **Squid**

The *Illex* stock was most recently assessed at SARC 42 in late 2005. While it was not possible to evaluate current stock status because there are no reliable current estimates of stock biomass or fishing mortality rate, qualitative analyses determined that overfishing had not likely been occurring.

NMFS proposes to maintain the *Illex* specifications in 2010 at the same levels as they were for the 2009 fishing year, consistent with the Council's recommendation. This action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. This level of DAH corresponds to a target fishing mortality rate of 75 percent FMSY. The FMP does not authorize the specification of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Butterfish

The status of the butterfish stock was most recently assessed at SARC 38 in late 2004. The assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished because estimates of stock biomass are

below the minimum biomass threshold (½ B_{MSY}). SARC 38 estimated the butterfish stock at 8,700 mt, ½ B_{MSY} at 11,400 mt, and B_{MSY} at 22,798 mt. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Act. The Council has developed a rebuilding plan for the butterfish stock in Amendment 10 to the , which was approved October 7, 2009. As in 2009, the Council recommended that the quota be restricted to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stocks. Without a current market for butterfish, a directed butterfish fishery has not existed for several years, with landings since 2003 ranging from 437 mt to 674 mt.

The MSB FMP specifies that maximum sustainable yield equals Max OY. SARC 38 re-estimated butterfish maximum sustainable yield as 12,175 mt, and the butterfish overfishing threshold at F of 0.38. Assuming that butterfish discards equal twice the level of landings, the amount of butterfish discards associated with approximately 500 mt of landings is approximately 1,000 mt.

Therefore, in 2010, as implemented in 2009, the proposed specifications would set the Max OY at 12,175 mt; the ABC at 1,500 mt; and the IOY, DAH, and DAP at 500 mt. Harvest at these proposed levels should prevent overfishing on the butterfish stock in 2010. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2010 because zero TALFF is proposed for mackerel.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after pubic comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*.

Statement of Objective and Need

This action proposes 2010 specifications and management measures for mackerel, squid, and butterfish, and proposes to modify accounting procedures for underages of Trimester 1 quotas in the *Loligo* fishery, and to increase the minimum mesh size requirement for codend covers in the *Loligo* fishery from 4.5 inches to 5 inches. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2008, the numbers of potential fishing vessels in the 2009 fisheries are as follows: 371 for *Loligo*/butterfish, 77 for *Illex*, 2,342 for mackerel, and 2,193 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

The mackerel IOY proposed in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents status quo, as compared to 2009, and is no constraint to vessels relative to the landings in recent years. Mackerel landings for 2004–2006 averaged 51,836 mt. Landings in 2007 were 25,547 mt, and landings in 2008 were 21,749 mt. This action also allows for an inseason adjustment, which would increase the IOY up to the ABC (156,000 mt), if landings approach the IOY early in the fishing year. Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action.

The *Loligo* IOY (19,000 mt) proposed in this action represents the status quo compared to the 2009. No reductions in revenues for the *Loligo* fishery are expected as a result of this proposed action.

The *Illex* IOY (24,000 mt) proposed in this action represents status quo as compared to 2008. Implementation of this proposed action would not result in a reduction in revenue or a constraint on expansion of the fishery in 2010.

The butterfish IOY proposed in this action (500 mt) represents status quo, as compared to 2009, and represents only a minimal constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Given the lack of a directed butterfish fishery and low butterfish landings, the proposed action is not expected to reduce revenues in this fishery more than minimally.

The accounting methods for *Loligo* trimester underages proposed in this action would distribute any substantial underage in Trimester I (greater than 25% of the Trimester I quota) evenly over the rest of the year. This method of transferring quota over to Trimester II from Trimester I may provide some economic benefits to this fishery compared to how the fishery was prosecuted under the 2008 and 2009 specifications.

The proposed action would also increase the required minimum codend cover mesh size from 4.5 inches to 5.0 inches in the *Loligo* fishery. A mesh size increase is not expected to have a significant impact on landings since most of the selectivity occurs in the codend liner. Most vessels are equipped with nets meeting or exceeding the proposed codend minimum mesh size, so no negative impacts on revenues in this fishery are expected as a result of these alternatives.

Alternatives to the Proposed Rule

The Council analysis evaluated two alternatives to the proposed action for mackerel, which is also the status quo. The first alternative would have set the ABC at 56,000 mt, IOY at 56,000 mt, and the second alternative would have set the ABC at 186,000 mt, IOY at 115,000 mt. Based on recent harvest levels, neither of the ABC and IOY alternatives represent a constraint on vessels in this fishery. However, the ABC of 56,000 mt in the first alternative could result in forgone revenue if mackerel is available to the fishery.

For *Loligo*, the alternatives to the proposed action would have set the Max OY at 32,000 mt and ABC, IOY, DAH,

and DAP at 19,000 mt, as in the proposed action, and the status quo. The alternatives differed only in how Trimester underages and overages were applied to the following Trimester quotas. The first alternative is the status quo, and would continue to transfer Trimester I and II overages or underages to Trimester III. The second alternative would make the full amount of a Trimester I underage available to Trimester II. The proposed action distributes any substantial underage in Trimester I (greater than 25% of the Trimester I quota) evenly over the rest of the year, which may positively impact *Loligo* stocks, and prevent an underharvest of the annual quota.

The three alternatives to the proposed minimum codend mesh size increase were all more restrictive than the proposed increase or the status quo. The first alternative recommended a minimum codend mesh size of 6 inches. This mesh size represents the most frequently observed codend mesh size observed in the *Loligo* fishery. The second alternative recommended a 6 inch mesh size using a square mesh for codend covers. Although diamond mesh is predominantly used in the *Loligo* fishery, this alternative specified square mesh based on reduced obstruction caused by square mesh compared to the diamond mesh. The third alternative would have required a minimum codend mesh size of 9.5 inches using square mesh. This alternative is based on the largest and least obstructive mesh size and type that has been observed in use for a codend cover in the *Loligo* fishery.

For *Illex*, one alternative was considered that would have set the ABC, IOY, DAH, and DAP at 19,000 mt rather than 24,000 mt. This quota was used between 1997 and 1999, and was associated with the SAW 21 stock assessment from 1996. However, this alternative would still allow harvest in excess of recent landings in this fishery.

For butterfish, two alternatives were considered in addition to the recommended action. The first would have set Max OY at 12,175 mt, ABC at 4,525 mt, and IOY, DAH, and DAP 1,861 mt, which is equivalent to the 2005–2007 specifications. The second alternative would set Max OY at 12,175 mt, ABC at 9,131 mt, and IOY, DAH, and DAP at 3,044 mt. The amounts in this alternative represent the specifications that would result from the application of the F target control rule if the butterfish stock was declared rebuilt. This alternative has been included due to the potential for rapid rebuilding in the butterfish stock. However, this alternative was not adopted by the Council because it would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species. None of these alternatives represent a constraint on vessels in this fishery or would reduce revenues in the fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 03, 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 proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.21, paragraph (f)(2) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(f) * * *

(2) Any underages of commercial period quota for Trimester I, which are greater than 25% of the Trimester I quota, will be divided in half, with one portion applied to Trimester II, and one portion applied to Trimester III of the same year. Any underages of commercial period quota for Trimester I, which are less than 25% of the Trimester I quota, will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

3. In § 648.22, paragraph (a)(2)(i) is added and paragraph (a)(2)(ii) is added and reserved to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(2) * * *

(i) If the Regional Administrator determines that the Trimester I closure threshold has been underharvested by 25% or more, then the amount of the underharvest shall be reallocated to Trimester II and Trimester III in equal amounts, through notice in the **Federal Register**.

(ii) [Reserved]

* * * * *

4. In § 648.23, paragraph (a)(3)(i) is revised to read as follows:

§ 648.23 Gear restrictions.

(a) ***

(3) ***

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 17/8 inches (48 mm) diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

* * * * *

[FR Doc. E9–26847 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 217

Thursday, November 12, 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

Rural Business—Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2010; Maximum Portion of Guarantee Authority Available for Fiscal Year 2010; Annual Renewal Fee for Fiscal Year 2010

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107(b) and 4280.126(c), Rural Development (the Agency) has the authority to charge an annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program and the Rural Energy for America (Section 9007; formerly Section 9006 Renewable Energy Systems and Energy Efficiency Improvements Program) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-fourth of 1 percent for the B&I Guaranteed Loan Program and one-fourth of 1 percent for the Section 9007 Guaranteed Loan Program. These rates will apply to all loans obligated in fiscal year (FY) 2010 that are made under the cited programs. As established in 7 CFR 4279.107 and 4280.126, the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

As set forth in 7 CFR 4280.126(a), each fiscal year the Agency shall establish the initial guarantee fee rate for loans made under the Section 9007 Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the initial guarantee fee rate at 1 percent for loans made in FY 2010.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a B&I guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119, will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious. For 1 percent fees, (1) the borrower's business must support value-added agriculture and result in farmers benefiting financially, or (2) such projects are ''high impact'' as defined in 7 CFR 4279.155(b)(5), and are located in rural communities that either (a) remain persistently poor, (b) have experienced long-term population decline and job deterioration, (c) are experiencing trauma as a result of natural disaster, or (d) are experiencing fundamental structural changes in its economic base. For guaranteed loans exceeding 80 percent, such projects must be a high-priority project in accordance with 7 CFR 4279.155 (and meet the other requirements of 7 CFR 4279.119(b)).

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority (including available Disaster funding) will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority (including available Disaster funding) will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits in 7 CFR part 4279. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBank) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. Up to 50 percent of CAIP loans may have a guarantee percentage exceeding 80 percent. The funding authority for CAIP loans is not derived carryover or recovered funding authority of the B&I Guaranteed Loan Program.

For B&I projects funded with American Recovery and Reinvestment Act (ARRA) funds, there is no renewal fee and all guaranteed loans will be charged a 1 percent guarantee fee. Any guaranteed loan that is $10 million or less that scores at least 55 points in accordance with RD Instruction 4279–B, section 4279.155, will receive a 90 percent guarantee.

DATES: *Effective Date:* November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, e-mail *brenda.griffin@wdc.usda.gov*, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–6802.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Date: October 16, 2009.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E9–27143 Filed 11–10–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, MT, Telegraph Vegetation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Helena National Forest is going to prepare an environmental impact statement for vegetation management actions in the Little Blackfoot drainage west of the Continental Divide. The purpose and need for action is to be responsive to the mountain pine beetle outbreak in this area, specifically to recover economic value of dead and dying trees. Additional purposes for the project include promoting desirable regeneration, reducing fuels and the risk of catastrophic fire, and maintaining diverse wildlife habitats.

DATES: Comments concerning the scope of the analysis must be received by December 14, 2009. The draft environmental impact statement is expected June 2010 and the final

environmental impact statement is expected November 2010.

ADDRESSES: Send written comments to Liz Van Genderen, Helena National Forest, 2880 Skyway Dr., Helena, MT 59602. Comments may also be sent via e-mail to *comments-northern-Helena@fs.fed.us,* or via facsimile to 406–449–5436.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Liz Van Genderen at 406–449–5201.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Wide-scale tree mortality has occurred due to the mountain pine beetle. This mortality causes changes to fire behavior in the event of a wildfire. Treatment is needed to ensure diverse and sustainable forest stands and to lessen the probability of a catastrophic wildfire which could threaten wildland urban interface areas. The project focuses on reducing hazardous fuels, establishing healthy regeneration, and recovering the economic value of dead trees. In addition, aspen and whitebark pine can be promoted with treatment. The project also seeks to maintain or improve watershed values.

Proposed Action

Approximately 6,335 acres are proposed for treatment. Roughly 2,000 acres are young stands that established after past harvest and are in need of thinning to ensure they reach viable maturity. The remaining acres are primarily mature stands of lodgepole pine with some Douglas-fir, Engelmann spruce, and subalpine fir with high mountain pine beetle mortality. These acres would be treated using a combination of improvement cuts, regeneration harvests, thinning, and prescribed fire. Post treatment activities would include approximately 3,800 acres of underburning, site prep, broadcast burning, jackpot burning, and hand piling/burning. In addition, trees that are hazardous to public and historic structures would be removed. Up to 7 miles of new road construction and approximately 5 miles of road reconstruction would be necessary to implement the proposed action.

Responsible Official

Helena National Forest Supervisor.

Nature of Decision To Be Made

The decisions to be made include: whether to implement the proposed action or an alternative to the proposed action, what monitoring requirements would be appropriate to evaluate the implementation of this project, and whether a forest plan amendment would be necessary as a result of the decision for this project.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In November 2009, a scoping package will be mailed, an open house will be scheduled, and website information will be posted.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: November 5, 2009.

Kevin T. Riordan,

Forest Supervisor.

[FR Doc. E9–27144 Filed 11–10–09; 8:45 am]

BILLING CODE 3410–11–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: This notice lists approved candidates who will comprise a standing roster for service on the Agency's SES Performance Review Board. The Agency will use this roster to select SES board members, and an outside member for the convening SES Performance Review Board each year. The standing roster is as follows:

Mauricio Vera, Chairperson;
Angelique Crumbly, Alternate;
Franklin Moore;
Susan Pascocello;
James Peters, Alternate;
Randy Streufert;
John Robinson, Outside SES Member.

FOR FURTHER INFORMATION CONTACT: Melissa Jackson, 202–712–1781.

Dated: *November 5, 2009.*

Helena Olivares,

Acting Chief, Civil Service Personnel Division.

[FR Doc. E9–27150 Filed 11–10–09; 8:45 am]

BILLING CODE 6116–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the California Advisory Committee (Committee) to the Commission will convene on Wednesday, December 2, 2009 at 9:30 a.m. and adjourn on or about 11 a.m. at the Federal Building, 300 North Los Angeles St., Suite 2010, Los Angeles, CA 90012. The purpose of the meeting is for the Committee to plan a briefing for fiscal year 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by January 2, 2010. The address is U.S. Commission on Civil Rights, 300 North Los Angeles St., Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments or who desire additional information should contact Peter Minarik, Regional Director, Western Regional Office, at (213) 894–3437 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the

Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 4, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–27153 Filed 11–10–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting cancellation.

SUMMARY: On October 29, 2009 (74 FR 55809–55810) the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, November 6, 2009 at the Commission's headquarters. On Wednesday, November 4, 2009, the meeting was cancelled. The decision to cancel the meeting was too close in time to the day of the meeting for the publication of a cancellation notice to appear in advance of the scheduled meeting date. The details of the cancelled meeting are:

DATE AND TIME: Friday, November 6, 2009; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Program Planning.

- Approval of Concept Papers for FY 2010 Briefing Report Topics.
- Amendments to Title IX Briefing Report.
- Update on Status of 2010 Enforcement Report.

III. Approval of Minutes of October 30 Meeting.

IV. Announcements.

V. Staff Director's Report.

VI. Adjourn.

The Commission's next scheduled meeting is Friday, November 20, 2009, the details of which to be published in this same issue of the **Federal Register**.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: November 9, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–27324 Filed 11–9–09; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, November 20, 2009; 9:30 a.m. EST.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Program Planning.

- Approval of MEPA Briefing Report.
- Update on Status of 2010 Enforcement Report.
- National Conference Update.
- Approval of Concept Papers for FY 2010 Briefing Topics.
- Amendments to Title IX Briefing Report.
- Update on Status of Title IX Project.

III. Management & Operations.

- Motion Regarding Special Assistant GS Level.
- Motion to Permit Commissioners' Special Assistants to Join Commissioners' Line for Telephonic Meetings.

IV. State Advisory Committee Issues.

- Iowa SAC.
- Massachusetts SAC.

V. Approval of September 24, October 8, October 15 and October 30 Meeting Minutes.

VI. Staff Director's Report.

VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: November 9, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–27327 Filed 11–9–09; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

OMB Control Number: 0648–0445.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 878.

Average Hours per Response: VMS installation, 6 hours (once every three years); maintenance, 4 hours per year; VMS activation checklist, 12 minutes (once every three years).

Burden Hours: 3,721.

Needs and Uses: Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), National Marine Fisheries Service (NMFS), Alaska Region, directs a satellite-based vessel monitoring program to locate fishing vessels and monitor compliance with area restrictions in the Gulf of Alaska, Bering Sea, and Aleutian Islands. The Vessel Monitoring System (VMS) allows the NMFS Office for Law Enforcement to monitor and survey vessels over vast expanses of open-water while maintaining the confidentiality of fishing positions. The VMS is required under certain conditions in the following fisheries: Atka Mackerel, Pollock, Pacific Cod, BSAI Crab, essential fish habitat (EFH) and habitat areas of particular concern (HAPC) in the Aleutian Islands and Gulf of Alaska. The VMS unit is passive and automatic, requiring no reporting effort of the vessel operator.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: November 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–27184 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–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 Institute of Standards and Technology (NIST).

Title: National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System.

OMB Control Number: 0693–0003.

Form Number(s): None.

Type of Review: Regular submission.

Burden Hours: 2,083.

Number of Respondents: 850.

Average Hours per Response: 2 hours, 27 minutes.

Needs and Uses: This information is collected from all testing and calibration laboratories that apply for National Voluntary Laboratory Accreditation Program (NVLAP) accreditation. It is used by NVLAP to assess laboratory conformance with applicable criteria as defined in 15 CFR part 285, section 285.14. The information provides a service to customers in business and industry, including regulatory agencies and purchasing authorities that are seeking competent laboratories to perform testing and calibration services. An accredited laboratory's contact information and scope of accreditation are provided on NVLAP's Web site (*http://www.nist.gov/nvlap*).

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, State or Local government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 6625, 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 Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: November 5, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–27074 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2009, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC''). *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Administrative Review*, 74 FR 27104 (June 8, 2009). This review covers the period June 1, 2007, through May 31, 2008. The final results of review are currently due no later than November 5, 2009.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act permits the Department to extend the time period to a maximum of 180 days.

On October 13, 2009, the Department published a notice extending the time limit for the final results of this administrative review for 30 days until November 5, 2009. *See Chlorinated Isocyanurates from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 74 FR 52452 (October 13, 2009).

The Department now finds that it is not practicable to complete the final results of the administrative review of chlorinated isocyanurates from the PRC within the current deadline due to complicated by-product and surrogate value issues. We find that additional time is needed to complete these final results. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of the administrative review by an additional 30 days. This extension makes these final results due 180 days after the date on which the preliminary results were published, *i.e.*, December 5, 2009. However, because December 5, 2009, falls on a weekend, the actual due date will be the first business day following the weekend, *i.e.*, December 7, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 5, 2009.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27202 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the

administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. The period of review is June 1, 2007, through May 31, 2008. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or John Drury, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3019 and (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2009, the Department published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 2007, through May 31, 2008. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Rescind in Part, and Notice of Intent Not to Revoke Order in Part,* 74 FR 32532 (July 8, 2009). The final results for the antidumping duty administrative review of certain stainless steel butt-weld pipe fittings from Taiwan are currently due no later than November 5, 2009.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the results in an administrative review within 120 days of the publication of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results up to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame (*i.e.,* by November 5, 2009). Specifically, the Department requires additional time to review complex issues raised in the respondent Ta Chen Stainless Pipe Co. Ltd.'s case brief, including comments relating to the respondent's qualification for a constructed export price offset and the Department's use of facts available with respect to certain aspects of respondent's cost reporting. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the final results of this administrative review by 32 days, to no later than December 7, 2009.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 5, 2009.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27201 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS81

Marine Mammals; File Nos. 14682, 10018, 13846, 14451, 14585, 14599, 14122, 14296, 14353

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that NMFS has received nine applications for permits or permit amendments to conduct research on marine mammals. See **SUPPLEMENTARY INFORMATION** for additional information regarding applicants and specific information on species affected.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 14, 2009.

ADDRESSES: The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting the associated File No. from the list of available applications.

These documents are also available upon written request or by appointment in the offices listed in **SUPPLEMENTARY INFORMATION**.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the associated File Number.

FOR FURTHER INFORMATION CONTACT: The following Analysts at (301)713–2289:

For File No. 14682: Kristy Beard or Carrie Hubard; File No. 10018: Carrie Hubard or Kristy Beard; File No. 13846: Amy Hapeman or Kristy Beard; File No. 14451: Kate Swails or Kristy Beard; File No. 14585: Amy Hapeman or Kristy Beard; File No. 14599: Amy Sloan or Kristy Beard; File No. 14122: Amy Sloan or Kristy Beard; File No. 14296: Kristy Beard or Jennifer Skidmore; File No. 14353: Carrie Hubard or Kristy Beard.

SUPPLEMENTARY INFORMATION: The subject permits and permit amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Each of the nine applications is summarized below. For specific take numbers of each species, please refer to the associated application.

Whitlow Au, Ph.D. [File No. 14682], University of Hawaii, Hawaii Institute of Marine Biology, Marine Mammal Research Program, PO Box 1106, Kailua, HI 96734, requests a five-year permit to investigate the population dynamics and behavior of cetaceans around Hawaii and the Pacific, to determine aspects of the behavior and use of the acoustic environment by large whales, and to determine the effects of noise on behavior of cetaceans around Hawaii. Researchers would conduct behavioral observations, photo-identification, genetic sampling, suction-cup tagging, acoustic recording, and acoustic playbacks from vessels. Target species would be: Blainville's beaked whale

(*Mesoplodon densirostris*), Cuvier's beaked whale (*Ziphius cavirostris*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*K. breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), melon-headed whale (*Peponocephala electra*), long-beaked common dolphin (*Delphinus capensis*), short-beaked common dolphin (*D. delphis*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*S. longirostris*), pantropical spotted dolphin (*S. attenuata*), bottlenose dolphin (*Turisiops truncatus*), Risso's dolphin (*Grampus griseus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and rough-toothed dolphin (*Steno bredanensis*).

Rachel Cartwright, Ph.D. [File No. 10018], Keiki Kohola Project, 5277 West Wooley Road, Oxnard, CA 93035, requests an amendment to Permit No. 10018, issued on June 18, 2008 (73 FR 36042). Dr. Cartwright is currently authorized to conduct humpback whale research, consisting of photo-identification, focal follows, underwater observations, and collection of sloughed skin, in Hawaiian waters. The permit holder now requests authorization to conduct similar research in Alaskan waters from May through September each year. The purpose of the amendment is to broaden the current study on humpback whale female-calf behavior and habitat choice. Field work would be based out of Kake, Alaska and focused primarily in Chatham Straits, Frederick Sound, Sumner Strait, Lynn Canal and Icy Strait. Humpback whales of all ages, including calves, would be harassed during surveys and the associated photo-identification, passive acoustics, and behavioral observations. Four other species of cetaceans (killer whales, Pacific white-sided dolphins, and harbor (*Phocoena phocoena*) and Dall's porpoises (*Phocoenoides dalli*)) may be incidentally harassed during the research. Any killer whales observed would be photographed for identification purposes. The amended permit would expire on June 30, 2013.

Jim Darling, Ph.D. [File No. 13846], Whale Trust, P.O. Box 384, Tofino, BC V0R2Z0, Canada, requests a five-year permit to study the social organization, behavior and communication of humpback whales in Hawaii (primarily off west Maui), and the population biology, ecology, and behavior of humpback and Eastern gray (Eschrichtius robustus) whales along the coastlines of Washington and Alaska. Researchers would conduct photo-identification, passive acoustic recording, behavioral observation (by vessel, underwater and aerial), video-recording, collection of sloughed skin, photogrammetry, biopsy sampling, playback experiments, and suction-cup and implant tagging of target whales. Whales of all ages would be harassed during surveys with the exceptions that only juvenile and adult humpbacks would be biopsy sampled and only adult humpbacks would be tagged. In Hawaii, spinner dolphins, pantropical spotted dolphins, bottlenose dolphins and false killer whales may be incidentally harassed during research. Killer whales and Steller sea lions (*Eumetopias jubatus*) may be incidentally harassed in Washington or Alaskan waters during research.

Joseph Mobley, Jr. [File No. 14451], University of Hawaii at Manoa, 2528 McCarthy Mall, Honolulu, HI 96816, requests a five-year permit to investigate short and long-term changes in population size, habitat use, and behavior of cetaceans off the coast of eastern and western United States, Hawaii, Alaska, Guam, and the Mariana Islands. Researchers would conduct aerial and vessel surveys, photo-identification, videography, and behavioral observations. Research would target numerous cetacean species including endangered blue whales (*Balaenoptera musculus*), fin whales (*B. physalus*), humpback whales, sei whales (*B. borealis*) and sperm whales (*Physeter macrocephalus*).

Adam Pack, Ph.D. [File No. 14585], University of Hawaii at Hilo, 200 West Kawili St., Hilo, HI, 96720, requests a five-year permit to continue long-term population studies of humpback whales and other cetacean species in the Eastern, Western and Central North Pacific Ocean, primarily Hawaii and Alaska. These studies include: (1) photo-identification to determine individual life histories, social role, migration, habitat use, distribution, and reproductive states; (2) underwater videogrammetry to determine the body sizes of animals in different social roles; (3) underwater videography to document behaviors and social interactions, and to aid in sex determination; (4) passive acoustic recordings of song to trace the evolution of song in Hawaii and to examine acoustic characteristics of song in relation to singer size and life history; (5) passive acoustic recordings of non-song vocalizations to determine acoustic properties, contexts, and functions; (6) Crittercam studies of humpbacks in different group types to help in the understanding of the humpback mating system; and (7) skin and blubber biopsy sampling for sex determination, and for health assessment. In addition to humpback whales, the following species may be opportunistically studied or incidentally harassed during surveys: bottlenose dolphin, spinner dolphin, spotted dolphin, Risso's dolphin, false killer whale, melon-headed whale, pygmy killer whale, rough toothed dolphin, pilot whale, striped dolphin, pygmy and dwarf sperm whales, killer whale, sperm whale, North Pacific right whale (*Eubalaena japonica*), fin whale, blue whale, Cuvier's beaked whale, minke whale (*B. acutorostrata*), sei whale, Bryde's whale (*B. edeni*), Fraser's dolphin (*Lagenodelphis hosei*) and Blainville's beaked whale.

Fred A. Sharpe, Ph.D. [File No. 14599], Alaska Whale Foundation, 4739 University Way NE ι1239, Seattle WA 98105, requests a five-year permit to conduct research on the social complexity of Alaskan humpback whale bubble feeding to gain insight into the manner in which environmental and social factors shape this behavior. Research would be conducted annually and include approaches to individuals for: (1) photo-identification; (2) acoustic recordings; (3) sonar profiling; (4) pole cam observations; (5) broadcasting sounds to individuals; (6) attachment of suction cup tags; (7) aerial observations; (8) SCUBA observations; and (9) opportunistic collection of fecal material. Most activities would be conducted independently; however, photo-identification would occur before or after most other activities, and some playbacks would be broadcast concurrently to tagged individuals to document received levels and subsurface movements. No impacts to non-target species are anticipated. The applicant is also requesting opportunistic approaches to killer whales for photo-identification. The proposed activities are part of an ongoing study, and ouldl be conducted in the waters of Southeast Alaska, primarily from mid-May to mid-October.

Jan Straley [File No. 14122], University of Alaska Southeast Sitka Campus, 1332 Seward Ave., Sitka, AK 99835, requests a five-year permit to study the biology of large whales in Alaskan waters to: (1) continue and expand a study of humpback whales including takes by close approach/disturbance, biological sampling, suction cup and satellite tagging and acoustic playbacks; (2) study sperm whale movements, foraging behavior and depredation on longline fishing gear to reduce interactions involving takes by close approach/disturbance, biological sampling, suction cup and satellite

tagging, fishing modifications and acoustic playbacks; (3) study killer whale seasonal movements, foraging, migration patterns and depredation, including takes by close approach/disturbance, biological sampling, suction cup and satellite tagging and acoustic playbacks; (4) enhance the body of knowledge, stock structure and current status through research activities involving close approach/disturbance, biological sampling and tagging of gray, minke, fin, sei, blue, and North Pacific right whales; and (5) study killer whale predation events, photograph, observe, collect tissue samples, incidentally harass and collect dead parts from prey including: humpback, gray, minke, sei and fin whales, harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, Northern fur seal (*Callorhinus ursinus*), Steller sea lion, and harbor seal (*Phoca vitulina*).

Briana Witteveen, Ph.D. [File No. 14296], University of Alaska Fairbanks, School of Fisheries and Ocean Sciences, 118 Trident Way, Kodiak, AK 99615, requests a five-year permit to conduct scientific research on cetaceans year-round in the Gulf of Alaska, with emphasis on examining prey use and foraging patterns of gray, fin, humpback, and killer whales and exploring the responses of humpback whales to acoustic deterrent devices. Takes would occur by close approach to collect photographs, recordings of vocalizations, biopsy samples, prey parts, sloughed skin, to attach suction cup tags, and to document response to acoustic deterrents. Sei, blue, minke, sperm, and right whales would be taken by close approach to collect photographs and biopsy samples. Other species of marine mammals might be incidentally harassed during research activities.

Ann Zoidis [File No. 14353], Cetos Research Organization, 33 Echo Ave., Suite 5, Oakland, CA 94611, requests a five-year permit to conduct scientific research on humpback and minke whales in Hawaiian waters. Research would occur January through March. Humpback whale research would be focused in the Au'au Channel near Maui. The objectives of the research are to examine: (1) underwater activity budgets of humpback whales, including during non-daylight hours; (2) mother/calf/escort interactions, including sound production and vocal/behavioral responses to sounds by conspecifics; (3) habitat use; and (4) any behavioral and/or acoustic reactions to passing vessel traffic. Research activities would include photo-identification, behavioral observations, passive acoustic recording, and underwater photo/videography. Suction cup tags would be deployed on humpback whales, including calves. Minke whales would be approached for photo-identification anywhere within the main Hawaiian islands. Twelve other cetacean species may be incidentally harassed during research activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) will be prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permits and permit amendment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

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

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Dated: November 5, 2009.

P. Michael Payne,

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

[FR Doc. E9–27185 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS83

Endangered and Threatened Species: Recovery Plan Preparation for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Notice of intent to prepare a recovery plan; request for information.

SUMMARY: NMFS announces its intent to develop a recovery plan for the Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter, ''sDPS green sturgeon'') and also requests information from the public. The sDPS green sturgeon is listed as threatened under the Endangered Species Act (ESA). NMFS is required by the ESA to develop and implement recovery plans for the conservation and survival of ESA-listed species. NMFS will be coordinating with state, Federal, tribal, and local entities in California, Oregon, Washington, Canada, and Alaska to develop the recovery plan.

DATES: Information related to this notice will be accepted, and incorporated appropriately, at any time during the recovery planning process. However, the first meeting of the recovery team is scheduled for December 10–11, 2009, and therefore information must be received by December 8, 2009, to be included during that meeting. In order to best facilitate a smooth process, NMFS strongly encourages public participation as early as possible. An initial meeting with stakeholders is likely to occur in early 2010.

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

- E-mail: Information may be submitted by e-mail to *swrsturgeon.recovery@noaa.gov*. Include in the subject line of the e-mail the following identifier: Information for sDPS green sturgeon recovery plan.
- Mail: David Woodbury, National Marine Fisheries Service, Southwest Region, 777 Sonoma Avenue, Santa Rosa, CA 95404–4731.
- Fax: (707) 578–3435, Attention: David Woodbury.

FOR FURTHER INFORMATION CONTACT: David Woodbury, NMFS Southwest Region, at (707) 575–6088 or *David.P.Woodbury@noaa.gov*.

SUPPLEMENTARY INFORMATION: The ESA requires that the Secretary of Commerce develop and implement recovery plans for the conservation and survival of threatened and endangered species. Recovery is defined as an ''improvement in the status of listed species to the point at which listing is no longer appropriate'' (50 CFR 402.02). Recovery plans provide blueprints to determine priority recovery actions for funding and implementation. The ESA specifies that recovery plans must, to the maximum extent practicable, incorporate into each plan: (1) a description of site-specific management actions that may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list of threatened and endangered species; and (3) estimates of the time required and costs to achieve the plan's goal and to achieve intermediate steps toward that goal. NMFS has also developed interim recovery planning guidance that provides additional information to ensure consistency among recovery plans developed for all species managed by NMFS. This guidance emphasizes the importance of stakeholder involvement throughout the recovery planning process. In developing the draft recovery plan for the sDPS green sturgeon, NMFS will consider all of the information received in response to this notice and solicitation. In addition, NMFS will publish the draft recovery plan in the **Federal Register** for public comment.

NMFS requests relevant information from the public that should be addressed during preparation of the draft recovery plan for the threatened sDPS green sturgeon. Such information should address: (a) biological and other criteria for removing the species from the list of threatened and endangered species; (b) factors that are presently limiting or threaten to limit the survival and conservation of the sDPS green sturgeon; (c) actions to address these limiting factors and threats; (d) estimates of the time and cost to implement recovery actions; and (e) research, monitoring, and evaluation needs.

NMFS understands that stakeholder participation in the recovery planning process is critical to the success of implementing the recovery plan. As such, NMFS requests that stakeholders identify themselves in order to receive notices of upcoming meetings and to receive draft documents to provide comments. For those receiving this notice, please forward to those that may be either interested in participating directly or may have knowledge to lend that would benefit the plan, and thus green sturgeon.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 6, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–27314 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 0910271380–91383–01]

Extension of the Award Period for Certain Minority Business Enterprise Centers

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice to allow for a funded extension of up to 12 months, on a non-competitive basis, of the award periods for those Minority Business Enterprise Centers (MBECs) identified in this notice. This action is necessary to allow continued program delivery by the incumbent MBEC operators while MBDA completes an evaluation of the MBEC Program and the solicitation and award processes for the next funding cycle.

DATES: The extension and related funding, if approved by the Department of Commerce Grants Officer, will commence at the end of the current award period and will continue for a period not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Chief, Office of Business Development, Minority Business Development Agency, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez may be reached by telephone at (202) 482–1940 and by e-mail at *egonzalez@mbda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625, the MBEC Program provides standardized business assistance and development services directly to eligible minority-owned businesses. The MBEC Program is a key component of MBDA's overall business development assistance program; it promotes the growth and competitiveness of minority business enterprises, and further incorporates an entrepreneurial approach to the delivery of client services. This strategy expands the reach and service delivery of the MBEC Program by requiring project operators to develop and build upon strategic alliances with public and private sector partners as a means of serving eligible businesses within each MBEC's applicable geographical service area.

MBDA amends its prior competitive solicitations under the MBEC Program, as referenced in the below table, to allow for a funded extension of up to 12 months, on a non-competitive basis, of the award period for the following MBEC projects:

Name of project	Name of operator	Geographical service area	Original **Federal Register** notice
Alabama MBEC	Mobile Area Chamber of Commerce, Inc.	State of Alabama	71 FR 42351, as amended by 71 FR 45773.
Georgia MBEC	Georgia Tech Research Corporation	State of Georgia	71 FR 42351.
Miami MBEC	M. Gill & Associates, Inc.	Miami/Ft. Lauderdale/Pompano Beach MSA.	72 FR 67277.
Mississippi MBEC	Arkansas Regional Minority Business Council.	State of Mississippi	71 FR 42351, as amended by 71 FR 45773.
North Carolina MBEC	North Carolina Institute of Minority Economic Development.	State of North Carolina	71 FR 42351.
South Carolina MBEC	DESA, Inc.	State of South Carolina	71 FR 42351.
Chicago MBEC	Chicago Community Ventures.	State of Illinois	71 FR 42351.
Detroit MBEC	Michigan Minority Business Development Council.	State of Michigan	71 FR 42351, as amended by 71 FR 58788.
Indianapolis MBEC	State of Indiana.	State of Indiana	71 FR 42351.

Name of project	Name of operator	Geographical service area	Original **Federal Register** notice
St. Louis MBEC	St. Louis Minority Business Development Council.	State of Missouri	71 FR 42351.
Dallas MBEC	Grijalva & Allen, P.C.	Dallas/Fort Worth/Arlington MSA	71 FR 42351.
El Paso MBEC	El Paso Hispanic Chamber of Commerce.	El Paso MSA	72 FR 71621.
New Mexico MBEC	NEDA Business Consultants, Inc.	State of New Mexico	71 FR 42351.
San Antonio MBEC	University of Texas at San Antonio.	San Antonio MSA	71 FR 42351.
Manhattan MBEC	Interracial Council for Business Opportunity.	New York Counties of: New York, Bronx & Westchester.	71 FR 42351.
New Jersey MBEC	Interracial Council for Business Opportunity.	State of New Jersey	71 FR 42351.
Pennsylvania	The Enterprise Center.	State of Pennsylvania	71 FR 42351.
Puerto Rico MBEC	Asociacion Productos de Puerto Rico.	Puerto Rico Islandwide	71 FR 42351.
Queens MBEC	Jamaica Business Resource Center.	New York Counties of: Queens, Nassau & Suffolk.	71 FR 42351.
Washington DC Metro MBEC	National Community Reinvestment Coalition, Inc.	Washington, DC/Arlington/Alexandria MSA.	71 FR 42351.
Williamsburg MBEC	ODA Community Development Corporation.	New York Counties of: Kings & Richmond.	71 FR 42351.
Arizona MBEC	Arizona Hispanic Chamber of Commerce Foundation.	State of Arizona	71 FR 42351.
Honolulu MBEC	University of Hawaii.	Honolulu MSA	72 FR 67277.
Inland Empire MBEC	CHARO Community Development Corporation.	California Counties of: Orange, Riverside, Inland Empire, San Diego & San Bernardino.	71 FR 42351.
Los Angeles MBEC	University of Southern California.	California Counties of: Los Angeles & Ventura.	71 FR 42351.
Nevada MBEC	New Ventures Capital Development Company.	State of Nevada	71 FR 42351.
Northern California MBEC	Asian, Inc.	California Counties of: Santa Clara, Alameda, San Francisco, San Mateo, San Benito, Monterey, Santa Cruz, Sonoma, Napa, Solano, Contra Costa, Mendocino, San Joaquin, Sacramento, & Marin.	71 FR 42351.
Washington MBEC	Seattle Business Assistance Center.	State of Washington	71 FR 42351.

MBDA takes this action to allow for continued program delivery by the incumbent MBEC operators while MBDA completes its evaluation of the MBEC Program and of the competitive solicitation and award processes for the next funding cycle.

The award extension and additional funding referenced herein will be made at the sole discretion of MBDA and the Department of Commerce using the following evaluation criteria: (1) The MBEC's program performance rating during the current program period; (2) the availability of appropriated funds; and (3) MBDA and Department of Commerce's priorities. MBDA will review each MBEC project's performance rating as evaluated through the standardized performance reports and assessments required under the MBEC Program in determining which projects will be offered an extension. Although MBDA is allowing for an extension of the award period for projects awarded under the MBEC Program, it is possible that not all projects will be offered an extension.

Funding for award extensions is contingent upon the availability of Fiscal Year 2010 appropriations, which have not yet been appropriated for the MBEC program. MBDA therefore issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2918, Division B, ''Continuing Appropriations Resolution, 2010,'' Public Law 111–68. In no event will MBDA or the Department of Commerce be responsible for any costs incurred outside of the current award period by the incumbent operators of the MBEC projects affected by this notice if the MBEC Program fails to receive funding or if an award extension is not made because of other MBDA or Department of Commerce priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any extensions or to obligate any available funds.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this notice.

Paperwork Reduction Act

This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The use of the MBDA Performance Online Database and Standard Forms 424, 424A and 424B has been approved by OMB under the control numbers 0640–0002, 4040–0004, 4040–0006 and 4040–0007, respectively. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts. 5 U.S.C. 553(a)(2). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. E9–26902 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS71

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

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

ACTION: Notice of workshop.

SUMMARY: NMFS, Alaska Region, and the U.S. Coast Guard, North Pacific Fisheries Training Center, will present a workshop on seaLandings, a consolidated electronic means of reporting production of commercial groundfish to multiple management agencies for Federal and State fisheries off the coast of Alaska, and 2010 recordkeeping and reporting requirements for the Alaska groundfish fisheries and Individual Fishing Quota fisheries.

DATES: The workshops will be held on November 18, 2009, 9 a.m. to 5 p.m., Pacific Standard Time.

ADDRESSES: The workshop will be held at the Swedish Cultural Center Seattle, WA, 1920 Dexter Ave. N in the Svea Room on the Main Level.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7376.

SUPPLEMENTARY INFORMATION: The workshop will include discussion of seaLandings and 2010 recordkeeping and reporting requirements for Alaska groundfish fisheries and Individual Fishing Quota fisheries and instructions for completing and submitting required reports and logbooks. NMFS will provide a demonstration of the new version of seaLandings for at-sea catcher processors and training on how to submit daily production reports, consolidated landing reports, with and without Individual Fishing Quota, and the maximum retainable amount worksheet.

Special Accomodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patty Britza, 907 586 7376, at least 5 working days prior to the meeting date.

Dated: November 6, 2009.

James P. Burgess,

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

[FR Doc. E9–27186 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed conference call.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will conduct a conference call on Thursday, December 3, 2009 at 1 p.m. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this conference call is to conduct final judging of the 2009 applicants. The conference call will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The conference call will convene December 3, 2009 at 1 p.m. and adjourn at 2 p.m. on December 3, 2009. The entire conference call will be closed.

ADDRESSES: None.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 8, 2009, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: November 5, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–27159 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ82

Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Sonoma County Water Agency (Agency) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to Russian River Estuary (Estuary) management activities, specifically construction and maintenance of a lagoon outlet channel

to improve rearing habitat for listed salmonid species and artificially breaching the barrier beach at the mouth of the river to minimize potential for flooding, as well as conducting a series of biological and physical monitoring activities. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Agency to incidentally harass, by Level B Harassment only, a small number of harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus califonianus*), and northern elephant seals (*Mirounga angustirostris*) during the specified activity.

DATES: Comments and information must be received no later than December 14, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XQ82@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289, ext 151.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, the IHA would be effective for one year from date of issuance.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on July 16, 2009 from the Agency for the taking, by Level B harassment only, of marine mammals incidental to the Agency's Estuary management activities. After receipt of subsequent information, NMFS determined the application complete on September 22, 2009. These activities include construction and maintenance of a lagoon outlet channel to improve rearing habitat for listed salmon and artificially breaching the barrier beach at the mouth of the river to minimize potential for flooding and a series of biological and physical monitoring activities. The purpose of these activities is to comply with NMFS' Reasonable and Prudent Alternatives (PRAs) outlined in its' Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River Watershed (NMFS, 2008) addressing ongoing practices and operations at dams and activities related to flood control, water diversion and storage, regulation of flows in the Russian River and Dry Creek, estuary management, hydroelectric power generation, channel maintenance, and fish hatchery production by numerous stakeholders including the Agency. NMFS found current water management practices, including those at the mouth of the Russian River, were jeopardizing the continued existence of some of the steelhead and salmon species and adversely modifying their critical habitat. In response, the Agency is altering its Estuary management approach to include the activities described below.

The Agency's specified activities include construction and maintenance of a lagoon outlet channel, artificial breaching of the barrier beach which forms at the Russian River- Pacific Ocean interface (the location of the Jenner haulout), and monitoring associated with such activities. Due to the necessity of operating heavy equipment (e.g., bulldozers, excavators) to carry out the proposed management activities, pinnipeds hauled out on the beach may be alerted or flush into the water. Therefore, the proposed action may result in Level B harassment to seals and sea lions present on the beach. Monitoring of harbor seals, the primary species located at the haulout, has been conducted by local residents who formed the Stewards Seal Watch Program since 1985, the Agency during breaching events from 1996–2000, and more recently with the aid of Goat Rock State Park volunteer docents. Therefore an extensive data set of harbor seal abundance and presence of other species of pinnipeds is available. Based on these monitoring data and number of

events the Agency expects will be necessary to carry out the proposed management activities, the Agency is requesting authorization to incidentally harass up to 2,861 harbors seals, 16 California sea lions, and 11 northern elephant seals under a one-year IHA. Because these activities would be on-going beyond one year, NMFS would likely also promulgate subsequent incidental take authorizations in the future.

Description of the Specified Activity

The Estuary is located about 97 kilometers (km; 60 miles) northwest of San Francisco in Jenner, Sonoma County, California. The Russian River watershed encompasses 3,847 square kilometers (km) (1,485 square miles) in Sonoma, Mendocino, and Lake counties. The Estuary extends from the mouth of the Russian River upstream approximately 10 to 11 km (6 to 7 miles) between Austin Creek and the community of Duncans Mills (Heckel, 1994). The proposed action includes construction and maintenance of a lagoon outlet channel that would facilitate management of a barrier beach (closed sandbar) at the mouth of the Russian River and creation of a perched, summer lagoon to avoid the likelihood of jeopardy to listed steelhead and salmon species and adverse modification of critical habitat, as described in the aforementioned BiOp (NMFS 2008).

Since 1995, the Agency has artificially breached the barrier beach which forms at the mouth of the Russian River, and hence creates a lagoon behind the beach, in accordance with the Russian River Estuary Management Plan recommended in the Heckel (1994) study. The purpose of artificially breaching the barrier beach is to alleviate potential flooding of low-lying properties along the estuary. However, the historic method of artificial sandbar breaching, which is done in response to rising water levels behind the barrier beach, adversely affects the estuary's water quality and depths by transforming a natural deep brackish water lagoon to one that is similar to a shallow tidal marine environment (i.e., high salinity). Salinity stratification contributes to low dissolved oxygen at the bottom in some areas and this shallow, high salinity environment is not conducive to ideal salmonid rearing habitat.

The Agency, along with a suite of other stakeholders including the U.S. Army Corps of Engineers (Corps), formally consulted with the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA) regarding the potential effects of their operations and maintenance activities, including, among other things, the Agency's estuary management program, on federally-listed Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), CCC coho salmon (*O. kisutch*), and California Coastal (CC) Chinook salmon (*O. tshawytscha*). As a result of this consultation, NMFS issued the BiOp finding that artificially elevated inflows to the Russian River estuary during the low flow season and historic artificial breaching practices have significant adverse effects on the Russian River's estuarine rearing habitat for steelhead, coho, and Chinook salmon and would likely result in jeopardy to listed species and adverse modification or destruction of designated critical habitat. NMFS included RPAs in the BiOp to avoid jeopardy and adverse modification or destruction of critical habitat. These require the Agency to collaborate with NMFS and to modify estuary water level management in order to reduce marine influence (high salinity and tidal inflow) and promote a higher water surface elevation in the estuary (formation of a fresh or brackish lagoon) for purposes of enhancing the quality of rearing habitat for juvenile (age 0+ and 1+) steelhead from May 15th to October 15th (referred to hereafter as the ''lagoon management period''). A program of potential, incremental steps are prescribed to accomplish this, including adaptive management of a lagoon outlet channel on the barrier beach. The Agency will monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system. In addition, the Agency would monitor effects of lagoon maintenance and sandbar breaching on pinnipeds and implement mitigation measures to minimize any impact.

Lagoon Outlet Channel Management

To comply with the Russian River Biological Opinion, the Agency, in coordination with NMFS, plans to adaptively manage water surface elevations during the lagoon management period (May 15 and October 15) after a barrier beach forms naturally and creates a lagoon. Modifications to the barrier beach would be small departures from the existing beach and channel topography at the time of closure, and the new channel would be similar to the channel configurations resulting from previous breaching practices and consistent with natural processes.

The adaptive lagoon outlet channel management plan seeks to work with natural processes and site conditions to maintain an outlet channel that reduces tidal inflow of saline water into the estuary (PWA, 2009). To avoid tidal inflow and maintain a lagoon system that would not flood properties adjacent to the Estuary, the Agency would create and maintain a shallow, ''perched'' outlet channel that would not be excavated as deeply, narrowly, or with as steep a gradient as typical artificial breaching pilot channels, which are designed to allow the current velocities to erode a wider and deeper channel and downcut into the barrier beach.

Active management of estuarine/lagoon water levels would commence when oceanside wave action pushes sand landward to form a natural barrier beach across the river's mouth. When this happens, the Agency would monitor lagoon water surface elevation, as river inflow to the newly closed lagoon builds up behind the barrier beach, causing water surface elevation to rise in the lagoon. The goal is to manage lagoon water surface elevations between 4 and 9 ft National Geodetic Vertical Datum (NGVD) 3, which is high enough to enhance fish habitat (NMFS, 2008) while also minimizing flood hazard to low-lying structures adjacent to the Estuary (Heckel, 1994). After the lagoon water surface elevation rises to 3 to 4 ft NGVD, the Agency would begin to manage water levels by excavating a relatively low elevation (bed between 3 and 4 ft NGVD) outlet channel. Water levels would initially be managed at the lower end of this range to reduce the potential for eroding the outlet channel and reopening the mouth to tidal exchange. If experience managing the outlet channel indicates that higher lagoon water levels are feasible, subsequent excavations would approach bed elevations of 7 ft NGVD.

The outlet channel, which is approximately 100–400 feet long, would be excavated and maintained with one or two pieces of heavy machinery (e.g., excavator or bulldozer) to move sand. The outlet channel would be excavated with a bed elevation 0.5 to 1.0 ft below the lagoon water surface elevation along its entire length to allow outflow from the lagoon to pass over the sandbar. The outlet channel would be a notch approximately 2 ft deep by 25 to 100 ft wide cut into the top of the naturally formed barrier beach. The strategy for outlet channel configuration and modifications would be an incremental approach that seeks to minimize the risk of uncontrolled breaching which returns the estuary to tidal conditions. The precise number of excavations would

depend on uncontrollable variables such as seasonal ocean wave conditions (e.g., wave heights and lengths), river inflows, and the success of previous excavations (e.g., the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations. It is predicted that up to three successive outlet channel excavations, at increasingly higher beach elevations, may be necessary, with the result being a ''perched'' lagoon. The goal is to develop an outlet channel that supports a stable ''perched'' lagoon with water surface elevations at approximately 7 ft NGVD for several months.

At the start of the management period, when configuring the outlet channel for the first time that year, machinery may operate on up to 4 consecutive working days. As technical staff and maintenance crews gain more experience with implementing the outlet channel and observing its response, it may be possible to reduce the frequency of maintenance during the remainder of the management season, i.e., 1–3 days of intervention typically one to two weeks apart. In consideration of the beach environment, effort would be made to minimize the amount and frequency of mechanical intervention, thereby reducing disturbances to seals and other wildlife, as well as State Park's visitors on the beach. In addition, activities would be conducted in a manner to effect the least practicable adverse impacts to pinnipeds and their habitat as described in the Mitigation section below (e.g., crews on foot approach first, machinery driven slow on beach, etc.).

Artificial Sandbar Breaching

The Estuary may close naturally throughout the year as a result of a barrier beach forming across the mouth of the Russian River. The mouth of the Russian River is located at Goat Rock State Beach (California Department of Parks and Recreation). Although closures may occur at anytime of the year, the mouth usually closes during the spring, summer, and fall (Heckel 1994; Merritt Smith Consulting 1997, 1998, 1999, 2000; Sonoma County Water Agency and Merritt Smith Consulting, 2001). Closures result in ponding of the Russian River behind the barrier beach and, as water surface levels rise in the Estuary, flooding may occur. Natural breaching events occur when estuary water surface levels exceed the height of the barrier beach and overtop it, scouring an outlet channel that reconnects the Russian River to the Pacific Ocean.

In addition to natural breaching, the Agency, for decades, has also mechanically breached the sandbar to alleviate potential flooding of low-lying shoreline properties near the town of Jenner. These artificial breaching activities would typically be conducted on outgoing tides to maximize the elevation head difference between the estuary water surface and the ocean. A cut in the barrier beach would be created at a sufficient depth to allow river flows to begin transporting sand to the ocean. The sand would be placed onto the beach adjacent to the pilot channel. After the pilot channel is dug, the last upstream portion of the sandbar would be removed, allowing river water to flow to the ocean. The size of the pilot channel varies depending on the height of the sandbar to be breached, the tide level, and the water surface elevation in the Estuary. A typical channel would be approximately 100 feet long, 25 feet wide, and 6 feet deep. The amount of sand moved would range from less than 100 cubic yards to approximately 1,000 cubic yards.

The Agency anticipates that artificial breaching activities would occur in accordance with the Russian River Biological Opinion and that they would primarily occur from October 16, 2009, to May 14, 2010. However, if estuary water surface elevations rise above 7.0 feet (at the Jenner gage) during the lagoon management period (May 15 through October 15), the Agency would artificially breach the sandbar to alleviate potential flooding, as discussed in the Biological Opinion. The Biological Opinion incidental take statement estimates that the Agency may need to artificially breach the sandbar ''twice per year between May 15 and October 15 during the first three years covered by the opinion, and once per year between May 15 and October 15 during years 4–15 covered by this opinion'' (NMFS, 2008). Because the IHA is only valid for the first year of this new management strategy, NMFS has analyzed the impacts from the proposed action based on two breaching events during the lagoon management period.

Monitoring of Lagoon Outlet Channel Adaptive Management Plan

To monitor the effectiveness of the new Estuary management plan, and abide by RPAs in NMFS' Biological Opinion, the Agency must monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system. In addition, the Agency must monitor the changes in the bar and channel elevation, lengths, and widths, as well as flow velocities and observations of the bed structure (to identify bed forms and depth-dependent grain size distribution indicative of armoring) in the channel. Fisheries seining and trapping, water quality monitoring, invertebrate/sediment sampling, and physical habitat measurements require the use of boats and nets in the Estuary. Boating and other monitoring activities occur in the vicinity of river haul outs and hence, may result in harassment to pinnipeds. A summary of the monitoring tasks and the frequency of their implementation are presented in Table 2 of the application.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals present within the action area would be harassed from crews and equipment on the beach during Estuary maintenance and monitoring activities. The primary species inhabiting the Jenner haulout is a portion of the California stock of harbor seals; however, rogue California sea lions and northern elephant seals have also been observed at the harbor seal haulout.

Harbor Seals

California harbor seals are not listed under the ESA or considered strategic under the Marine MMPA. Based on the most recent harbor seal counts (26,333 in May-July 2004; Lowry *et al.*, 2005) and Hanan's revised correction factor, the harbor seal population in California is estimated to number 34,233 with a minimum population estimate of 31,600 (Caretta *et al.*, 2005). Counts of harbor seals in California showed a rapid increase from approximately 1972 (when the MMPA was passed) to 1990. Net production rates appeared to decline from 1982 to 1994. Although earlier analyses were equivocal (Hanan, 1996) and there has been no formal determination that the California stock has reached its Optimal Sustainable Population (OSP) level (defined in the MMPA), the decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may be an indication that the population is reaching its environmental carrying capacity.

On land, harbor seals haul out on rocky outcrops, mudflats, sandbars and sandy beaches with unrestricted access to water and with minimal human presence. In California, approximately 400–500 harbor seal haul out sites are widely distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996). The Russian

River haul out is the largest in Sonoma County, comprising of approximately 18 percent of the harbor seal population found there (M. DeAngelis, pers. comm.). There are also several known haulouts in the Russian River estuary at logs and rock outcroppings in the river. Haulout sites are important as resting sites for harbor seals. Harbor seals feed opportunistically in shallow waters on fish, crustaceans, and cephalopods. Foraging occurs in shallow littoral waters, and common prey items include flounder, sole, hake, codfish, sculpin, anchovy and herring (California Department of Fish and Game, 2005). Harbor seals are typically solitary while foraging, although small groups have been observed.

Although the Jenner haul-out is not a designated pupping beach, Mortenson (1996) observed pups were first seen at the Jenner haulout in late March, with maximum counts in May. In this study, pups were not counted separately from other age-classes at the haulout after August due to the difficulty in discriminating pups from small yearlings (Mortenson, 1996). From August 1989 to July 1991, Hanson (1993) observed that pupping began at the Jenner haulout in mid-April, with a maximum number of pups observed during the first two weeks of May. This corresponds with the peaks observed at Point Reyes, where the first viable pups are born around the first to second week of March and the peak is the last week of April to early May.

As described above, the Jenner haulout has been exclusively monitoring since 1985. Local residents also began monthly seal counts in 1987, with nearby haulouts added to the counts thereafter. The monthly average number of harbor seals recorded by E. Twohy during daily counts of seals at the Jenner haulout from 1993 to 2005 is presented in Table 4a of the application. During these counts, diurnal patterns were discovered and it was noted whether the mouth of the River was open or closed off to the Pacific Ocean. The information that has emerged from these data sets is that the Jenner haulout is atypical in terms of the time of year and time of day that the peck numbers of harbor seals are present.

The numbers of seals at the Jenner haulout peaks in the late winter (February and March); at other harbor seal haulouts, peaks are typically observed during the pupping and molting season (spring and summer; Mortenson and Twohy, 1993). The number of harbor seals significantly declines in August and remains low until November. This trend corresponds to monitoring conducted by the Agency during breaching events between 1996–2000. The Jenner haulout is also atypical in terms of the time of day seal count peaks are observed. At other harbor seal haulouts, daily peaks are typically observed at mid-afternoon low tides regardless of the season. Although daily harbor seal numbers at the Jenner haulout do peak at midday during the winter (November 16th to March 30th) and in the pupping and molting seasons (April/May and June/July/August, respectively), a midday peak is not observed during the fall (Mortenson and Twohy, 1994). Mortenson and Twohy (1994) identified the peak in harbor seal abundance at the Jenner haulout as occurring in February and March, with high abundance continuing through July. On a daily scale, in general, harbor seal abundance peaks during the morning hours at the Jenner haulout when the barrier beach is closed (Meritt Smith Consulting 1997, 1998, 1999, 2001). However, daily harbor seal numbers peak at midday tides during the winter (November 16- March 30 as defined in Mortenson and Twohy (1994)).

California Sea Lions

California Sea Lions are not listed under the ESA and is not ''depleted'' or listed as ''strategic'' stock under the MMPA. The entire U.S. population has been estimated at 238,000 and growing at a rate of approximately 6.52 percent annually between 1975 and 2005 (Carretta *et al.*, 2007) with an estimated annual growth rate of approximately 6 percent since at least 1975. On land, the sea lions are found resting and breeding in groups of various sizes, and haul out on rocky surfaces and outcroppings and beaches, as well as manmade structures such as jetties and beaches. Sea lions prefer haul out sites and rookeries near abundant food supplies, with easy access to water; although sea lions occasionally travel up rivers and bays in search of food. They feed on fish and cephalopods, including Pacific whiting, rockfish, anchovy, hake, flat-fish, small sharks, squid, and octopus (California Department of Fish and Game, 1990). Although solitary feeders, sea lions often hunt in groups, which can vary in size according to the abundance of prey (California Department of Fish and Game, 1990).

Sea lions exhibit seasonal migration patterns organized around their breeding patterns. California sea lions breed at large rookeries on the Channel Islands in southern California, and on both sides of the Baja California peninsula, typically from May to August. Females tend to remain close to the rookeries throughout the year, while males migrate north after the breeding season in the late summer, and then migrate back south to the breeding grounds in the spring (California Department of Fish and Game, 1990). No established rookeries are known north of Point Reyes, California, but large numbers of subadult and non-breeding or post-breeding male California sea lions are found throughout the Pacific Northwest.

During harbor seal counts, solitary California sea lions were occasionally observed between the river mouth and the Jenner visitor's center during bar-open conditions in the Russian River estuary (Merritt Smith Consulting, 1999 and 2000). A single sea lion was hauled out during post-breaching monitoring on September 6, 2000 (Sonoma County Water Agency and Merritt Smith Consulting, 2001).

Northern Elephant Seals

Northern elephant seals are not listed under the ESA and is not ''depleted'' or listed as ''strategic'' stock under the MMPA. Based on the estimated 35,549 pups born in California in 2005, the California stock was approximately 124,000 in 2005 (Carretta *et al.*, 2007). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005 (Carretta *et al.*, 2009), but appear to be stable or slowly decreasing in Mexico (Stewart *et al.*, 1994). Northern elephant seals range along the entire California coast (California Department of Fish and Game, 2009). Adult male elephant seals breed with harems of females in from mid-December through March in dense rookeries on the San Miguel Island, Santa Barbara Island, San Nicolas Islands, San Simeon Island, Southeast Farallon Island, Ano Nuevo Island, on the mainland at Ano Nuevo (San Mateo Co.), and the Point Reyes Peninsula (California Department of Fish and Game, 2001). From April to November, they feed at sea or haul out to molt at rookeries.

Censuses of pinnipeds at the mouth of the Russian River have been taken at least semimonthly since 1987. Elephant seals were noted from 1987 to 1991. From 1992–1995, one or two elephant seals were counted during the censuses conducted in May, with occasional records during the fall and winter (Mortenson and Follis, 1997). For the past several years, a single male northern elephant seal has been present at the mouth of the Russian River harbor seal haul out site, during the late winter and spring of each year. The elephant seal was believed to be a juvenile or sub-adult male when it first began using the area as a haul out site. It was

observed harassing harbor seals hauled out at the mouth of the Russian River.

Potential Effects on Marine Mammals

In addition to local resident and state park monitoring efforts, the Agency also conducted pinniped monitoring during its artificial breaching activities from 1996–2000. In all five years of monitoring, the number of seals hauled out on the barrier beach was generally low when it was and then quickly increased once the barrier beach was artificially breached (Merritt Smith Consulting, 1997, 1998, 1999, 2000, Sonoma County Water Agency and Merritt Smith Consulting, 2001). According to Heckel (1994), ''the loss of easy access to the haulout and ready escape to the sea when the river mouth is closed may account for the lower number of harbor seals seen at that time.'' The mouth of the Russian River is typically open during the winter months, but intermittently closes during the late spring through fall.

The Agency's pinniped monitoring from 1996 to 2000 focused on the barrier beach artificial breaching activities and its effects on the Jenner haulout. Seal counts and disturbances were recorded from 1 to 2 days prior to breaching, the day of breaching, and the day after breaching (Merritt Smith Consulting, 1997, 1998, 1999, 2000; Sonoma County Water Agency and Merritt Smith Consulting 2001). In each year, the trend observed was that harbor seal numbers were lower when the beach was closed (i.e., the sandbar was present) and increased the day following an artificial breaching event. According to Heckel (1994), the loss of easy access to the haulout and ready escape to the sea when the river mouth is closed may account for the lower number of harbor seals seen at that time. In addition, while seals often alerted to distance sources of disturbance (e.g., the sound of trucks braking on nearby Highway 1), seals primarily fled the haulout as a result of presence of people on or near the beach which is possibly when the beach is closed (i.e., people have access to the beach). The number of seals declined during the day due to disturbances by people on the beach or kayakers/boaters approaching the haulout. Disturbances on the beach typically increased as the morning progressed (greater number of visitors on the beach in the late mornings and early afternoons). Therefore, although the Agency's operations may harass pinnipeds present on the beach, it is likely many have left due to the presence of people. During actual breaching activities, monitoring has revealed that some or all of the seals flush from the beach in response to crew on the beach or equipment. In 2000, all seals flushed from the beach; however, more recently, the trend is that not all seals flush and some will remain hauled-out on the beach while the equipment is in operation. Therefore, harbor seals, at most, would flush into the water in response to maintenance activities but may also simply become alert or make small movement across the beach away from equipment and crews. Harbor seals are considered more skidish than other species of pinnipeds; therefore, California sea lions or northern elephant seals, if present, are not expected to display a more adverse reaction to maintenance activities that those of harbor seals. No stampeding has been documented since the Agency began monitoring in 1999 and this reaction is not expected from any pinniped species present on the haulout.

Although the Jenner haulout is not a designated pupping beach, pups have been observed during the pupping season; therefore, NMFS has evaluated the potential for injury or mortality to pups should an management event occur when pups are present. To do so, NMFS has inquired about pups from monitoring data. Since monitoring began in 1987, there are records of only two stampedes, both of which occurred prior to 1999 when equipment entered the beach before crews. Under the proposed mitigation, equipment would not enter onto the beach before crews. Stampeding or dead pups have not been observed during monitoring of the Agency's artificial breaching activities since those events. Implementation of the lagoon outlet channel, as required by NMFS' Russian River Biological Opinion, has not yet begun, but the potential direct effects on harbor seals and their pups would be expected to be similar to artificial breaching activities as construction methods would be very similar. Any Stellar sea lions or California sea lions on the beach are expected to be juveniles or adults; therefore, there would be no impact to the survival of pups of these species.

The opportunity for mother/pup bonding at the Jenner haulout is not expected to be impacted by implementation of the lagoon outlet channel or artificial breaching activities. The peak of pupping season is likely by mid-May in most years, and implementation of the lagoon outlet channel would begin around May 15th (as required by the Russian River Biological Opinion). By this time, it is expected that ''bonding'' between mothers and pups would have likely occurred. The number of artificial breaching activities during the months of March, April and May has been relatively low in the past (see Table 1 of the Agency's IHA application), and the breaching activities occur in a single day over several hours. Artificial breaching activities are not expected to impact mother/pup bonding.

Based on the extensive monitoring data, NMFS has preliminary determined that impact to pinnipeds on the beach during Estuary management activities would be limited to short-term (i.e., one day or less) behavioral harassment in the form of alertness or flushing. Because crews would approach the beach slowly and cautiously, stampeding, and therefore injury or mortality, is not expected nor is it documented in the years of monitoring data as a result of breaching activities. Further, the lack of evidence of permanent abandonment of the haulout despite the Agency breaching the beach for years indicates long term or permanent abandonment of the haulout is unlikely.

Anticipated Take

The Agency is requesting, and NMFS is proposing, authorization to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to beach based construction work involving the use of excavators and support vehicles and activities required by monitoring set forth in the BiOp. The estimates of the number of Pacific harbor seals, California sea lions, and northern elephant seals that may be harassed by the proposed activities is based upon the number of potential events associated with Russian River estuary management activities (see Table 3 in the application) and the average number of individuals of each species that are present at the Jenner haulout during bar-closed conditions (Table 1).

The numbers of events associated with lagoon outlet channel management are split into two categories: (1) initial channel excavation, which would likely occur between May and September, and (2) maintenance and monitoring of the outlet channel, which would continue until October 15th. The Estuary has not remained closed for extended periods of time (greater than 14 days), particularly in the summer months, since regular counts of pinnipeds at the Jenner haulout began. It is difficult to estimate the numbers of seals that may be hauled out on the barrier beach when the lagoon is formed; however, harbor seals are regularly observed crossing overland from the Pacific Ocean to haul out on the Estuary side of the beach, even in bar-open conditions, so it is anticipated

that seals would continue to use the haulout in bar-closed, lagoon conditions. Based on pinniped monitoring from 1996 to 2000 associated with artificial breaching events, the average number of harbor seals hauled out during barrier beach-closed conditions can be used to estimate the number of individuals that may be harassed by both lagoon outlet channel and artificial breaching activities. Both activities would likely be implemented soon after a beach closure (within 14 days), so the data presented in Table 1 would be reasonable for the take estimates from April to November. Because the lagoon outlet channel implementation dates cannot be determined yet (they are dependent on when the barrier beach naturally closes after May 15th), the highest average number of harbor seals presented in Table 4b in the application was used to conservatively estimate the number of seals that may be taken during barrier beach-closed conditions and excavation of the lagoon outlet channel (Table 1). For maintenance and monitoring activities associated with the lagoon outlet channel, the average number of harbor seals for each month (see Table 4b in the application) was used. Harbor seal numbers presented in Table 4a in the application were used to estimate take associated with artificial breaching from December to March as this was the best information available for those months and overlapped with the peak in harbor seal numbers at the Jenner haulout. For biological and physical habitat monitoring activities in the Estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haulout.

The estimated potential total number of individual animals that may be taken equates to the maximum number of seals of each species anticipated to be encountered per event multiplied by the estimated number of events during the term of the IHA (Table 1). The potential total number of individual animals that may be taken is likely an overestimate because the same seal would likely be taken multiple times throughout the season.

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Table 1. Potential Number of Marine Mammals Taken from Estuary Management Activities.

Species	No. Animals Expected to Occur	No. Take Events[a]	Potential Total Number of Individual Animals that may be Taken[b,c]
Lagoon Outlet Channel Management on the Sandbar (May 15 to October 15)			
Pacific harbor seal	Implementation: 103[b] Maintenance & Monitoring: May-103; June-100; July-75; Aug-17; Sept-5; Oct-22	Implementation (May- Sept): 4 Maintenance May - 1; June-Sept-4/month;Oct-1 Monitoring (June-Sept-2/month; Oct-1	Implementation: 412 Maintenance.: 913 Monitoring: 416 TOTAL: 1,741
California sea lion (potential to encounter once per month July-Oct)	1	4	4
Northern elephant seal (potential to encounter once per month July-Oct)	1	4	4
Artificial Breaching on the Sandbar (October 16 to May 14)			
Pacific harbor seal	Oct: 22 Nov: 11 Dec:134 Jan: 142 Feb: 137 Mar: 167 Apr: 173 May: 103	Oct: 2[e] Nov: 2 Dec: 2 Jan: 1 Feb: 1 Mar: 1 Apr: 1 May: 1 11 events maximum	Oct: 44 Nov: 22 Dec: 268 Jan: 142 Feb: 137 Mar: 167 Apr: 173 May: 103 TOTAL: 1,056
California sea lion (potential to encounter once per month Sept-Apr)	1	8	8
Northern elephant seal (potential to encounter once per month Dec-May)	1	6	6
Biological and Physical Habitat Monitoring in the Estuary			
Pacific harbor seal	1	64	64
California sea lion (potential to encounter once per month Sept-Dec)	1	4	4
Northern elephant seal (potential to encounter in Dec)	1	1	1

[a] For implementation of the lagoon outlet channel, an event is defined as a single, 4-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities listed in Table 3 in the application.

[b] The estimated potential total number of individual animals that may be taken equates to the maximum number of seals of each species anticipated to be encountered per event multiplied by the estimated number of events during the term of the IHA.

[c] The potential total number of individual animals that may be taken is likely an overestimate because the same seal would likely be taken multiple times throughout the season

[e] The number of events is the monthly average number of artificial breaching events from 1996 to 2008 (Table 1 in the application).

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Anticipated Effects on Habitat

The purposes of the lagoon outlet channel management and artificial breaching activities are to manage the sandbar to improve summer rearing habitat for juvenile salmonids in the Russian River estuary and to minimize potential flood risk to low-lying properties near on the Estuary, respectively. These activities would result in physical alterations of the Jenner haulout but are essential to conserving and recovering endangered salmonid species (which are important prey for pinnipeds). When the barrier beach closes, water surface elevations in the Estuary rise, resulting in an increase in elevation of the beach and flooding of other haulouts in the Russian River. For the summer lagoon outlet channel, elevations would be targeted between 4 and 9 ft NGVD. For artificial breaching activities, the sandbar would be breached when water surface elevations ranged from 4.5 and 7 ft NGVD.

The lagoon outlet channel would alter the beach by creating a shallow outlet channel that would convey river flow to pass over the sandbar and minimize or eliminate tidal exchange from 1st to October 15th. The gentle slope of the outlet channel would allow seals to travel through the channel, although the shallow depths (0.5 to 2 ft.) would likely not allow for swimming through the channel. Depending on the barrier beach height and the location of the river's thalweg when the beach closes, part of the outlet channel may be constructed in areas where seals typically haul out on the Estuary side. The outlet channel would be maintained from May 15 to October 15, annually. After October 15th, the closed barrier beach would be artificially breached when water surface elevations in the Estuary approach 7.0 feet NGVD as read at the Jenner visitor's center gauge. Artificial breaching activities alter the habitat by creating a pilot channel through the closed sandbar. The location of the pilot channel is dependent on the height and width of the sandbar and the location of the river's thalweg.

Changes in haulout elevation regularly occur with the tides at this site and any habitat that would be impacted by side cast sand would be temporary. Pinnipeds seeking to haul out would still have access to the estuary/lagoon waters and would likely continue to naturally flush into the water during high water surface elevation periods. Therefore, the natural cycle of using the Jenner haulout on a daily basis is not expected to change. Modification of habitat resulting from construction of the lagoon outlet channel or artificial breaching pilot channel would also be temporary in nature. Harbor seals are regularly observed crossing overland from the Pacific Ocean to haul out on the Estuary side of the beach, even in bar-open conditions, so it is anticipated that seals would continue to use the haulout in bar-closed, lagoon conditions.

In summary, there will be physical alteration of the beach and potential impacts to other, smaller haulouts located up the Russian River. However, the beach opens and closes naturally resulting in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmon abundance, ultimately providing more food for seals present within the action area.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The Agency has proposed the following mitigation measures designed to minimize impact to affected species and stocks: (1) Agency crews would slowly and cautiously approach the haulout ahead of the heavy equipment to minimize the potential for flushes to result in a stampede, a particular concern during pupping season; (2) Agency staff would avoid walking or driving equipment through the seal haulout; (3) Crews on foot would take caution to approach the haulout slowly and to make an effort to be seen by the seals from a distance, if possible, rather than appearing suddenly at the top of the sandbar; and (4) during breaching events all monitoring would be conducted from the overlook on the bluff along Highway 1 adjacent to the haulout in order to minimize potential for harassment. Personnel on the beach would include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there would be two or more additional people on the beach (Agency staff or regulatory agency staff) on the beach to observe the activities. Agency staff would be followed by the equipment, which would then be followed by an Agency vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut downs and start ups when the equipment is on the beach. Channel construction and modifications would be initiated during low tide so that after several hours of work, the removal of the final portion of the beach berm occurs near high tide. This would minimize the head difference between the estuary and ocean, reducing the potential for the reconnected channel to scour into a fully tidal inlet.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on

populations of marine mammals that are expected to be present.

The applicant has developed the *Russian River Estuary Management Activities Pinniped Monitoring Plan* which describes the proposed monitoring efforts. This Plan can be found on the NMFS website at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. In summary, monitoring includes the following:

Lagoon Outlet Channel and Artificial Breaching Event Monitoring

Should the mouth close during the lagoon management period (May 15th to October 15th), the Agency would construct a lagoon outlet channel as described above. A one-day pre-outlet channel survey would be made within 1–3 days prior to constructing the outlet channel and the day of construction. Monitoring would also occur on each subsequent day the channel is maintained using heavy equipment for the duration of the outlet channel period (May 15 to October 15). In addition to pre-construction and construction/maintenance days, seal counts would also be conducted twice monthly for the life of the IHA to gain a better understanding about what specific conditions seals may prefer for hauling out at the mouth of the river. This baseline information will provide the Agency with details so that they may plan Estuary management activities around prime seal haulout times in the future. These monthly counts would begin at dawn and continue for 8 hours, if weather permits, and be scheduled to capture a low and high tide each in the morning and afternoon.

During artificial breaching events, half-hour counts of all pinnipeds hauled out on the beach would begin at local dawn the day of the breaching event and continue for approximately five hours. Monitoring may occasionally last longer than five hours when artificial breaching activities occur in late morning or early afternoon. Pinnipeds would be monitored from the overlook on the bluff along Highway 1 adjacent to the haulout.

For all counts, the following information would be recorded in 30 minute intervals from an overlook on a bluff to avoid harassment from the monitoring: (1) seal counts, by species; (2) behavior; (3) time, source and duration of disturbance; (4) estimated distances between source and seals; (5) weather conditions (e.g., temperature, wind, etc.); and (5) tide levels and Estuary water surface elevation. The method and disturbance behavior would be recorded following Mortenson (2006). In summary, Level 1 indicates an alert reaction where the seal may turn its head towards the disturbance; Level 2 involves movement from short distances to many meters but does not enter water; and a Level 3 reaction includes flight or flushing to the water. In an attempt to understand possible relationship between use of the Jenner haulout and nearby coastal and river haulouts, several other haulouts in the Estuary, which were extensively monitored from 1994–1999, would also be monitored (see Figure 2 in the IHA application for locations of these haulouts).

Long Term Monitoring

In addition to monitoring on event days, pinnipeds at the Jenner haulout would be counted twice monthly for the term of the IHA in the same manner as described above. In an attempt to understand if seals from the Jenner haulout are displaced to coastal and river haulouts nearby when the mouth remains closed in the summer, several other haulouts, on the coast and in the Russian River estuary, would be monitored (Figure 2 in application). These haulouts include North Jenner and Odin Cove to the north, Pocked Rock, Kabemali, and Rock Point to the south, and Jenner logs, Patty's Rock, and Chalanchawi in the Russian River estuary. Each of these coastal and river haulouts would be monitored concurrent with monitoring of outlet channel construction and maintenance activities. This would provide an opportunity to qualitatively assess if these haulouts are being used by seals displaced from the Jenner haulout during lagoon outlet channel excavation and maintenance. This monitoring would not provide definitive results that individuals from the Jenner haulout are displaced to the coastal and river haulouts as individual seals would not be marked; however, it would useful to track general trends in haulout use during lagoon outlet channel excavation and maintenance.

An annual report would be prepared and distributed to the NMFS, California State Parks, and Stewards of the Coasts and Redwoods. The report would also be available to the public on the Agency's website. The annual report would include an executive summary, monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Negligible Impact and Small Numbers Analysis and Determination

In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, as defined in Background section above, NMFS considers a number of criteria regarding the impact of the proposed action including the number, nature, intensity, and duration of Level B harassment takes will occur. Specific to the proposed action, NMFS has preliminarily determined that, although the Agency's Estuary Management Activities will impact a majority of pinnipeds at the Jenner haulout during construction and maintenance of the lagoon outlet channel and sandbar breaching events, as well as recurring monitoring activities, impacts are occurring to small, localized population. Further, no mortality or injury is anticipated, nor will the proposed action result in long-term impacts such as permanent abandonment of the haulout. This is evident from continued use of the haulout despite the sandbar being artificially breached for years and monitoring data indicating the seals generally return to the haulout within one day. Seals will likely become alert or flush into the water when crews and equipment come on to the beach. Further, breaching the sandbar leads to an increase in seal abundance on the beach, likely due to fact that humans can not access the haulout when the sandbar is breached, thereby limited additional disturbance. In addition, the lagoon management plan may provide ideal rearing habitat for listed steelhead and thereby increasing the availability of this species as prey for the seals.

No pinniped stocks which may be found within the action area is listed as threatened or endangered under the ESA or listed as depleted under the MMPA. Harbor seal populations are theorized to have reached the environment's carrying capacity and populations of California sea lions and northern elephant seals are also considered healthy. The low level, acute disturbance to pinnipeds at the Jenner haulout from the proposed action is not anticipated to have more than a negligible impact to the affected species and stocks. To ensure minimal disturbance, crews will, along with other minimization measures described above, approach the beach slowly and cautiously before heavy equipment to reduce chance of stampeding and will also reduce the frequency and stager days of Estuary maintenance and breaching events minimizing continued disturbance.

Marine mammal species and stocks affected by the proposed activities are not listed as threatened or endangered under the ESA or as depleted under the MMPA. The proposed number of animals taken for each species of

pinnipeds can be considered small relative to the population size. As described in the species description section above, the latest stock assessments estimate there are 34,233 harbor seals (which may have reached OSP levels), 238,000 California sea lions (increasing at approximately 6.5 percent per year), and 124,000 northern elephant seals (also increasing in number in the U.S.). The applicant has requested, based on numerous monitoring data specific to the affected haulout, that approximately 2,861 harbor seals (approximately 8 percent of the population), 16 California sea lions (approximately 0.006 percent of the population), and 11 northern elephant seals (0.008 percent of the population) may be taken each year. However, because it is not possible to identify individual animals over the course of the year from the proposed monitoring (seals would have to be tagged and observed closely to do so), these numbers represents the total number of seals observed harassed during monitoring, not individuals. Therefore, an even smaller percentage of individuals from each population are likely to taken from the proposed activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that Estuary management activities will result in the incidental take of small numbers of marine mammals and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action as none are present within the action area.

Endangered Species Act (ESA)

There are no ESA listed marine mammals found in the action area; however, there are listed salmon and steelhead species present. The Agency and the U.S. Army Corps of Engineers (Corps) consulted with NMFS under Section 7 of the Endangered Species Act (ESA) regarding the' potential effects of their operations and maintenance activities, including the Agency's estuary management program, on federally-listed steelhead, coho salmon, and Chinook salmon that resulted in the likelihood of jeopardy and adverse modification of critical habitat. As a result of this consultation, the NMFS issued the Russian River Biological Opinion (NMFS, 2008) finding that artificially elevated inflows to the Estuary during the low flow season (May through October) and historic artificial breaching practices have significant adverse effects on the Russian River's estuarine rearing habitat for steelhead, coho salmon, and Chinook salmon. The BiOp's RPA 2 requires the Agency to collaborate with NMFS and to modify Estuary water level management in order to reduce marine influence (high salinity and tidal inflow) and promote a higher water surface elevation in the estuary (i.e., formation of a fresh or brackish lagoon) for purposes of enhancing the quality of rearing habitat for juvenile (age 0+ and 1+) steelhead from May 15th to October 15th (lagoon management period), hence the need for the proposed action. The BiOp fully considered the effects to listed species in the action area in drawing the conclusion that Estuary management activities conducted in accordance with RPAs would not result in jeopardy to any species or cause the modification or destruction of designated critical habitat. Any potential take of listed species associated with Estuary management activities is permissible if conducted in accordance with the Incidental Take Statement in the BiOp. Again, no listed marine mammals would be affected by the action.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to pinnipeds and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorization for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS website listed in the beginning of this document.

Preliminary Determination

The applicant has submitted a complete application for incidental take of pinnipeds for specified activities in a specified geographic region for a period not to exceed one year. NMFS has preliminarily determined that the specified activities would result in short-term, Level B harassment to pinnipeds located within the action area during construction and maintenance of the lagoon outlet channel and during sandbar breaching events. Reactions are anticipated to be limited to alertness, movement, or flushing in response to crew or equipment presence. Seals are expected to return to the beach within one day, as shown in the Agency's five years of monitoring data. Due to the proposed mitigation measures (e.g., crews approaching on foot slowly and cautiously), stampeding is unlikely and therefore mortality, a concern during the pupping season, is not expected. All Estuary management activities will be monitored by NMFS approved MMOs; thereby, documenting the number of pinnipeds, nature of disturbance, and number of level of take during each event. For these reasons, NMFS has preliminarily determined that the specified activity would result in the take of small numbers of marine mammal species or stocks, would result in a negligible impact on the affected species and stocks, and would not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses as there are no such uses for these pinniped species in California.

Dated: November 2, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–27183 Filed 11–10–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent To Undertake a Determination Whether the Mid-C Financial Peak Contract; Mid-C Financial Peak Daily Contract; Mid-C Financial Off-Peak Contract; and Mid-C Financial Off-Peak Daily Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is reopening the comment period for interested parties to comment on the Commission's Notice of Intent to consider whether the Mid-C Financial Peak Contract, Mid-C Financial Peak Daily Contract, Mid-C Financial Off-Peak Contract, and Mid-C Financial Off-Peak Daily Contract offered for trading on the IntercontinentalExchange, Inc.

(''ICE'') perform a significant price discovery function.

DATES: Written comments must be received by November 27, 2009.

ADDRESSES: Interested persons should submit their views and comments to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Include the subject contracts by name in the subject or reference line of the comment.

FOR FURTHER INFORMATION CONTACT: Martin Murray, Assistant Associate Director for Product Review, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581. Telephone: (202) 418–5276. E-mail: *mmurray@cftc.gov;* Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5122. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2009, the Commission published for public comment a notice of intent to undertake a determination, pursuant to section 2(h)(7) of the Commodity Exchange Act and Commission rule 36.3(c), whether the above-referenced contracts perform a significant price discovery function.[1] The Commission established a 15-day period for submitting public comment; the comment period closed on October 21, 2009. The notice of intent has generated substantial interest, and a number of commenters and potential commenters have informally requested that the Commission provide them additional time in which to submit their views. In response to these requests, and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period for an additional 15 days.

Issued in Washington, DC, on November 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–27160 Filed 11–10–09; 8:45 am]

BILLING CODE 6351–01–P

[1] 74 FR 51261.

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent To Undertake a Determination Whether Various SP–15 Financial Day-Ahead Contracts Offered for Trading on the IntercontinentalExchange, Inc. Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is reopening the comment period for interest persons to comment on the Commission's October 6, 2009 Notice of Intent to consider whether the following contracts offered for trading on the IntercontinentalExchange, Inc. perform a significant price discovery function: SP–15 Financial Day-Ahead LMP Peak Contract; SP–15 Financial Day-Ahead LMP Peak Daily Contract; SP–15 Financial Day-Ahead LMP Off-Peak Daily Contract; SP–15 Financial Swap Real Time LMP—Peak Daily Contract; SP–15 Financial Day-Ahead LMP Off-Peak Contract; NP–15 Financial Day-Ahead LMP Peak Daily Contract; and NP–15 Financial Day-Ahead LMP Off-Peak Daily Contract.

DATES: Written comments must be received by November 27, 2009.

ADDRESSES: Interested persons should submit their views and comments to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Include the subject contracts by name in the subject or reference line of the comment.

FOR FURTHER INFORMATION CONTACT: Martin Murray, Assistant Associate Director for Product Review, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, Washington, DC 20581. Telephone: (202) 418–5276. E-mail: *mmurray@cftc.gov*. Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION: On October 6, 2009, the Commission published for comment a notice of intent to undertake a determination, pursuant to section 2(h)(7) of the Commodity Exchange Act and Commission rule 36.3(c), whether the above-referenced contracts perform a significant price discovery function.[1] The Commission established a 15-day period for submitting public comment; the comment period closed on October 21, 2009. The notice of intent has generated substantial interest, and a number of commenters and potential commenters have informally requested that the Commission provide additional time in which to submit their views. In response to these requests, and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period for an additional 15 days.

Issued in Washington, DC, on November 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–27162 Filed 11–10–09; 8:45 am]

BILLING CODE 6351–01–P

[1] 74 FR 51264.

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 December 14, 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: November 4, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Application Forms and Instructions for the Language Resource Centers Program (CFDA Number 84.229A)

Frequency: Programs conduct competition every four years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 27.

Burden Hours: 2,160.

Abstract: The Language Resource Centers Program makes awards to institutions of higher education for the purpose of establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4164. 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. E9–26957 Filed 11–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services—Capacity Building Program for Traditionally Underserved Populations: Technical Assistance for American Indian Vocational Rehabilitation Services Projects

Catalog of Federal Domestic Assistance (CFDA) Number: 84.406.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Capacity Building program for Traditionally Underserved Populations to fund a grant that will establish a training and technical assistance center to support the projects funded under the American Indian Vocational Rehabilitation Services (AIVRS) program authorized under section 121 of the Rehabilitation Act of 1973, as amended (Act). The purpose of this center is to improve the provision of vocational rehabilitation (VR) services to, and the employment outcomes of, American Indians with disabilities through the provision of training and technical assistance to projects funded under the AIVRS program. The Assistant Secretary may use this priority for competitions in fiscal year 2010 and later years.

DATES: We must receive your comments on or before December 14, 2009.

ADDRESSES: Address all comments about this notice to Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5018, Potomac Center Plaza, Washington, DC 20202–2800. If you prefer to send your comments by e-mail, use the following address: *Ellen.Chesley@ed.gov.* You must include the term ''Capacity Building: Technical Assistance for AIVRS Projects'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley. Telephone: (202) 245–7300 or by e-mail: *Ellen.Chesley@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.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 5018, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Capacity Building Program for Traditionally Underserved Populations under section 21(b)(2)(C) of the Act (29 U.S.C. 718(b)(2)(C)) provides outreach and technical assistance to minority entities and American Indian tribes in order to enhance their capacity to carry out activities funded under the Act and to promote their participation in activities funded under the Act.

Program Authority: 29 U.S.C. 718(b)(2)(C).

Proposed Priority

This notice contains one proposed priority.

Capacity Building Program for Traditionally Underserved Populations: Technical Assistance for American Indian Vocational Rehabilitation Services Projects.

Background

According to the 2000 U.S. Census data, there are approximately 2.5 million United States citizens who have identified themselves as either American Indian or Alaskan Natives and, of that number, more than 550,000 have disabilities. In addition, section 21(a)(2) of the Act (29 U.S.C. 718(a)(2)) states that the rate of work-related disability for American Indians is about one and one-half times that of the general population.

The AIVRS program authorizes grants to the governing bodies of Indian tribes located on Federal and State reservations, and consortia of such governing bodies, to carry out VR service projects for American Indians with disabilities residing on or near such reservations (CFDA 84.250A). The Department currently funds 77 of these projects. The purpose of these projects is to provide VR services to American Indians with disabilities, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, and business ownership.

The Department's Rehabilitation Services Administration (RSA), which oversees the administration of the AIVRS projects, has identified specific areas requiring technical assistance and training. These include, but are not limited to: Understanding the role and impact of the VR counselor and other key personnel on the provision of VR services to American Indians with disabilities; understanding and applying Federal rules, regulations, and guidance applicable to the AIVRS program; and implementing appropriate financial management practices, including expending grant funds in a timely manner.

An assessment of the training and technical assistance needs of AIVRS projects conducted in 2002 by the Human Resource Committee of the Consortium of Administrators of Native American Rehabilitation (CANAR) identified similar training and technical assistance needs, including the need for assistance with program and financial management and strategies to improve staff recruitment and retention.

The Department also supported an independent evaluation of the AIVRS program conducted in 2000 and 2001 that identified a number of technical assistance needs. The final report, published in 2002, contained several technical assistance related recommendations, including the need for the development of: (1) Orientation materials and training for new AIVRS projects; (2) training guidelines for AIVRS counselors with limited backgrounds in vocational rehabilitation; (3) monitoring and evaluation guidelines for AIVRS projects to strengthen internal project assessment and reporting; and (4) strategies to increase communication and cooperation between State VR agencies and AIVRS projects. (Evaluation of the American Indian Vocational Rehabilitation Services Program, June 2002, *http://www.ed.gov/policy/speced/leg/rehab/eval-studies.html#aivrs*).

The Department currently supports ten regional Technical Assistance and Continuing Education (TACE) Centers that provide technical assistance and continuing education to State VR agencies and other entities that partner with State VR agencies (partners). While AIVRS grantees are included among the many partners eligible for TACE services, the TACE Centers give highest priority to addressing State VR agency needs that are identified through RSA's monitoring process and partner needs that directly relate to the performance and compliance of State VR agencies. Therefore, TACE Centers may not have the capacity or resources to address directly the training and technical assistance needs of the AIVRS grantees identified in this notice.

Additionally, RSA conducted three technical assistance and training forums for AIVRS grantees in the past two years in centralized geographical areas around the United States.

Despite the existing training and technical assistance resources, more intensive training and technical assistance is needed and RSA believes it would be more efficient and cost effective to provide such support through a technical assistance center that is focused on the needs of AIVRS projects in order to improve outcomes for American Indians with disabilities.

Through the ARRA, Congress has appropriated $140,000,000 for the Independent Living programs under Title VII of the Rehabilitation Act of 1973, as amended (the Act) to be obligated by FY 2010. Under section 21(b)(1) of the Act, the Department is required to reserve 1 percent of the funds appropriated for the fiscal year for programs authorized under title VII (and other titles of the Act, but title VII was the only one to receive ARRA funding) to carry out section 21, the purpose of which is to provide grants to eligible entities to increase the capacity of traditionally underserved populations to participate in the activities funded under the Act. Section 21(b)(2)(C) of the Act makes awards to eligible entities to provide outreach and technical assistance to minority entities and American Indian tribes in order to enhance their capacity to carry out and to promote their participation in activities funded under the Act. For the reasons discussed in this notice, the Department intends to propose a priority under this authority to fund a grant that will establish a training and technical assistance center to support AVIRS projects.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to support a technical assistance center under section 21(b)(2)(C) of the Rehabilitation Act of 1973, as amended (the Act) to improve project management and the delivery of VR services to American Indians with disabilities under the American Indian Vocational Rehabilitation Services (AIVRS) program. The Department intends to award this grant as a cooperative agreement to ensure that there is substantial involvement (*i.e.,* significant communication and collaboration) between RSA and the grantee in carrying out the activities of the Center. (34 CFR 75.200(b)(4))

In coordination with the Department, the Center must—

(1) Provide training and technical assistance to AIVRS grantees to improve their understanding of the principles, requirements, and practices that serve as the foundation of the VR process and VR service provision, (*e.g.,* the determination of eligibility, the development of individualized plans for employment, and the requirement to provide informed consumer choice);

(2) Provide comprehensive training to AIVRS staff on the regulatory requirements and grants management practices that are necessary for the proper administration of AIVRS projects including, but not limited to, requirements found in 34 CFR parts 369 and 371 and the Education Department General Administrative Regulations (EDGAR);

(3) Provide comprehensive training on requirements and practices associated with fiscal management found in EDGAR, the cost principles of Office of Management and Budget (OMB) Circular A–87, and general fiscal management practices;

(4) Provide guidance on the need to utilize community resources and build relationships with the State VR agency in order to expand the ranges of the

employment choices available for consumers and of the financial resources the project can leverage in order to provide the services the consumer needs;

(5) Provide training on how the AIVRS projects can improve inter- and intra-tribal communication regarding confidentiality and the development of cooperative agreements with State VR agencies and Federal entities (*e.g.,* the Department of Interior and the Bureau of Indian Affairs);

(6) Provide technical assistance on methods associated with measuring project performance, including the development of goals, performance measures, and efficiency models, and on the reporting of performance data;

(7) Identify other technical assistance and training needs of the AIVRS projects; and

(8) Provide technical assistance to build an infrastructure that sustains training and technical assistance for these projects.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Executive Order 13175: Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') provides that each Federal agency must have an accountable process to ensure regular and meaningful consultation and collaboration with Indian tribal governments or their representative organizations in the development of regulatory policies that have tribal implications. Because Indian tribal governments will be the beneficiaries of any project funded under this priority and because Indian tribal governments are eligible applicants for any award made using this priority, we are specifically inviting input from Indian tribal officials concerning this notice of proposed priority as part of the process of consultation required by the Executive order.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document 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**.

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 Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: November 6, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–27197 Filed 11–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Public Scoping Meeting, and Notice of Floodplain and Wetlands Involvement To Support Construction and Startup of the Mississippi Gasification, LLC, Industrial Gasification Facility in Moss Point, MS

AGENCY: Department of Energy, Loan Guarantee Program.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting, and Notice of Proposed Floodplain and Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures to assess the

potential environmental impacts for its proposed actions of issuing a Federal loan guarantee to Mississippi Gasification, LLC, (MG) and providing co-funding in a Cooperative Agreement with Leucadia Energy, LLC (Leucadia) and Denbury Onshore, LLC (Denbury) (DOE/EIS–0428). In addition, the U.S. Army Corps of Engineers and the U.S. Coast Guard will be cooperating agencies in the preparation of the EIS.

MG, a wholly-owned subsidiary of Leucadia National Corporation, submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support construction and startup of the MG Industrial Gasification Facility (the Facility) in Moss Point, Mississippi. Leucadia and Denbury submitted an application to DOE for a cost-shared Cooperative Agreement pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA 2009) and Section 703 of the Energy Independence and Security Act of 2007 for a two-phase project to support carbon dioxide (CO_2) capture at the Facility and subsequent enhanced oil recovery (EOR) sequestration. The EIS would also help DOE decide whether to fund the Leucadia-Denbury application.

The Facility would be designed to produce upwards of 120 million standard cubic feet per day (MMSCFD) of pipeline-quality substitute natural gas (SNG) from approximately 7,000 tons per day of petroleum coke (petcoke) using gasification technology, coupled to acid gas recovery, and methanation. Marketable byproducts would include sulfuric acid, CO_2, argon, and a small amount of electric power. MG plans to capture nearly 90% of the CO_2 produced and sell it to Denbury under a long-term contract for use in EOR. The EIS will evaluate the potential impacts of DOE issuing MG a Federal loan guarantee for the proposed project, the funding of a DOE Cooperative Agreement with Leucadia and Denbury, and the range of reasonable alternatives. The purpose of this Notice of Intent is to inform the public about the DOE proposed actions, invite public participation in the EIS process, announce plans for a public scoping meeting to solicit public comments for consideration in establishing the scope and content of the EIS, and provide notice of the intent to prepare a floodplain and wetland assessment.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked, or e-mailed by December 14, 2009 to ensure consideration. DOE will consider late comments to the extent practicable. In addition to receiving written comments (*see* **ADDRESSES** below), DOE will conduct a public scoping meeting at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions regarding the alternatives and potential impacts to be considered in the EIS. Further details about the public scoping meeting will be announced through local-area media and on the DOE Loan Guarantee Program Office Web site (*http://www.lgprogram.energy.gov/NEPA-2.html*) at least 15 days prior to the meeting. Advance requests to speak at the public scoping meeting may be sent to Dr. Alistair Leslie at the address indicated below prior to the meeting. Requests to speak may also be made at the time of registration for the meeting. However, persons who submitted advance requests to speak will be given priority if time should become limited during the meeting.

ADDRESSES: Written comments on the proposed scope of the EIS and requests to speak at the public scoping meeting should be addressed to: Dr. Alistair Leslie, Loan Guarantee Program Office (CF–1.3), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by e-mail to: *MG-EIS@hq.doe.gov*. All comments should reference Project No. DOE/EIS–0428.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the MG project or this EIS, the public scoping meeting, or to receive a copy of the draft EIS when it is issued, contact Dr. Alistair Leslie by *telephone:* 202–287–5620; *toll free number:* 800–832–0885 ext. 75620 or *e-mail: alistair.leslie@hq.doe.gov*. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *telephone:* 202–586–4600; *facsimile:* 202–586–7031; e-mail: *askNEPA@hq.doe.gov* or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

EPAct 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of EPAct 2005 authorizes the Secretary of Energy to make loan guarantees for various types of projects, including those that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' A principal goal of the loan guarantee program is to encourage commercial use in the United States of new or significantly improved energy-related technologies. DOE believes that accelerated commercial use of these new or improved technologies will help sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply. Pursuant to the provisions of Titles XV and XVI of the ARRA 2009 and Section 703 of the Energy Independence and Security Act of 2007, DOE has competitively solicited applications for a requirement titled: ''Carbon Capture and Sequestration from Industrial Sources and Innovative Concepts for Beneficial CO_2 Use.'' One of the objectives of this solicitation is to demonstrate advanced technologies that capture and sequester CO_2 emissions from industrial sources into underground formations.

Purpose and Need for Agency Action

MG submitted a Part I application to DOE for a loan guarantee on December 18, 2008, and submitted a Part II application on March 23, 2009, to support construction and startup of the Facility. Leucadia and Denbury jointly submitted an application to DOE on August 6, 2009, for a two-phase project for compression power supply studies at the Facility; a measurement, monitoring, and validation study (MMV) for the utilization of recovered CO_2 in EOR; compression and metering equipment at the Facility; and a 110-mile CO_2 pipeline to be funded, in part, with funds appropriated by ARRA 2009. The purpose and need for agency action is to comply with DOE's mandates under EPAct 2005 and ARRA 2009 by selecting eligible projects that meet the goals of these Acts. DOE is using the NEPA process to assist in determining whether to issue MG a loan guarantee to support the proposed project and whether to provide funding for a Cooperative Agreement with Leucadia and Denbury to support the work they proposed.

Proposed Action

The DOE proposed action is to issue a loan guarantee to MG to support

construction and startup of the MG Facility in Moss Point, MS, and to provide funding to Leucadia and Denbury to partially support a two-phase project for compression power supply and MMV studies, compression and metering equipment at the Facility, and construction of a 110-mile CO_2 pipeline.

As proposed the Facility would produce upwards of 120 MMSCFD of SNG from approximately 7,000 tons per day of petcoke using gasification technology, coupled with acid gas recovery, and methanation. The SNG would be the primary product and would be delivered to one or more nearby natural gas pipelines. Marketable byproducts would include sulfuric acid, CO_2, argon, and a small amount of electric power. MG plans to capture nearly 90% of the CO_2 produced and sell it to Denbury under a long-term contract for use in EOR. Leucadia and Denbury plan to undertake compression power supply studies at the Facility, install compression and metering equipment at the Facility, construct a CO_2 pipeline from the Facility to an existing Denbury pipeline 110 miles to the north that already distributes CO_2 for use in EOR, and undertake MMV for the utilization of the recovered CO_2 in EOR. MMV for injection of at least 1 million tons of CO_2 would be conducted at Denbury's EOR projects at the Heidelberg, Soso and/or the Eucutta oil fields in Mississippi and in the Citronelle oil field in Alabama.

Approximately 119 tons per day of slag—the non-hazardous vitrified (glassy) solid product of gasification—would be shipped off-site for sale or disposed of as a non-hazardous waste. Up to 12 million gallons of water per day would be supplied from the Escatawpa River supplemented by water from the Pascagoula River, well water, and treated water near the site. Operation, maintenance, and general management of the Facility are estimated to require 177 full-time employees.

The Facility would utilize approximately 115 acres of the 205-acre site at Moss Point, known as the Moss Point Industrial Technology Complex. The site is in southeastern Mississippi along the Gulf of Mexico, and is generally bounded by the Escatawpa River to the north, the Pascagoula River to the east, Grierson Street to the south, and an abandoned rail right-of-way to the west. The site has a designated industrial use, was previously the location of a paper mill, and has undergone remediation for past site contamination. Part of the proposed site at Moss Point is within a 100-year floodplain and other parts are within a 500-year floodplain. There are also wetlands on the site. Therefore, DOE will include in the EIS a floodplain and wetland assessment prepared in accordance with the DOE Regulations for Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR part 1022).

The EIS will analyze supporting infrastructure and facilities, including rail interconnections with an extended rail spur and unloading facility; existing local roads and regional highways; an upgraded barge dock and unloading facility on the Escatawpa River; interconnection to an onsite 115 kilovolt transmission line or a 230 kilovolt transmission line within 2 miles; interconnection to one or more nearby natural gas pipelines; and an existing CO_2 pipeline network 110 miles to the north to which an interconnecting pipeline from the Facility fence line would be constructed.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS for the Facility, DOE identified the reasonable alternatives that would satisfy the underlying purpose and need for agency action. DOE currently plans to analyze potential impacts of the projects as proposed by MG and by Leucadia and Denbury, and the no-action alternative. To the extent appropriate, DOE will also analyze design options available to MG and to Leucadia and Denbury, within the scope of the proposed actions (such as disposing slag and sulfur, transporting petcoke, and alternative pipeline corridors) and mitigation measures.

Under the no-action alternative, DOE would not issue MG a loan guarantee and the project would not be constructed as part of the DOE loan guarantee program. This option would not contribute to the Federal loan guarantee program goals to make loan guarantees for energy projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies.'' In addition DOE would not provide partial funding to Leucadia and Denbury, and the demonstration of advanced technologies that capture and sequester CO_2 emissions from industrial sources into underground formations would not be advanced.

Preliminary Identification of Environmental Issues

DOE has tentatively identified the following environmental resource areas for consideration in the EIS. This list is neither intended to be all-inclusive nor a predetermined set of potential environmental impacts.

- Air quality
- Greenhouse gas emissions and climate change
- Energy use and production
- Water resources, including groundwater and surface waters
- Wetlands and floodplains
- Geological resources
- Ecological resources, including threatened and endangered species and species of special concern
- Cultural resources, including historic structures and properties; sites of religious and cultural significance to Tribes; and archaeological resources
- Land use
- Visual resources and aesthetics
- Transportation and traffic
- Noise and vibration
- Hazardous materials and solid waste management
- Human health and safety
- Accidents and terrorism
- Socioeconomics, including impacts to community services
- Environmental justice

DOE invites comments on whether the EIS should consider other resource areas or potential issues.

Public Scoping Process

To ensure that all issues related to DOE's proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will begin with publication of this Notice of Intent and end on December 14, 2009. Interested government agencies, private-sector organizations, and the general public are encouraged to submit comments concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Comments must be postmarked, or e-mailed by December 14, 2009 to ensure consideration. (See **ADDRESSES** above). Late comments will be considered to the extent practicable. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

A public scoping meeting will be held in the Moss Point area. Further details about the public scoping meeting will be announced at least 15 days prior to the meeting on the DOE Loan Guarantee Program Office Web site (*http://www.lgprogram.energy.gov/NEPA–2.html*) and in local media in the Moss Point, MS, area. Members of the public

and representatives of groups and Federal, state, local, and Tribal agencies are invited to attend. Displays and other forms of information about the proposed agency action, the EIS process, and the Facility will be available, with DOE personnel available for discussions with attendees. DOE requests that anyone who wishes to present oral comments at the meeting contact Dr. Alistair Leslie by phone, or e-mail (see **ADDRESSES** above). Individuals who do not make advance arrangements to speak may register at the meeting. Speakers who need more than five minutes should indicate the amount of time desired in their request. DOE might need to limit speakers to five minutes initially, but will provide additional opportunities as time permits. Written comments regarding the scoping process can also be submitted to DOE officials at the scoping meeting.

Issued in Washington, DC, on November 4, 2009.

Steve Isakowitz,

Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–27165 Filed 11–10–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Federal Loan Guarantee To Support Construction and Start-Up of the Indiana Gasification, LLC, Industrial Gasification Facility in Rockport, IN

AGENCY: Department of Energy, Loan Guarantee Program.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement, Conduct a Public Scoping Meeting, and Notice of Proposed Floodplain and Wetland Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures to assess the potential environmental impacts for its proposed action of issuing a Federal loan guarantee to Indiana Gasification, LLC (IG) (DOE/EIS–0429). IG submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support construction and start-up of a coal to substitute natural gas (SNG) facility in Rockport, Indiana (the Facility).[1] The Facility would utilize gasification technology with Illinois Basin coal as the feedstock to produce SNG. Other products from the gasification process would be sulfuric acid, argon, and electric power, all of which would be sold.

The EIS will evaluate the potential impacts of the issuance of a DOE Loan Guarantee for IG's proposed project and the range of reasonable alternatives. The purpose of this Notice of Intent (NOI) is to inform the public about DOE's proposed action; invite public participation in the EIS process; announce plans for a public scoping meeting; solicit public comments for consideration in establishing the scope and content of the EIS; and provide notice of a proposed floodplain and wetlands assessment. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked or e-mailed by December 14, 2009 to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving written comments (see **ADDRESSES** below), DOE will conduct a public scoping meeting in the vicinity of the proposed project at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions with regard to the alternatives and potential impacts to be considered in the EIS. The date, time, and location of the public scoping meeting will be announced in local news media and on the DOE Loan Guarantee Program's ''NEPA Public Involvement'' Web site (*http://www.lgprogram.energy.gov/NEPA-2.html*) at least 15 days prior to the date of the meeting.

ADDRESSES: Public comments can be submitted electronically or by U.S. mail. Written comments on the proposed EIS scope should be addressed to: Mr. Doug Boren, Loan Guarantee Program Office (CF–1.3), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Please submit one signed original paper copy. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by sending an e-mail to: *IG–EIS@hq.doe.gov.* All electronic and written comments should reference Project No. DOE/EIS–0429.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this NOI, the public scoping meeting, or to receive a copy of the draft EIS when it is issued, contact Doug Boren by telephone: 202–287–5346; toll-free number: 800–832–0885 ext. 75346; or electronic mail: *Douglas.Boren@hq.doe.gov.* For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; facsimile: 202–586–7031; electronic mail: askNEPA@hq.doe.gov; or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

EPAct 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of EPAct 2005 authorizes the Secretary of Energy to make loan guarantees for a variety of types of projects, including those that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' The two principal goals of the loan guarantee program are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. On September 22, 2008, the DOE Loan Guarantee Program Office issued a solicitation for coal based power generation and industrial gasification facilities. A portion of the funds made available in the solicitation come under the authority of the Consolidated Appropriations Act, 2008, P.L. 110–161, which provides loan guarantee support for advanced coal gasification projects. The proposed IG project qualifies under this provision of the loan guarantee authority.

Purpose and Need for Agency Action

IG submitted an application to DOE for a loan guarantee in March 2009, to support construction and start-up of the Facility. The purpose and need for agency action is to comply with DOE's mandate under EPAct 2005 by identifying and providing loan

[1] The amount requested for the loan guarantee is not being disclosed at this time because it is business sensitive. Moreover, should DOE approve a loan guarantee, the amount may differ from the original request.

guarantees to eligible projects that meet the goals of the Act. DOE has determined that the IG project meets the two principal goals of the Act—encouraging commercial use of new or significantly improved energy-related technologies, and achieving substantial environmental benefits. The IG Project is expected to operate below the emission limits established in Title XVII of EPAct 2005 for sulfur dioxide, nitrogen oxides, particulate matter, and mercury.

Proposed Action

DOE's proposed action is to issue a loan guarantee to IG to support construction and start-up of the proposed Facility. The Facility would utilize gasification technology with Illinois Basin coal as the feedstock to produce raw syngas that would be further processed to produce SNG. The Facility could handle up to approximately 12,600 tons of coal per day, delivered to the site by barge or rail, to produce up to approximately 153 million standard cubic feet of SNG per day. The SNG would be pipeline quality and could be transported from the Facility to the Midwestern Gas Transmission line (3 miles) and/or the ANR Pipeline (4.5 miles). Byproducts of the gasification process would be sulfuric acid, argon, and electric power, all of which would be sold.

The Facility would employ a variety of technologies. The raw syngas (a mixture of carbon monoxide (CO) and hydrogen (H_2)) would be produced using gasification technology, processed to remove sulfur compounds and carbon dioxide (CO_2) and converted to SNG using methanation technology. Solid waste (slag) from the process would be sold as a commercial product (*e.g.,* an aggregate substitute) or transported by truck for disposal at a non-hazardous, solid waste landfill. The construction work force would peak at approximately 1,000 workers. The Facility would be operated and maintained by a staff of approximately 200 employees.

The Facility would be designed to be capable of capturing and compressing approximately 85–90 percent of the CO_2 produced during the gasification process. IG intends to sell the CO_2 to a third party off taker for use in enhanced oil recovery. Construction of a pipeline would be necessary to transport the CO_2. IG has an agreement with a potential third party off taker in the Gulf Coast region for the sale of its CO_2. The third party off taker would be responsible for construction of a pipeline to transport the CO_2 but a commitment from the off taker to construct such a pipeline does not exist at this time, and IG is not proposing to construct a CO_2 pipeline as part of the project. In the event a CO_2 pipeline is not constructed and no other reasonable alternative to sequester the CO_2 is determined, then the CO_2 produced during the gasification process would be released to the atmosphere.

The site of the proposed IG Facility is within a 1,300-acre parcel of land located in Spencer County, Indiana. The land is partially within the corporate limits of the City of Rockport. The center of the City of Rockport is approximately 2.3 miles south of the site. The proposed Facility would utilize approximately 600 acres of the site. This would include approximately 200 acres for the main facilities; 200 acres for the rail area, consisting of the railroad spur to be reactivated and a coal unloading and storage area; 70 to 80 acres for road and utility access corridors; 30 acres for an Ohio River barge terminal for the delivery of construction equipment and coal, water intakes, and cooling water discharge; and 100 acres for material lay down, storage and construction parking, including 40 to 80 acres for a process water well-field to facilitate the withdrawal of water from an aquifer at the site, if required. The remaining approximately 700 acres of the proposed project site was made subject to option by IG in order to provide alternative paths from the Ohio River to the Facility site, a source for fill material, wetland mitigation areas, and additional buffer.

Supporting infrastructure and facilities would include local access roads, rail and barge access, water supply and wastewater pipelines, a potential connection to a CO_2 pipeline, and a high voltage transmission line to connect the Facility to the electric grid system. DOE plans to analyze the impacts of construction and operation of the supporting infrastructure and facilities in the EIS.

The site is topographically flat and land use in the vicinity of the proposed Facility site is mainly agriculture and undeveloped, with small developed areas to the south and east. Several hundred acres of the proposed project site are considered prime farmland and could be affected by the proposed project. Wetlands comprise about 18 percent of the 1,300-acre optioned property limits. Most of the wetlands are forested wetlands along drainages and former channels. IG expects that most of the wetlands onsite would be avoided and only a minimal amount of the wetlands onsite would be permanently lost as a result of this project. IG estimates 400 acres of the site would need to be raised from one to seven feet in order to elevate the plant site out of the 100-year floodplain. As a result, DOE will prepare a floodplain and wetland assessment in accordance with its regulations at 10 CFR Part 1022 and include the assessment in the EIS.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS, DOE identified alternatives that would satisfy the underlying purpose and need for agency action. DOE currently plans to analyze in detail the project as proposed by IG and the no action alternative. As appropriate, DOE will also analyze alternatives to portions of the project that lessen or avoid impacts to affected resources and mitigation measures.

Under the no action alternative, DOE would not provide the loan guarantee for the IG project and the project would not be constructed as part of the DOE loan guarantee program.

Preliminary Identification of Environmental Issues

The following environmental resource areas have been tentatively identified for consideration in the EIS. This list is neither intended to be all-inclusive nor a predetermined set of potential environmental impacts:

- Air quality.
- Greenhouse gas emissions and climate change.
- Energy use and production.
- Water resources, including groundwater and surface waters.
- Wetlands and floodplains.
- Geological resources.
- Ecological resources, including threatened and endangered species and species of special concern.
- Cultural resources, including historic structures and properties; sites of religious and cultural significance to Tribes; and archaeological resources.
- Land use.
- Visual resources and aesthetics.
- Transportation and traffic.
- Noise and vibration.
- Hazardous materials and solid waste management.
- Human health and safety.
- Accidents and terrorism.
- Socioeconomics, including impacts to community services.
- Environmental justice.

DOE invites comments on whether other resource areas or potential issues should be considered in the EIS:

Public Scoping Process

To ensure that all issues related to DOE's proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping

period will begin with publication of this NOI and end on December 14, 2009. Interested government agencies, private-sector organizations, and the general public are encouraged to submit comments concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Comments must be postmarked or e-mailed by December 14, 2009 to ensure consideration. (See **ADDRESSES**). Late comments will be considered to the extent practicable. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

A public scoping meeting will be held at a date, time, and location to be determined. Notice of this meeting will be provided in local news media and on the DOE Loan Guarantee Program's ''NEPA Public Involvement'' Web site (*http://www.lgprogram.energy.gov/NEPA-2.html*) at least 15 days prior to the date of the meeting. Members of the public and representatives of groups and Federal, state, local, and Tribal agencies are invited to attend. The meeting will include both a formal opportunity to present oral comments and an informal session during which DOE and IG personnel will be available for discussions with attendees. Displays and other forms of information about the proposed agency action, the EIS process, and the IG proposed Facility will also be available for review. DOE requests that anyone who wishes to present oral comments at the meeting contact Mr. Boren by phone or e-mail (see **ADDRESSES** above). Individuals who do not make advance arrangements to speak may register at the meeting. DOE may need to limit speakers to five minutes initially, but will provide additional opportunities as time permits. Written comments regarding the scoping process can also be submitted to DOE officials at the scoping meeting.

Issued in Washington, DC, on November 6, 2009.

Steve Isakowitz,

Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–27166 Filed 11–10–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). The Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, December 18, 2009, 8:30 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the L'Enfant Plaza Hotel at 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Designated Federal Officer, U.S. Department of Energy, 19901 Germantown Rd., Germantown, MD 20874; telephone (301) 903–6509; e-mail *Kenneth.wade@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide expert advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. NEAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: Introduction of new members to the committee; briefing the committee on recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy; and receiving advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the Office of Nuclear Energy's strategic goals and direction, research and development roadmap, updates on the next generation nuclear plant project and university program activities. In addition, there will a discussion on nuclear energy policy and technology and NEAC subcommittees. The agenda may change to accommodate committee business. For updates, one is directed the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Friday, December 18, 2009. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Kenneth Chuck Wade, U.S. Department of Energy 1000 Independence Avenue, SW., Washington DC 20585, or e-mail *Kenneth.wade@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Wade at the address above or on the Department of Energy, Office of Nuclear Energy Web site at: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Issued in Washington, DC, on November 3, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–27164 Filed 11–10–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the form DOE–887, ''DOE Customer Surveys,'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.,* at 3507(h)(1)).

DATES: Comments must be filed by December 14, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Christine_Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington,

DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. DOE–887, ''DOE Customer Surveys''.
2. Energy Information Administration.
3. OMB Number 1901–0302.
4. Three-year extension.
5. Voluntary.
6. DOE–887 will be used to contact users and beneficiaries of DOE products or other services to determine how DOE can better improve its services to meet their needs. Information is needed to make DOE products more effective, efficient, and responsive and at a lesser cost.
7. Respondents are users and beneficiaries of DOE products and services
8. 12,500 hours (50,000 respondents times 1 response per year times .25 hours per response).

Please refer to the supporting statement for more information about the types of information collections that may be conducted. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Executive Order 12,862 § 1, 58 FR 48,257 (Sept. 11, 1993).

Issued in Washington, DC, November 5, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–27167 Filed 11–10–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–10–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

November 4, 2009.

Take notice that on October 27, 2009, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP10–10–000, 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 by sale and transfer to CenterPoint Energy Field Services, Inc. (CEFS) Line B–55 EXT in its entirety and an approximately two mile long segment of Line B–106, located in Sebastian and Crawford Counties, Arkansas; and, to abandon in place its Hobbs Compressor Station, located in Sebastian County, Arkansas, 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 B. Michelle Willis, Manager, Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–3708 (telephone) or (318) 429–3133 (fax), *michelle.willis@centerpointenergy.com,* or to Mark C. Schroeder, Vice President & General Counsel, CenterPoint Energy Gas Transmission Company, P.O. Box 1700, Houston, Texas 77210–1700, or by calling (713) 207–3395 (telephone) or (713) 207–0711 (fax), *mark.schroeder@centerpointenergy.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: November 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27121 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–9–000]

Tennessee Gas Pipeline Company; Notice of Application

November 4, 2009.

Take notice that on October 23, 2009, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed with the Commission an application under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to Tauber Pipeline, L.L.C. (Tauber) thirty-four small natural gas supply laterals attached to Tennessee's mainline in South Texas, and related facilities (collectively, the Facilities). Tennessee states that no construction, removal or modifications of the Facilities is required to effectuate the abandonment and sale of the Facilities to Tauber, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for Tennessee, Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or via telephone at (713) 420–5751, facsimile number (713) 420–1601, or e-mail *susan.habach@elpaso.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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

The Commission strongly encourages electronic filings of comments, 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.

Comment Date: November 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27120 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

November 3, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–8–000.

Applicants: American Electric Power Service Corporation

Description: American Electric Power Service Corp requests for disclaimer of

jurisdiction or, in the alternative application for approvals Under Section 203 of the Federal Power Act.

Filed Date: 10/23/2009

Accession Number: 20091029–0016.

Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–025; ER00–3240–014; ER01–1633–011; ER03–1383–014.

Applicants: Alabama Power Company, Georgia Power Company, Southern Company Services, Inc., Mississippi Power Company, Gulf Power Company, Oleander Power Project, L.P., DeSoto County Generating Company, LLC, Southern Company—Florida LLC.

Description: Notice of Non-Material Change in Status and of Generation Site Acquisition of Southern Companies.

Filed Date: 10/30/2009.

Accession Number: 20091030–5095.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER99–3151–014; ER97–837–011; ER03–327–006; ER08–447–04; ER08–448–004.

Applicants: PSEG Energy Resources & Trade LLC, PSEG Fossil LLC, PSEG Nuclear LLC, PSEG Power Connecticut LLC, Public Service Electric and Gas Company.

Description: Order No. 697–C—Quarterly Generation Siting Report for the PSEG Companies.

Filed Date: 10/30/2009

Accession Number: 20091030–5098

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER07–1356–012; ER07–1112–010; ER07–1113–010; ER03–1283–020; ER07–1116–009; ER07–1117–012; ER07–1358–011; ER07–1118–011; ER00–2885–026; ER01–2765–025; ER09–609–003; ER09–1141–005; ER05–1232–021; ER09–335–007; ER02–2102–025.

Applicants: BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Central Power & Lime LLC, J.P. Morgan Commodities Canada Corporation, J.P. Morgan Ventures Energy Corporation, Utility Contract Funding, L.L.C., Vineland Energy LLC.

Description: Notice of non-material change in status.

Filed Date: 09/29/2009.

Accession Number: 20090929–5055.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 17, 2009.

Docket Numbers: ER07–1106–006; ER02–1884–010; ER07–751–001; ER08–1255–001; ER09–1488–001.

Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Waterside Power LLC, LEA Power Partners, LLC, Black Bear Hydro Partners, LLC.

Description: Notice of Change in Status of ArcLight Energy Marketing, LLC, *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5096.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER09–934–003.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company submits filing to notify the Commission that, effective 11/1/09, it will be charging under Schedule 21–BHE revised transmission rates based on the corrected value.

Filed Date: 10/30/2009.

Accession Number: 20091102–0117.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER09–1050–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a filing to comply with Order No. 719–A.

Filed Date: 10/27/2009.

Accession Number: 20091028–0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER10–155–000.

Applicants: Northern States Power Company.

Description: Xcel Energy Services, Inc. submits a proposed Notice of Cancellation for 12 Construction Agreements and 1 Interconnection Study Agreement.

Filed Date: 10/30/2009.

Accession Number: 20091102–0186.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–156–000.

Applicants: Dynegy Oakland, LLC.

Description: Dynegy Oakland, LLC submits a revision to certain Reliability Must-Run Rate Schedules of its Reliability Must-Run Agreement with the California Independent System Operator Corporation.

Filed Date: 10/30/2009.

Accession Number: 20091102–0185.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–157–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits Rate Schedules for service to East Texas Electric Cooperative Inc *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091102–0183.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–158–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an executed Amended and Restated Agreement for Interconnection of Transmission Facilities among MidAmerican Energy Company *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091102–0180.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–160–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No 6.

Filed Date: 10/30/2009.

Accession Number: 20091102–0176.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–161–000.

Applicants: New England Power Pool.

Description: New England Power Pool Participants Committee submits counterpart signature pages of the NEPOOL Agreement, dated 9/1/71 as amended executed etc.

Filed Date: 10/30/2009.

Accession Number: 20091102–0184.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–163–000; ER10–164–000; ER10–165–000.

Applicants: CalPeak Power—Border LLC; CalPeak Power—El Cajon, LLC.

Description: CalPeak Entities submits Notices and Termination of the Reliability Must-Run Service Agreement between each of the CalPeak Entities and the CAISO, Rate Schedule FERC 2 for each of the CalPeak Entities.

Filed Date: 10/30/2009.

Accession Number: 20091102–0116.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–166–000.

Applicants: Dynegy South Bay, LLC.

Description: Dynegy South Bay, LLC submits revisions to certain Reliability Must-Run Rate Schedules of its Must-Run Service Agreement with California Independent System Operator Corporations and amendments to the RMR Agreement.

Filed Date: 10/30/2009.

Accession Number: 20091102–0115.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–167–000.

Applicants: Gilroy Energy Center, LLC.

Description: Gilroy Energy Center, LLC submits annual revisions to certain Rate Schedules of its Reliability Must-Run Agreement with the California Independent System Operator Corporation, effective January 1, 2010.

Filed Date: 10/30/2009.

Accession Number: 20091102–0114.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–168–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revised tariff sheets of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, LLC.

Filed Date: 10/30/2009.

Accession Number: 20091102–0113.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–169–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits proposed increase in rates for transmission services under Avista's open-access transmission tariff, FERC Electric Tariff, Fifth Revised Volume 8, to be effective 1/1/10.

Filed Date: 10/30/2009.

Accession Number: 20091102–0121.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–170–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits amended and restated transmission line participation.

Filed Date: 10/30/2009.

Accession Number: 20091102–0118.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–172–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power and Light Company submits a correction to its cost-of-service formula rate for network integration service and point-to-point service taken under PEC's Open Access Transmission Tariff.

Filed Date: 10/30/2009.

Accession Number: 20091102–0112.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–173–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits revisions to its cost-of-service formula rate for network integration service and point-to-point revisions to its cost-of-service formula rate for network integration service and point-to-point service etc.

Filed Date: 10/30/2009.

Accession Number: 20091102–0111.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–175–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits executed Cost Based Agreement for Wholesale Power Sales Service from generating assets likely to participate with the City of Burlingame.

Filed Date: 10/30/2009.

Accession Number: 20091102–0173.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–176–000.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits proposed amendments to its Rate Schedule No 1.

Filed Date: 10/30/2009.

Accession Number: 20091102–0172.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–177–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits revised rate schedule sheet in Exhibit G to its Rate Schedule No 51 with the City of Marshfield.

Filed Date: 10/30/2009.

Accession Number: 20091102–0171.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–178–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits revised service agreements between Manitowoc Public Utilities and Upper Peninsula Power Company.

Filed Date: 10/30/2009.

Accession Number: 20091102–0170.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–179–000.

Applicants: Mirant Potrero LLC.

Description: Mirant Potrero, LLC submits revisions to its Must Run Service Agreement with the California Independent System Operator Corporation.

Filed Date: 10/30/2009.

Accession Number: 20091102–0169.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–180–000.

Applicants: The United Illuminating Company.

Description: The Unlimited Illuminating Company submits Localized Costs Sharing Agreements.

Filed Date: 10/30/2009.

Accession Number: 20091102–0168.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–181–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Tenth Revised Sheet 163A *et al.* to FERC Electric Tariff, Fifth Revised Volume 1 to be effective 1/1/10.

Filed Date: 10/30/2009.

Accession Number: 20091102–0167.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–183–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits revised tariff sheets with proposed revisions to the Midwest ISO' Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Fourth Revised Volume 1.

Filed Date: 10/30/2009.

Accession Number: 20091102–0175.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–184–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement with Flat Ridge Wind Energy, LLC as Interconnection Customer etc.

Filed Date: 10/30/2009.

Accession Number: 20091102–0174.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–185–000.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Company, LLC submits material in support of its request for authorization to use updated depreciation rates in the calculation of charges of transmission service.

Filed Date: 10/30/2009.

Accession Number: 20091102–0165.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–186–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits Forward Capacity Auction Results filing which includes the testimony of Stephen J Rouke *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091102–0162.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–187–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator *et al.*

submits Third Revised Sheet No 1853 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 1/1/10.

Filed Date: 10/30/2009.

Accession Number: 20091102–0164.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–191–000.

Applicants: E.ON U.S. LLC.

Description: E.ON US, LLC *et al.* seeks approval to change Applicants method of complying with Order Nos. 888, 889 and 890 meeting certain conditions imposed by the Commission in the context of prior mergers etc.

Filed Date: 10/30/2009.

Accession Number: 20091103–0044.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–2–000.

Applicants: Western Electricity Coordinating Council.

Description: Compliance Filing of the North American Electric Reliability Corporation in response to Order No. 723: VSLs for BAL–004–WECC–01 R2–R4 and request for an extension of time for the filing of the VSL for R1.

Filed Date: 10/23/2009.

Accession Number: 20091023–5064.

Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27298 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 2, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–75–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit between Natural and Eagle Energy Partner I, LP.

Filed Date: 10/26/2009.

Accession Number: 20091026–0283.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–80–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits Fourth Revised Sheet 395 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 10/28/2009.

Accession Number: 20091029–0053.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–81–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Thirty Second Revised Sheet 25 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 10/28/2009.

Accession Number: 20091029–0054.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–82–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits Forty-Ninth Revised Sheet No. 9 *et al.* to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 10/29/2009.

Accession Number: 20091030–0011.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–83–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits First Revised Sheet No. 69 *et al.* to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 10/29/2009.

Accession Number: 20091030–0010.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–84–000.

Applicants: Sequent Energy Management, L.P., Integrys Energy Services, Inc.

Description: Sequent Energy Management, L.P, *et al.* Request for Temporary Waiver, Shortened Comment Period and Expedited Decision.

Filed Date: 10/29/2009.

Accession Number: 20091029–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–85–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet No. 217 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 10/29/2009.

Accession Number: 20091030–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–86–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Original Sheet No. 9P *et al.* to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 10/29/2009.

Accession Number: 20091030–0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–87–000.

Applicants: Destin Pipeline Company, L.L.C.

Description: Destin Pipeline Co, LLC submits the Revenue Crediting Provision for Twelve Months ended 8/31/09.

Filed Date: 10/30/2009.
Accession Number: 20091030–0147.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–88–000.
Applicants: Quest Pipelines (KPC).
Description: Quest Pipelines (KPC) submits First Revised Sheet No. 62 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1.
Filed Date: 10/30/2009.
Accession Number: 20091030–0146.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–89–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits First Revised Sheet No. 6A *et al.* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0145.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–90–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits Fifth Revised Sheet No. 273 to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 12/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0144.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–91–000.
Applicants: Colorado Interstate Gas Company.
Description: Request of Waiver of non-critical penalties for services related to its new Totem Gas Storage Field facilities of Colorado Interstate Gas Company.
Filed Date: 10/30/2009.
Accession Number: 20091030–5024.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–92–000.
Applicants: El Paso Natural Gas Company.
Description: Request for Waiver of non-critical penalties at certain delivery locations. This request results from the in-service of two new taps on the East Valley Lateral pipeline of El Paso Natural Gas Company.
Filed Date: 10/29/2009.
Accession Number: 20091029–5095.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: RP10–93–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits Seventh Revised Sheet No. 871 and amendments to three non-conforming transportation service agreements, to be effective 12/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0143.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–94–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits the Annual Interruptible Storage Revenue Credit Surcharge Adjustment for the period September 2008 through August 2009.
Filed Date: 10/30/2009.
Accession Number: 20091030–0142.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–95–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits two new backhaul service agreements under Rate Schedule FT–A, to be effective 12/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0141.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–96–000.
Applicants: Equitrans, L.P.
Description: Equitrans L.P. submits Sixth Revised Sheet No. 317 to FERC Gas Tariff, Original Volume No. 1, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0140.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–97–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Fifth Revised Sheet No. 0 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0139.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–98–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits Forty-Seventh Revised Sheet No. 15 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0138.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–99–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits 131st Revised Sheet No. 9 to FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0137.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–100–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Great Lakes Gas Transmission Limited Partnership submits Fifth Revised Sheet No. 0 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 11/30/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0136.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–101–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits Twenty-First Revised Sheet No. 470 to FERC Gas Tariff, Fourth Revised Volume No. 1.
Filed Date: 10/30/2009.
Accession Number: 20091030–0135.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–102–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits Twelfth Revised Sheet No. 8A *et al.* to FERC Gas Tariff, First Revised Volume No. 2, to be effective 11/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091030–0134.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–103–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company Ltd submits Twenty-Fifth Revised Sheet No 4C *et al.* to its FERC Gas Tariff, Second Revised Volume No. 2.
Filed Date: 10/30/2009.
Accession Number: 20091030–0132.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–104–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company Ltd submits Fourth Revised Sheet No 39C *et al.* to its FERC Gas Tariff, Second Revised Volume No. 2.
Filed Date: 10/30/2009.
Accession Number: 20091030–0131.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–105–000.
Applicants: Southern LNG Inc.
Description: Southern LNG Inc submits Twenty-Fifth Revised Sheet No 5 *et al.* to its FERC Gas Tariff, Original Volume No 1.
Filed Date: 10/30/2009.
Accession Number: 20091030–0130.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–106–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits First Revised Sheet no 140 *et al.* to its FERC Gas Tariff, Third Revised Volume No 1.
Filed Date: 10/30/2009.
Accession Number: 20091030–0128.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–107–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits First Revised Sheet No 12 to it FERC Gas Tariff, Original Volume No 1.
Filed Date: 10/30/2009.
Accession Number: 20091030–0148.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–108–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gulf Transmission, LLC submits petition for waiver of the Delivery Point Scheduling Penalty.
Filed Date: 10/30/2009.
Accession Number: 20091030–0127.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–109–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits petition for waiver of the Delivery Point Scheduling Penalty.
Filed Date: 10/30/2009.
Accession Number: 20091030–0126.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27301 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 3, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–5–000.
Applicants: Grant County Wind, LLC.
Description: Self Certification Notice of Exempt Wholesale Generator of Grant County Wind, LLC.
Filed Date: 10/29/2009.
Accession Number: 20091029–5098.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2284–012; ER98–2185–017; ER09–1278–001; ER09–38–002; ER99–1761–008; ER99–1773–012; ER01–1315–008; ER01–2401–014; ER98–2186–018; ER00–1026–019; ER00–33–014; ER01–751–014; ER05–442–006; ER98–2184–017
Applicants: AEE 2 LLC; AES Alamitos, Inc.; AES Huntington Beach, L.L.C.; AES Energy Storage, LLC; AES Eastern Energy, LP; AES Eastern Energy, LP; AES Ironwood LLC; AES Red Oak LLC; AES Armenia Mountain Wind, LLC; Indianapolis Power & Light Company; AES Placerita Inc.; AES Redondo Beach, LLC; Mountain View Power Partners, LLC.
Description: The AES Corporation Quarterly Report of Generation Site Acquisition.
Filed Date: 10/30/2009.
Accession Number: 20091030–5082.
Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER99–2311–013; ER97–2846–016.
Applicants: Carolina Power & Light Company; Florida Power Corporation.
Description: Carolina Power & Light Co *et al.* submits notice of change in status in compliance with requirements set forth in Section 35.42 of the regulations.
Filed Date: 10/28/2009.
Accession Number: 20091029–0058.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER99–3168–011; ER04–657–012; ER04–659–012; ER04–660–012; ER04–994–007.
Applicants: Astoria Generating Company, LP; Mystic I, LLC; Fore River Development, LLC; Sithe Mystic Development LLC; Sithe Boston Generating, LLC.
Description: Quarterly Report for the Third Quarter of 2009 of Astoria Generating Company, L.P., *et al.*
Filed Date: 10/29/2009.
Accession Number: 20091029–5094.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER00–1770–022; ER01–202–011; ER02–453–013; ER07–903–005; ER04–472–010; ER08–1336–003; ER09–1729–001; ER09–886–003; ER96–1361–016; ER98–3096–018; ER98–4138–012; ER99–2781–014; ER05–1054–006.
Applicants: Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva Generation, LLC; Potomac Power Resources, Inc.; Conectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Bethlehem

Renewable Energy, LLC; Energy Systems North East LLC; Conectiv Mid Merit, LLC; Conectiv Vineland Solar, LLC; Atlantic City Electric Company; Pepco Energy Services, Inc.; Potomac Electric Power Company; Delmarva Power & Light Company; Eastern Landfill Gas, LLC.

Description: Change in Status of Conectiv Energy Supply, Inc, *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5070.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER00–1780–012; ER00–840–013; ER01–137–011; ER01–2641–016; ER01–2690–014; ER01–557–016; ER01–559–016 ; ER01–560–016; ER01–596–010; ER02–1942–013; ER02–2509–011; ER02–553–014; ER02–77–014; ER02–963–014; ER03–720–015; ER05–524–009; ER09–43–003; ER94–389–035; ER98–1767–019; ER99–2992–012; ER99–3165–013.

Applicants: Big Sandy Peaker Plant, LLC, Tenaska Alabama II Partners, L.P., Tenaska Alabama Partners, L.P., Tenaska Georgia Partners, L.P., Tenaska Frontier Partners, Ltd., New Covert Generating Company, LLC, Tenaska Power Services Co., High Desert Power Project, LLC, Wolf Hills Energy, LLC, Tenaska Washington Partners, L.P., Lincoln Generating Facility, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, Tenaska Gateway Partners, Ltd., University Park Energy, LLC, New Mexico Electric Marketing, LLC, Alabama Electric Marketing, LLC, Kiowa Power Partners, LLC, Rolling Hills Generating, L.L.C., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC.

Description: Alabama Electric Marketing, LLC., *et al.* Quarterly Report for the Third Quarter of 2009.

Filed Date: 10/29/2009.

Accession Number: 20091029–5101.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER02–237–015; ER03–1151–008.

Applicants: J. Aron & Company, Power Receivable Finance, LLC.

Description: J. Aron & Company and Power Receivable Finance LLC submits Notice of Change in Status for New Generation Capacity Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5079.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER03–9–018; ER98–2157–019.

Applicants: Westar Energy, Inc.; Western Resources, Inc.

Description: Quarterly Report regarding Generation Sites of Westar Energy, Inc.

Filed Date: 10/30/2009.

Accession Number: 20091030–5078.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER04–449–020.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc *et al.* submits amendments to the Open Access Transmission Tariff etc.

Filed Date: 10/28/2009.

Accession Number: 20091030–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER06–441–005; ER00–1115–011; ER00–3562–012; ER00–38–010; ER01–2688–013; ER01–2887–010; ER01–480–009; ER02–1319–009; ER02–1367–007; ER02–1633–007; ER02–1959–008; ER02–2227–010; ER02–2229–009; ER02–600–011; ER03–1288–006; ER03–209–008; ER03–24–009; ER03–25–006; ER03–341–007; ER03–342–008; ER03–446–008; ER03–49–008; ER03–838–009; ER04–1081–006; ER04–1099–007; ER04–1100–007; ER04–1221–006; ER04–831–008; ER05–67–006; ER05–68–006; ER05–819–006; ER05–820–006; ER06–741–006; ER06–742–006; ER06–749–006; ER06–750–006; ER06–751–007; ER06–752–006; ER06–753–005; ER06–755–006; ER06–756–006; ER07–1335–006; ER09–1084–003; ER09–71–003; ER99–1983–009; ER99–970–010.

Applicants: Auburndale Peaker Energy Center, L.L.C., Bethpage Energy Center 3, LLC, Blue Spruce Energy Center, LLC, Broad River Energy LLC, Calpine Construction Finance Company, LP, Calpine Energy Services, L.P., Calpine Gilroy Cogen, L.P., Calpine Newark, LLC, Calpine Oneta Power, LP, Calpine Philadelphia, Inc, Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, Carville Energy LLC, CES Marketing IX, LLC, CES Marketing V, L.P., CES Marketing X, LLC, Columbia Energy LLC, CPN Bethpage 3RD Turbine, INC, CPN Pryor Funding Corporation, Creed Energy Center, LLC, Decatur Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Hermiston Power, LLC, KIAC Partners, Los Esteros Critical Energy Facility LLC, Los Medanos Energy Center LLC, Mankato Energy Center, LLC, Metcalf Energy Center, LLC, Mobile Energy LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, Otay Mesa Energy Center, LLC, Pastoria Energy Center, LLC, PCF2, LLC, Pine Bluff Energy, LLC, Power Contract Financing, L.L.C., Riverside Energy Center, LLC, RockGen Energy, LLC, Rocky Mountain Energy Center, LLC, Santa Rosa Energy Center, LLC, South Point Energy Center, LLC, TBG Cogen Partners, Zion Energy LLC.

Description: Quarterly Report for the Third Quarter of 2009 of Auburndale Peaker Energy Center, L.L.C., *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5081.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER06–615–054.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corporation submits informational filing of Third Revised Sheet 639 *et al.* to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 11/5/09.

Filed Date: 10/28/2009.

Accession Number: 20091030–0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER09–556–003; ER08–367–008; ER06–615–054.

Applicants: California Independent System Operator Corporation

Description: The California Independent System Operator Corporation submits informational filing of Third Revised Sheet 639 *et al.* to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 11/5/09.

Filed Date: 10/28/2009.

Accession Number: 20091030–0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER09–1247–004.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Third Substitute Original Sheet 216A *et al.* to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 11/1/09.

Filed Date: 10/28/2009.

Accession Number: 20091030–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER09–1621–003.

Applicants: Jersey Central Power & Light Co.

Description: Jersey Central Power & Light Company submits the third amendment to the 9/24/09 filing to replace the canceled rate schedule sheet to comply with the requirements of Order 614.

Filed Date: 10/29/2009.

Accession Number: 20091030–0108.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–121–000.

Applicants: Entergy Power, Inc.

Description: Entergy Power Inc submits Notices of Termination.
Filed Date: 10/28/2009
Accession Number: 20091028–0065.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER10–126–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits filing for providing for revisions to its Open Access Transmission Tariff.
Filed Date: 10/28/2009.
Accession Number: 20091029–0020.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER10–127–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Company submits Engineering and Procurement Agreement dated 10/1/09 etc.
Filed Date: 10/28/2009.
Accession Number: 20091029–0021.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER10–128–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits amendments to Section 38.2.5.g of the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 10/28/2009.
Accession Number: 20091029–0022.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER10–135–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No 6.
Filed Date: 10/29/2009.
Accession Number: 20091030–0056.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–137–000.
Applicants: Upper Peninsula Power Company.
Description: Upper Peninsula Power Company submits changes in the depreciation rates affecting cost based wholesale rates.
Filed Date: 10/29/2009.
Accession Number: 20091030–0006.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–138–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits notice of termination and consent to termination of the Large Generator Interconnection Agreement with Columbia Community Windpower LLC.
Filed Date: 10/29/2009.
Accession Number: 20091030–0120.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–139–000.
Applicants: Atlantic Path 15, LLC.
Description: Atlantic Path 15, LLC submits revisions to its Transmission Owner Tariff, FERC Electric Tariff First Revised Volume No 1.
Filed Date: 10/29/2009.
Accession Number: 20091030–0119.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–140–000.
Applicants: Entergy Power, LLC.
Description: Entergy Power, LLC submits Rate Schedule No 48.
Filed Date: 10/29/2009.
Accession Number: 20091030–0118.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–141–000; ER10–141–001.
Applicants: RRI Energy Wholesale Generation, LLC.
Description: RRI Energy Wholesale Generation, LLC submits notice of cancellation of the Blackstart Service Agreement between RRI Energy Wholesale Generation, LLC and Commonwealth Edison Company.
Filed Date: 10/29/2009.
Accession Number: 20091030–0117.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–142–000.
Applicants: Entergy Power, Inc.
Description: Entergy Power Inc submits notice of succession *et al.*
Filed Date: 10/28/2009.
Accession Number: 20091030–0106.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: ER10–143–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits Original Service Agreement No 264 between FPL and the City of Vero Beach.
Filed Date: 10/29/2009.
Accession Number: 20091030–0116.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–144–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool. Inc submits an executed service agreement for Network Integration Transmission Service with the Board of Public Utilities, Springfield, Missouri etc.
Filed Date: 10/29/2009.
Accession Number: 20091030–0115.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–145–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff etc.
Filed Date: 10/29/2009.
Accession Number: 20091030–0114.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–146–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits executed Service Agreement for Network Integration Transmission Service between Southwest Power Pool, Inc. as Transmission Provider and Westar Energy as Network Customer, etc.
Filed Date: 10/29/2009.
Accession Number: 20091030–0113.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–147–000.
Applicants: Great River Energy.
Description: Great River Energy *et al.* submits revised tariff sheets with proposed revisions to the Midwest ISO's Open Access Transmission Energy and Operating Reserve Markets Tariff FERC Electric Tariff, Fourth Revised Volume 1 under ER10–147.
Filed Date: 10/29/2009.
Accession Number: 20091030–0121.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–148–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. *et al.* submit an amended and restated large generator interconnection agreement among New York Independent System Operator, Inc. *et al.* and request for waiver.
Filed Date: 10/29/2009.
Accession Number: 20091030–0112.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–150–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Updated Tariff Sheets for Compliance with Order 614.
Filed Date: 10/29/2009.
Accession Number: 20091030–0111.
Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–152–000.

Applicants: PPL Electric Utilities Corporation.

Description: PPL Electric Utilities Corporation submits revised tariff sheets to the PJM Interconnection, LLC Open Access Transmission Tariff.

Filed Date: 10/29/2009.

Accession Number: 20091030–0123.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–153–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits for Commission acceptance a 1999 Site Agreement between Niagara Mohawk and Erie Boulevard Hydropower, LP.

Filed Date: 10/29/2009.

Accession Number: 20091030–0122.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER10–154–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits 5th Revised Sheet 8545 *et al.* to FERC Electric Tariff 3 from Section IV A of the ISO's Transmission, Markets and Services Tariff in order to collect its administrative costs for CY 2010.

Filed Date: 10/29/2009.

Accession Number: 20091030–0107.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27299 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–49–005]

BJ Energy LLC; Franklin Power LLC; GLE Trading LLC; Ocean Power LLC; Pillar Fund LLC v. PJM Interconnection; L.L.C.; Notice of Filing

November 4, 2009.

Take notice that on November 2, 2009, PJM Interconnection, L.L.C. filed a refund report in compliance with the Commission's October 2, 2009 Order, *BJ Energy LLC* v. *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61, 010 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27119 Filed 11–10–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2009–0164–200917; FRL–8980–1]

Adequacy Status of the Tennessee Portion of the Bi-State Memphis Maintenance Plan 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: EPA is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) for Shelby County, Tennessee in the 1997 8-Hour Ozone Maintenance Plan State Implementation Plan (SIP) revision, submitted on February 26, 2009, by the Tennessee Department of Environment and Conservation (TDEC), are adequate for transportation conformity purposes. Shelby County is one of the counties in the bi-state Memphis Area for the 1997 8-hour ozone standard. Crittenden County, Arkansas is the other county in the bi-state Memphis Area. Through a separate action EPA has already found the Crittenden County budgets adequate for transportation conformity purposes. This action relates only to the Shelby County, Tennessee budgets. As a result of EPA's finding, Shelby County must use the MVEBs for future conformity

determinations for the 1997 8-hour ozone standard.

DATES: These MVEBs are effective November 27, 2009.

FOR FURTHER INFORMATION CONTACT: Dianna Smith, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

SUPPLEMENTARY INFORMATION: This notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to TDEC on

September 18, 2009, stating that the MVEBs identified for Shelby County in Tennessee's maintenance plan SIP revision for their portion of the bi-state Memphis Area, submitted on February 26, 2009, are adequate and must be used for transportation conformity determinations in Shelby County, Tennessee. The bi-state Memphis, Tennessee 8-hour ozone nonattainment area is comprised of Shelby County in Tennessee and Crittenden County in Arkansas. Tennessee's redesignation request and maintenance plan submittal addresses only MVEBs for the Tennessee portion of this Area (*i.e.,* Shelby County). The MVEBs for the Arkansas portion of this Area are addressed in a separate submittal provided by the State of Arkansas. In a previous action, EPA found the MVEBs associated with Crittenden County (as a part of the bi-state Memphis 1997 8-hour ozone area) adequate for transportation conformity purpose. More details on EPA's finding for the Crittenden County MVEBs can be obtained at the EPA Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm.*

EPA posted the availability of the Shelby County MVEBs on EPA's Web site on March 12, 2009, as part of the adequacy process, for the purpose of soliciting comments. The adequacy comment period ran from March 12, 2009, through April 13, 2009. During EPA's adequacy comment period, no adverse comments were received on the Shelby County MVEBs. Through this notice, EPA is informing the public that these MVEBs are adequate for transportation conformity. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm.* The adequate MVEBs are provided in the following table:

SHELBY COUNTY, TENNESSEE 8-HOUR OZONE MVEBS

[Tons per day]

	2006	2009	2017	2021
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of Tennessee's maintenance plan SIP revision submittal for Shelby County. Even if EPA finds a budget adequate, the maintenance plan SIP revision submittal could later be disapproved.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEBs, if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See, 73 FR 4419 (January 24, 2008).

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

Dated: October 29, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–27170 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0321; FRL–8795–1]

Dimethyldithiocarbamate Salts; Amendment to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order to terminate uses, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide sodium dimethyldithiocarbamate, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a July 1, 2009 **Federal Register** Notice of Receipt of Request from a sodium dimethyldithiocarbamate registrant to voluntarily amend to terminate uses of their sodium dimethyldithiocarbamate preservation of cotton fabric, preservation of wood veneer, and preservation of alginate pastes product registrations. These are not the last sodium dimethyldithiocarbamate products registered for use in the United States. In the July 1, 2009 Notice, EPA indicated that it would issue an order implementing the amendment to terminate uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrant withdrew its request within this period. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw its request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendment to terminate uses. Any distribution, sale, or use of the sodium dimethyldithiocarbamate products subject to this cancellation order is permitted only in accordance

with the terms of this order, including any existing stocks provisions.

DATES: The cancellation is effective November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Eliza Blair, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7279; e-mail address: *blair.eliza@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0321. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the termination of use, as requested by the registrant, of materials-preservation manufacturing-use sodium dimethyldithiocarbamate product registered under section 3 of FIFRA. The registered product and the uses that are terminated and removed from the label are listed in Table 1 of this unit.

TABLE 1.—SODIUM DIMETHYLDITHIOCARBAMATE PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

EPA Registration Number	Product Name	Delete from Label
1965–8	Vancide 51	Preservation of cotton fabric, preservation of wood veneer, and preservation of alginate pastes

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANTS OF AMENDED SODIUM DIMETHYLDITHIOCARBAMATE PRODUCTS

EPA Company Number	Company Name and Address
1965	R.T. Vanderbilt Co. Inc. 30 Winfield Street Norwalk, CT 06856–5150

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the July 1, 2009 **Federal Register** notice (74 FR 31428) (FRL–8417–2) announcing the Agency's receipt of the request for amendment to terminate uses of sodium dimethyldithiocarbamate.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate uses of sodium dimethyldithiocarbamate registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the sodium Dimethyldithiocarbamate product registration identified in Table 1 of Unit II is hereby amended to terminate the affected uses. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation order. The cancellation order issued in this notice includes the following existing stocks provisions.

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, dimethyldithiocarbamate salts, Sodium dimethyldithiocarbamate.

Dated: October 22, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–26701 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0840; FRL–8799–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals

under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 7, 2009 to October 23, 2009, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before December 14, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0840, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0840. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0840. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to

publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 7, 2009 to October 23, 2009, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/7/09 TO 10/23/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0624	09/09/09	12/07/09	CBI	(G) Open, non-dispersive (resin)	(G) Quaternized styrene polymer
P–09–0625	09/09/09	12/07/09	CBI	(G) Open non-dispersive polyurethane resin	(G) Aromatic isocyanate prepolymer
P–09–0626	09/09/09	12/07/09	CBI	(G) Wash water additive	(G) Modified urea polymer
P–09–0627	09/11/09	12/09/09	CBI	(G) Additive, open, non-dispersive use	(G) Polyethylene glycol dicarylate, modified
P–09–0628	09/14/09	12/12/09	CBI	(G) Crosslinking, coupling agent	(G) 1-substituted propane, 3-(triethoxysilyl)-, reaction products with polyethylene glycol monobranched tridecyl) ether
P–09–0629	09/14/09	12/12/09	Santolubes LLC	(S) This substance will be a raw material for a flame retardant product used in the plastics	(S) Bis(para-phenoxyphenyl)ether
P–09–0630	09/14/09	12/12/09	3M	(G) Surface treatment	(G) Silane derivative
P–09–0631	09/14/09	12/12/09	CBI	(S) Flame retardant for molded electrical devices	(G) Bromodiohenylethane
P–09–0632	09/15/09	12/13/09	FRX Polymers, Inc.	(G) FRX 100 is a non-halogenated polyphosphonate flame retardant polymer that addresses the need to replace the current commercial bromine-containing flame retardants that are being phased out due to environmental regulation. Flame retardants are required to meet fire safety standards in order to reduce flammability of combustible materials.	(G) Polyphosphonate
P–09–0633	09/15/09	12/13/09	Forbo Adhesives, LLC	(G) Hot melt adhesive	(G) Isocyanate functional polyester urethane polymer
P–09–0634	09/16/09	12/14/09	Fujifilm Hunt Chemicals USA	(S) Raw material (reactant) for production of intermediate for a photographic chemical	(S) Phenol, 4-(1,1-dimethylethyl)-2-nitro-*
P–09–0635	09/17/09	12/15/09	Umicore Precious Metals NJ, LLC	(G) Catalyst electronics application	(S) Platinum (2+), tetraammine-, (SP-4-1)-, acetate (1:2)
P–09–0636	09/18/09	12/16/09	Fujifilm Hunt Chemicals U.S.A., Inc.	(S) Isolation of intermediate in the production of substance P–03–840	(S) Benzenamine, 5-(1,1-dimethylethyl)-2-[(2-ethylhexyl)thio]-, 4-methylbenzenesulfonate (1:1)
P–09–0637	09/21/09	12/19/09	H.B. Fuller	(G) Industrial adhesive	(G) Polyester isocyanate polymer
P–09–0638	09/23/09	12/21/09	CBI	(G) Open, non-dispersive	(G) Polymer of glycidyl and anhydride esters
P–09–0639	09/21/09	12/19/09	CBI	(G) Dispersion additive for printing ink	(G) Alkyl substituted azo metal salt
P–09–0640	09/23/09	12/21/09	CBI	(G) Colorant for coatings	(G) Substituted 29*H*, 31*H*-phthalocyaninato metal complex
P–09–0641	09/23/09	12/21/09	CBI	(G) Intermediate for manufacture of colorant	(G) Substituted 29*H*, 31*H*-phthalocyaninato metal complex
P–09–0642	09/22/09	12/20/09	CBI	(G) Chemical intermediate	(G) Acrylate
P–09–0643	09/22/09	12/20/09	CBI	(G) Chemical intermediate	(G) Acrylate
P–09–0644	09/25/09	12/23/09	CBI	(G) Hard surface protector; open, non-dispersive use.	(G) Substituted alkyl phosphate ester
P–09–0645	09/25/09	12/23/09	CBI	(G) Hard surface protector; open, non-dispsersive use.	(G) Substituted alkyl phosphate ester,, ammonium salt
P–09–0646	09/28/09	12/26/09	CBI	(G) Urethane component	(G) Aromatic dicarboxylic acid, polymer with aliphatic diols and aliphatic dicarboxylic acid

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/7/09 TO 10/23/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0647	09/28/09	12/26/09	CBI	(S) Intermediate for polyurethane manufacture	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with glycidyl alkanoate, 4-oxopentanoic acid and trimethylolpropane
P–09–0648	09/28/09	12/26/09	CBI	(S) Binder for lacquers and coatings, mainly for wood and concrete	(G) Dimer fatty acid based polyester polyether polyurethane
P–09–0649	09/25/09	12/23/09	CBI	(G) Lubricant additive	(G) 2,5-furandione, polymer with alkene, alkyl ester, substituted imidazoline amide
P–09–0650	09/28/09	12/26/09	CBI	(S) Binder for wood floor lacquers	(G) Dimer fatty acid based polyester polyurethane
P–09–0651	09/29/09	12/27/09	CBI	(G) Automated dish washing, hard surface cleaning applications	(G) Polymer of acrylamido alkyl propane sulfonic acid sodium salt and vinylic copolymer
P–09–0652	09/29/09	12/27/09	CBI	(G) Intermediate for paint or cleaner additive for non-dispersive use	(G) Alkyl alkanol amine
P–09–0653	09/30/09	12/28/09	CBI	(G) Intermediate	(G) Alkyl-dihydro-dialkyl-benzoxazine
P–10–0001	10/01/09	12/29/09	Shin-ETSU Silicones of America, Inc.	(G) This material is used as reforming agent of the polycarbonate resin	(G) Modified siloxane
P–10–0002	10/06/09	01/03/10	Fbsciences, Inc.	(S) Active ingredient for plant nutrient enhancement; active ingredient plant growth regulator	(S) Definition: Active ingredient for plant nutrient enhancement; Active ingredient plant growth regulator. Soil organic mattter, alkaline extract
P–10–0003	10/06/09	01/03/10	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of by-products from distant lights
P–10–0004	10/06/09	01/03/10	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacturer of by-products from distant residues
P–10–0005	10/07/09	01/04/10	Southwest Nanotechnologies, Inc.	(S) Conductive coating using SWNT dispersion or SWNT ink; additive (SWNT powder) in resins/thermoplastics/elastomers for mechanical reinforcement; manufacture of sheet composites (buckypaper) using SWNT (no process information is available)	(S) Single-wall carbon nanotube
P–10–0006	10/08/09	01/05/10	CBI	(S) Base resin for ultraviolet light and electron beam curable formulation	(G) Aliphatic alcohol, polymer with 1,3-diisocyanatomethylbenzene and .alpha.-hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl), 2-hydroxypropyl methacrylate-blocked
P–10–0007	10/08/09	01/05/10	CBI	(G) Manufacturing intermediate	(G) Distillates (petroleum), light thermal cracked, reaction products with phenol, carboxylated, metal salts
P–10–0008	10/08/09	01/05/10	CBI	(G) Lubricant additive	(G) Distillates (petroleum), light thermal cracked, reaction products with phenol, carboxylated, metal salts
P–10–0009	10/08/09	01/05/10	CBI	(S) Reactive expoxide for use in producing reinforced composites (open/non-dispersive use)	(G) Diglycidylaniline
P–10–0010	10/01/09	12/29/09	CBI	(G) Component in inks	(G) Fatty acid, polymer with alkenyl alcohol, alkenedioic acid, rosin, vinyl monomer and phosphate, compound with alkanolamine
P–10–0011	10/01/09	12/29/09	CBI	(G) Component in pigment dispersions	(G) Amines, fatty alkyl, alkyoxylated, compounds with acrylates, vinyl monomers polymer with alkanolamine
P–10–0012	10/14/09	01/11/10	CBI	(G) Component in a polyurethane adhesive/sealant	(G) Polycarbonate polyurethane prepolymer
P–10–0013	10/14/09	01/11/10	CBI	(G) Highly dispersive use	(G) Manganese sulfonate derivative
P–10–0014	10/09/09	01/06/10	CBI	(G) Colorant raw material	(G) Quino[2,3-b]acridine-7, 14-dione, 2,9-dichloro-5, 12-dihydro[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-,sodium salt (1:1)
P–10–0015	10/15/09	01/12/10	CBI	(G) Fuel additive	(G) Anthraquinonedicarboximide, diamino-*N*-alkyl-
P–10–0016	10/19/09	01/16/10	Heucotech LTD./heubach	(S) Organic corrosion inhibitor/paint additive	(S) 1,2-benzenedicarboxylic acid, zinc salt (1:1)

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/7/09 TO 10/23/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–10–0017	10/20/09	01/17/10	CBC (America) Corporation	(G) Sealant application	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane, hydrogenated
P–10–0018	10/20/09	01/17/10	CBI	(G) Intermediate used on site for manufacture of odor neutralizer, contained use; odor reducing agent for use in consumer and commercial products	(G) Fatty acid ethoxylate
P–10–0019	10/20/09	01/17/10	CBI	(G) Odor reducing agent for use in consumer and commercial products	(G) Fatty acid ethoxylate
P–10–0020	10/21/09	01/18/10	Essential Industries	(S) Raw material for industrial coating	(G) Aliphatic polyurethane dispersion
P–10–0021	10/21/09	01/18/10	Forbo Adhesives, LLC	(G) Hot melt adhesive	(G) Isocyanate functional polyester urethane polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 63 NOTICES OF COMMENCEMENT FROM: 09/7/09 TO 10/23/09

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0126	09/22/09	09/17/09	(S) *L*-aspartic acid, *N,N′*-1,2-ethanediylbis-, compound with 2-aminoethanol
P–00–0152	09/22/09	09/17/08	(S) *L*-aspartic acid, *N,N′*-1,2-ethanediylbis-
P–03–0265	10/14/09	09/16/04	(G) Polymer of diethylenetriamine with polyepoxy functional polymers
P–03–0421	09/23/09	07/29/09	(S) 9-octadecenoic acid (9*Z*)-, bismuth(3+) salt
P–03–0719	09/15/09	09/04/09	(G) Isocyanate functional polyester polyether urethane polymer
P–04–0717	10/20/09	09/30/09	(G) Tetramethylammonium halo salt
P–04–0878	09/28/09	06/13/05	(G) Hydroxyl-terminated; aliphatic polycarbonate
P–06–0713	09/21/09	09/08/09	(S) *D*-glucopyranose, 6-*O*-(carboxymethyl)-, oligomeric, C_{10-16}-alkyl glycosides, sodium salts
P–07–0537	09/09/09	08/19/09	(G) Alkanenitrile, bis(cyanoalkyl)amino
P–07–0652	09/23/09	09/11/09	(S) Soybean oil, reaction products with diethanolamine and ethaneperoxoic acid
P–08–0152	10/19/09	09/13/09	(G) Glycol modified pen (polyethylene naphthalate) polyester
P–08–0287	09/28/09	05/20/09	(G) Hydrocarbylpolysilicate
P–08–0453	10/16/09	10/07/09	(G) Cationic polyether
P–08–0530	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0531	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0532	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0533	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0534	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0535	10/20/09	09/25/09	(G) Silicic acid ester polymer
P–08–0623	09/30/09	09/28/09	(S) 1,1-biphenyl, 3,3′,4,4′-tetramethyl
P–08–0686	10/08/09	07/24/09	(G) Polyurethane prepolymer for coatings
P–08–0697	10/20/09	10/06/09	(S) 2,5-furandione, telomer wth ethenylbenzene and (1-methylethyl)benzene, 2-phenylhydrazides
P–09–0001	09/18/09	09/07/09	(G) Hexanedioic acid, polymer with oxybis (propanol) and alkylpolyol
P–09–0026	10/19/09	10/08/09	(G) 2-(dimethylamino)ethyl methyl-2-propenoate, polymer with alkyl-substituted 2-methyl-2-propenoate and arylsubstituted methyl-2-propanoate,
P–09–0038	10/08/09	07/24/09	(G) Reaction product of aldehyde and cyclic amine
P–09–0077	09/22/09	08/20/09	(G) Alkylaminoalcohol
P–09–0078	09/22/09	08/24/09	(G) Alkylaminoalcohol
P–09–0085	10/14/09	09/24/09	(G) 1,3-propane diaminium-2-substituted,-hexaalkyl-,di halide
P–09–0145	09/08/09	08/18/09	(S) 2-propenoic acid, 2-methyl-, 1,1′-[(3-heptyl-4-pentyl-1,2-cyclohexanediyl)bis (9,1-nonanediyliminocarbonyloxy-2,1-ethanediyl)] ester
P–09–0145	09/08/09	08/18/09	(S) 2-propenoic acid, 2-methyl-, 2-[[[[9-[3(or 6)-heptyl-2-[9-[[(2oxiranyl methoxy)carbonyl]amino]nonyl]pentylcyclohexyl]nonyl]amino]carbonyl] oxy]ethyl ester
P–09–0145	09/08/09	08/18/09	(S) Carbamic acid, *N,N′*-[(3-heptyl-4-pentyl-1,2-cyclohexanediyl)di-9,1-nonanediyl]bis-, *C,C′*-bis(2-oxiranylmethyl) ester
P–09–0150	09/09/09	08/28/09	(S) Siloxanes and silicones, di-me, 3-(2-hydroxyphenyl)propyl group-terminated, polymers with bisphenol A diglycidly ether
P–09–0158	10/14/09	09/25/09	(G) Substituted carbomoncyles, polymer with alkanediols
P–09–0176	09/22/09	09/17/09	(G) Fluorinated copolymer
P–09–0208	09/15/09	08/21/09	(G) Mixture on *N*-methylated polyalkylenepolyamine
P–09–0216	10/08/09	09/20/09	(S) 1,3-dioxolan-2-one, 4-fluoro-

II. 63 NOTICES OF COMMENCEMENT FROM: 09/7/09 TO 10/23/09—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–09–0217	09/17/09	09/09/09	(G) Fatty acid ester
P–09–0222	10/02/09	09/18/09	(G) Isocyanate terminated urethane polymer
P–09–0223	10/02/09	09/18/09	(G) Isocyanate terminated urethane polymer
P–09–0225	10/02/09	09/21/09	(G) Isocyanate terminated urethane polymer
P–09–0226	10/02/09	09/21/09	(G) Isocyanate terminated urethane polymer
P–09–0227	10/02/09	09/22/09	(G) Isocyanate terminated urethane polymer
P–09–0230	10/07/09	08/08/09	(G) Rosin phenolies
P–09–0287	10/20/09	09/22/09	(G) Acrylic acid, alkyl ester, polymer with ethylene and vinyl carboxylate
P–09–0291	10/07/09	09/21/09	(G) Ammonium salt of fluoropropanoic acid
P–09–0338	09/18/09	08/25/09	(G) Acrylic co-polymer
P–09–0339	09/30/09	09/08/09	(G) Chlorinated rubber
P–09–0368	09/29/09	09/14/09	(G) Fluorochemical acrylate
P–09–0385	10/05/09	09/30/09	(S) Benzenepropanol, *B*-methyl-
P–09–0389	09/21/09	09/14/09	(S) Phenol, 4,4′-[(1,1,3,3-tetramethyl-1,3-disiloxanediyl)di-2,1-ethanediyl]bis-, 1,1′-diacetate
P–09–0401	09/17/09	09/09/09	(G) Hexanedioic acid, polymer with 1,2-ethanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, vinyl functionality blocked
P–09–0411	10/05/09	09/18/09	(S) 2-propenoic acid, 3-(5,5,6-trimethylbicyclo[2.2.1]hept-2-yl)cyclohexyl
P–09–0419	10/01/09	09/10/09	(G) Modified styrene maleic anhydride polymer
P–09–0424	09/30/09	09/23/09	(S) Siloxanes and silicones, di-me, bu group- and 3-[2-(3-carboxymethylene-1-oxopropoxy)ethoxy]propyl group-terminated
P–09–0425	09/28/09	09/18/09	(S) 2-propenoic acid, 2-methyl-, polymer with 2-propenamide and 2-propenenitrile
P–09–0436	10/02/09	09/24/09	(G) 2-propenoic acid, 2-methyl-, C_{12-15}-branched and linear alkyl esters, telomers with alkyl 2-[[(alkylthio)thioxomethyl]thio]-2-alkanoate, aminoalkyl methacrylate and alkyl methacrylate, tert-bu 2-ethylhexanoperoxoate-initiated
P–09–0441	10/09/09	09/24/09	(G) Blocked polyurethane prepolymer
P–09–0442	10/16/09	10/08/09	(G) Organomodified silanic hydrogen fluid
P–09–0443	10/16/09	10/08/09	(G) Modified silicone polyether copolymer
P–09–0452	10/20/09	10/10/09	(S) 13-decosen-1-amine, *N*, *N*-dimethyl-(13*Z*)-
P–09–0494	10/20/09	10/07/09	(G) Isocyanate polymer, amine blocked
P–09–0496	10/20/09	10/07/09	(G) Isocyanate polymer, amine blocked

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2009.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–27168 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8599–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)© of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.*

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090294, ERP No. D–AFS–L65579–OR, Off-Highway Vehicle (OHV) Management Plan, Including Forest Plan Amendment #17, Designation of Roads, Trails and Areas for OHV Use on Mt. Hood National Forest, Implementation, Clackamas, Hood River, Multnomah, and Wasco Counties, OR.

Summary: EPA expressed environmental concerns about impacts to water quality from sedimentation and the potential spread of invasive plants, and recommended the elimination of Off-Highway Vehicle routes with resource concerns. Rating EC2.

EIS No. 20090314, ERP No. D–FHW–F40450–IL, TIER 1—Elgin O'Hare—West Bypass Study, To Identify Multimodal Transportation Solutions, Cook and DuPage Counties, IL.

Summary: While EPA has no objections to this project, we asked conceptual mitigation for wetland losses be included in the Final EIS, and that detailed mitigation measures for wetlands, air quality and stormwater be developed in Tier 2. Rating LO.

Final EISs

EIS No. 20090322, ERP No. F–AFS–L65558–ID, Salmon-Challis National Forest (SCNF), Proposes Travel Planning and OHV Route Designation, Lemhi, Custer and Butte Counties, ID.

Summary: While EPA has no objection with the proposed action, we asked that the Forest Service further integrate water quality considerations into future travel management planning.

EIS No. 20090338, ERP No. F–AFS–L65574–OR, Big Summit Allotment Management Plan, Proposes to Reauthorize Cattle Term Grazing Permits, Construct Range Improvements, and Restore Riparian Vegetation on Five Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR.

Summary: EPA does not object to the proposed action.

Dated: November 9, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–27311 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0008; FRL–8798–8]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Full Committee will hold a 2–day meeting, beginning on December 7, 2009, and ending December 8, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 7, 2009 from 8:30 a.m. to 5 p.m., and 8:30 a.m to 12 noon on Tuesday, December 8, 2009.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561 fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; e-mail address: *grierstaytonaapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

Topics may include but are not limited to:

1. Regional Reports.
2. EPA Policy which Reduces Pesticide Pollution and Waste – torn bags, leaking containers.
3. POM/EQI WC Reports.
4. NPDES Permits.
5. OPP Incident Workgroup Progress Report.
6. Bed Bug Forum - Follow-up - Section 18, Section 3 labels.
7. OECA/OPP Updates.
8. WDL Survey Results.
9. Issue Papers Discussion.
10. Drift Labeling.
11. Label Format Issue Paper.
12. Container/Containment - Container Issues DOT.
13. AAPSE Report.
14. TPPC Report.
15. Funding Issues Discussion setting priorities.
16. DFE Labels.

III. How Can I Request to Participate in this Meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: November 3, 2009.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. E9–27306 Filed 11–10–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8980–2]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Risk and Technology Review Methods Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Risk and Technology Review (RTR) Methods Review Panel to discuss its draft advisory report.

DATES: The public teleconference will be held on December 3, 2009 from 12:30 p.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 343–9977; fax (202) 233–0643; or via e-mail at: *shallal.suhair@epa.gov.* General information about the EPA SAB, as well as any updates concerning the teleconference announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab* .

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB RTR Methods Review Panel will hold a public teleconference to discuss its draft advisory report. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Science Advisory Board (SAB) review their draft methodologies for conducting Risk and Technology Review assessments (RTR assessments) as required by the Clean Air Act. These assessments evaluate the effects of industrial emissions of hazardous air pollutants (HAPs) on public health and the environment. The proposed methodologies are demonstrated through the use of two case studies, (1) petroleum refineries and (2) Portland cement manufacturing facilities. The SAB RTR Methods Review Panel held a meeting on July 28–29, 2009 to review the EPA methodology and assessment document. A **Federal Register** notice dated June 10, 2009 (74 FR 27538) announced the meeting and provided background information on this advisory activity. Information on the process of forming the RTR Methods Review Panel was provided in a **Federal Register** notice dated January 31, 2008 (73 FR 5836–5838). The purpose of this upcoming teleconference is for the Panel to discuss its draft advisory report. Additional information about this advisory activity can be found on the SAB Web site at *http://www.epa.gov/sab.*

Availability of Meeting Materials: The teleconference agenda and other materials including the SAB Committee's draft report will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Dr. Shallal, DFO, in writing (preferably via e-mail) at the contact information noted above, by November 24, 2009 to be placed on the list of public speakers for the teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office no later than November 30, 2009 so that the information may be made available to the SAB Panel members for their consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 4, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–27169 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007-0536; FRL–8798–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective December 14, 2009. The Agency will consider a withdrawal request postmarked no later than December 14, 2009. Comments must be received on or before December 14, 2009.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before December 14, 2009.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0536, by one of the following methods:

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2007–0536. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide

registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
10163–274	Rubigan AS Turf and Ornamental	Fenarimol	All turf uses except golf course tees, greens, and fairways and turf in professional athletic stadia
10163–276	Rubigan Technical	Fenarimol	All turf uses except golf course tees, greens, and fairways and turf in professional athletic stadia
10163–290	Riverdale Patchwork	Fenarimol	All turf uses except golf course tees, greens, and fairways and turf in professional athletic stadia
10163–302	Fenarimol Technical	Fenarimol	All turf uses except golf course tees, greens, and fairways and turf in professional athletic stadia

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 14, 2009 to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366-5569

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Mary L. Waller using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than December 14, 2009.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 29, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–26926 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0803; FRL–8796–5]

Pseudomonas Fluorescens; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the United States Department of Interior's Bureau of Reclamation to use the pesticide Pseudomonas fluorescens CL145A (ATCC #55799) to treat dams, water distribution (e.g., canals, pipes and plumbing), water treatment, water pumping facilities, irrigation and power generation facilities infested with invasive quagga and zebra mussels and associated reservoirs, water holding marinas and watercraft, recreational facilities (e.g., beaches, boat launches), fish hatcheries and fish protection facilities (e.g., fish ladders and screens). The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0803, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0803. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; fax number: (703) 605–0781; e-mail address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).
• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The United States Department of Interior's Bureau of Reclamation has requested the Administrator to issue a quarantine exemption for the use of Pseudomonas fluorescens CL145A to treat dams, water distribution (e.g., canals, pipes and

plumbing), water treatment, water pumping facilities, irrigation and power generation facilities infested with invasive quagga and zebra mussels and associated reservoirs, water holding marinas and watercraft, recreational facilities (e.g., beaches, boat launches), fish hatcheries and fish protection facilities (e.g., fish ladders and screens). Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that mussel infestations are causing physical obstruction of flow in water conveyance systems, ranging from roughening to complete blockage. Intake structures such as pipes and screens are becoming clogged, reducing delivery capacities, pumping capabilities, and hydropower generation functions. Flow obstruction from mussel settlement at Reclamation facilities has caused a significant increase in the frequency of high temperature alarms in cooling systems, requiring shut-downs for maintenance. It is often necessary to replace plugged equipment to avoid lengthy interruptions in operations. Invasive mussels affect all submerged components, conduits and other structures such as trashracks, fish screens, raw water distribution systems for turbine cooling, fire suppression systems, water intakes (service, domestic, and irrigation), irrigation canals, gauging stations, weirs, gates, diffuser gratings, drains, and virtually all types of instrumentation in contact with raw water. Chemical degradation (corrosion) of infrastructure is also resulting from mussel fouling of metallic structures and equipment. These impacts are increasing both in degree and frequency. The ongoing proliferation and dispersion of mussel populations threatens to seriously impact Reclamation operations, resulting in the interruption of hydropower and water delivery at significant economic costs.

Method of Application: MOI 401 (the product containing Pseudomonas fluorescens CL145A) will be applied using standard aquatic pesticide application equipment and or similar equipment commonly used for chemical injection in drinking water treatment. This includes equipment such as sprayers, mixers, injection pumps and/or weighted hoses. The material will be contained and transported in totes or appropriate plastic chemical application barrels. Application will be flow of volume based. For enclosed and confined systems (i.e. canals, irrigation, and pipes), treated water flow rates and chemical injection pump flow rates can be measured by using flow meters and hand flow measurements. Turbidity measurements before and after application can be used as a surrogate to measure actual applied product.

Maximum Rate of Application: Up to 200 ppm for up to 24 hours per treatment.

Maximum Number of Applications: Maximum of 12 applications of MOI 401 end use product (84059-L) per site.

Maximum Amount of Pesticide to be Used: 60,000 kg active ingredient, which equals approximately 411,000 kg of end use product.

Maximum Volume to be Treated: Based on the maximum amount of pesticide to be used and the treatment rate of 200 mg a.i./L, the maximum volume of water that will be treated will be 1.67 acre-feet.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the quarantine exemption requested by the United States Department of Interior's Bureau of Reclamation.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 29, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–26822 Filed 11–10–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–046.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Maruba S.C.A. as a party to the agreement.

Agreement No.: 012037–002.

Title: Maersk Line/CMA CGM TA3 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would reduce the amount of space being chartered, extend the duration of the agreement, incorporate other miscellaneous modifications, change the name of the agreement, and restate the agreement.

Agreement No.: 201202–002.

Title: Oakland MTO Agreement.

Parties: Eagle Marine Services, Ltd.; Ports America Outer Harbor Terminal, LLC; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add SSA Terminals, LLC as a party to the agreement.

Agreement No.: 201203–002.

Title: Port of Oakland/Oakland Marine Terminal Operator Agreement.

Parties: Eagle Marine Services, Ltd.; Ports of America Outer Harbor Terminal, LLC; Port of Oakland; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add SSA Terminals, LLC as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: November 6, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–27188 Filed 11–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 09–05]

Application of Leonardo Ortiz for Admission To Practice Before the Federal Maritime Commission

Served: November 5, 2009.

By The Commission: Richard A. Lidinsky, Jr., *Chairman*, Joseph E. BRENNAN, and Rebecca F. DYE, *Commissioners*.

Order Denying Application of Leonardo Ortiz for Admission to Practice

By Order served July 30, 2009, the Commission directed Respondent Leonardo Ortiz to demonstrate that he is qualified to practice before the Commission as a non-lawyer, pursuant to 46 CFR 502.27 and 502.29. Despite two opportunities to be heard, Mr. Ortiz did not submit evidence or otherwise respond to the Commission's Order. Accordingly, the Commission upholds the Secretary's April 15, 2009 decision letter to Mr. Ortiz, and denies Mr. Ortiz certification to practice before the Commission.

Background

Mr. Ortiz filed an Application for Admission to Practice before the Commission on December 31, 2007, showing that he is self-employed and operating from his residence in Anderson, SC. Following discussions among FMC staff and further communications with Mr. Ortiz, the Secretary issued a decision letter on April 15, 2009, indicating the denial of Mr. Ortiz's application to practice before the Commission as a non-attorney. Among issues cited in the Secretary's decision letter for the determination are Respondent's lack of legal academic credentials and lack of relevant work experience demonstrating his qualifications to practice before the Commission.

In the decision letter, the Secretary informed Mr. Ortiz of his right to request a hearing within twenty days, pursuant to Rule 29 of the Commission's Rules of Practice and Procedure, 46 CFR 502.29. Mr. Ortiz timely requested a hearing on April 29, 2009.

Pursuant to Mr. Ortiz's request, the Commission duly served an Order directing applicant to show his qualifications to practice as a non-attorney before the Commission. The Secretary served such Order on Mr. Ortiz via Federal Express courier service on July 31, 2009. Mr. Ortiz signed a Federal Express receipt, evidencing his receipt of the Commission's Order. Notice of this proceeding also was published in the **Federal Register**. 74 FR 38627 (Aug. 4, 2009).

The Commission's Order designated Mr. Ortiz as a Respondent and directed him to file affidavits of fact and a memorandum of law no later than September 4, 2009. The Order designated the Commission's Bureau of Enforcement (BOE) as a party, and required BOE to submit rebuttal affidavits of fact and memoranda of law no later than October 5, 2009. Thereafter, Mr. Ortiz was permitted to file a reply brief no later than October 20, 2009.

BOE timely submitted its memorandum of law and factual case on October 5, 2009. BOE's case includes the verified statement of the Commission's Secretary, Karen V. Gregory, which describes the factual background of the Secretary's review of the subject application, along with the Secretary's decision letter issued to Mr. Ortiz on April 15, 2009. To date, Mr. Ortiz has not submitted evidence, any memoranda of law, or otherwise responded to the Commission's Order.

Discussion

The Secretary is authorized to approve or deny an application to practice before the Commission. 46 CFR 501.24(a). If the Secretary denies an application to practice before the Commission, written notice is given so that the applicant can request a hearing before the Commission. 46 CFR 502.29. At hearing, Mr. Ortiz has the burden of showing the applicant's qualifications. 46 CFR 502.155.

BOE cites the Secretary's decision letter as setting forth three major points which justify denying Mr. Ortiz admission to practice before the Commission: First, Mr. Ortiz is not a credentialed attorney because he does not have a license to practice law before any Federal, State or Territorial court. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Question 10); Decision Letter of April 15, 2009, at 1. Second, Mr. Ortiz lacks other credible proof of legal or academic education to justify his entitlement to practice before the Commission, inasmuch as the American Bar Association has not granted recognition to the British American School of Law, where Mr. Ortiz attended. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Questions 7 and 12a); Verified Statement of Karen V. Gregory at ¶ 7; and Decision Letter of April 15, 2009, at 1. Third, Mr. Ortiz's purported work experience assisting attorneys in criminal, contract, torts, and Federal administrative law is not sufficient to make him qualified to practice before the Commission. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Questions 8 and 12b); Verified Statement of Karen V. Gregory at ¶ 7; and Decision Letter of April 15, 2009, at 2. Likewise, possession of a U.S. Coast Guard Merchant Marine Master license does not establish the requisite basis to conclude that Mr. Ortiz has shown the necessary ''legal, technical or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission,'' 46 CFR 502.27(a)(1). See also BOE Memorandum of Law at 1–2; Decision Letter of April 15, 2009, at 1.

Although Mr. Ortiz submitted several recommendations with his application, it was determined that these letters lacked sufficient information or support as to his qualifications to be admitted to practice before the Commission. BOE Memorandum of Law at 1–2, and Decision Letter of April 15, 2009, at 2. The Secretary determined that such letters served only to provide evidence of Mr. Ortiz's good character. *Id.*

Despite adequate notice of the issues in the Decision Letter and notice of the September 4, 2009 deadline by which Mr. Ortiz should respond to the Order, Mr. Ortiz never submitted evidence, memoranda of law or affidavits to contest the Secretary's determinations.

As the Commission explained in *Revocation of License No. 016019N—Central Agency of Florida Inc.*, 31 S.R.R. 486 (FMC, 2008): ''It is a familiar rule of evidence that the party with control of information relevant to a disputed issue may be assigned the burden to provide such information or suffer an adverse inference for its failure to respond,'' 31 S.R.R. at 486–7, citing *Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Meritt—Submission of Materially False or Misleading Statements to the Federal Maritime Commission*, 29 S.R.R. 1408, 1412 (FMC 2003); *Adair* v. *Penn-Nordic Lines*, 26 S.R.R. 11, 15 (ALJ, 1991), citing *Alabama Power Co.* v. *FPC*, 511 F.2d 383, 391 (D.C. Cir., 1974). Of similar import, an applicant who fails to meet its burden of contesting allegations or evidence upon a disputed issue is deemed to have accepted the opposing party's allegations and evidence as true. *Revocation of License No. 016019N—Central Agency of Florida Inc., 31 S.R.R. at 487*; *Capitol Transportation, Inc.* v. *United States*, 612 F.2d 1312, 1318–

1319 (1st Cir. 1979); *Bermuda Container Line Ltd.* v. *SHG Int'l Sales Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 28 S.R.R. 312, 314 (I.D. 1998).

Having requested this hearing, Mr. Ortiz has, on two separate occasions, neglected his opportunity to respond to those issues specified in the Commission's Order. In view of the uncontested nature of BOE's case, the Commission validly may find that Mr. Ortiz is not qualified to practice before the Commission as a non-attorney, as provided by 46 CFR. 502.27. Accordingly, the Commission upholds the Secretary's Decision Letter of April 15, 2009 and hereby denies certification for Mr. Ortiz to practice before the Commission.

Conclusion

Therefore, it is ordered, that the Application of Leonardo Ortiz to practice before the Commission as a non-attorney is denied.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–27076 Filed 11–10–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

JMJ Logistics, Inc., 201 Sevilla Avenue, Coral Gables, FL 33134, Officer: Ernesto Del Riego, President (Qualifying Individual).

Advance Marine Shipping, 6505 Rusk, Houston, TX 77023, Gibson A. Oluyitan, Sole Proprietor.

SBC International Inc., 398 S. Lemon Creek Dr., Ste. #R, Walnut, CA 91789. Officer: Min Y. Zhu, CEO (Qualifying Individual).

Conquests International Freight LLC, 4452 NW 74 Avenue, Miami, FL 33166, Officer: Brian N. Contipelli, Manager, (Qualifying Individual).

Prana International Inc, 4842 SW 1144 Ct., Miami, FL 33175, Officer: Jorge Lacayo, President (Qualifying Individual).

Port Line Services LLC, 250 North Avenue East, Elizabeth, NJ 07201, Officer: Jose B. Jiminez, Member (Qualifying Individual).

Cuban Parcel Services, Corp., 11027 N.W. 122nd Street, Medley, FL 33178, Officers: Rolgues Rodriguez, Treasurer (Qualifying Individual). Ernesto Villa, President.

KSB Shipping & Logistics LLC, 2301 Trafalgar Square, Hillsborough, NJ 08844, Officer: Satish K. Sharma, Member (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Optim International Freight Services, Inc., 5733 Arbor Vitae Street, Ste. 101, Los Angeles, CA 90045, Officer: Dennis J. Liebregt, President (Qualifying Individual).

England Global Logistics USA, Inc. dba England Logistics, 11222 La Cienega Boulevard, Ste. 588, Inglewood, CA 90304, Officers: Jack H. Chen, Director (Qualifying Individual), Josh A. England, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applications

ASL Logistics USA, LLC, Skyline Tower, 10900 NE 4th Street, Ste. 2300, Bellevue, WA 98004, Officers: Jerry V. Garcia, Managing Partner (Qualifying Individual), Alicia S. Gilson, President.

Midnite Air Corp dba MNX, 300 N Oak Street, Inglewood, CA 90302, Officers: Sean T. Gallagher, Senior Cargo Officer (Qualifying Individual). Keith D. Storey, Chairman.

Allyn International Services, Inc., 13391 McGregor Boulevard, Fort Myers, FL 33919, Officer: Michael Smyers, Vice President, (Qualifying Individual).

Reindeer Forwarding, LLC, 5100 Charles Court, Zionsville, IN 46077, Officers: Bradley Willy, General Manager (Qualifying Individual), Timothy Donnar, CEO.

Dated: November 6, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–27191 Filed 11–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 002233NF.
Name: Pronto Cargo Corporation.
Address: 1530 NW 98th Court, Unit 103, Doral, FL 33172–2757.
Date Revoked: October 8, 2009.
Reason: Surrendered license voluntarily.

License Number: 021205NF.
Name: Selim Logistics System USA, Inc. dba Uni Global Logistics.
Address: 6492 New Albany Rd., Lisle, IL 60535.
Date Revoked: October 7, 2009.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–27190 Filed 11–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P1–09]

Petition of Hanjin Shipping Co., Ltd. for an Exemption From 46 CFR 530.10; Notice of Filing and Request for Comments

Served: November 6, 2009.

This is to provide notice of filing and to invite comments on or before November 16, 2009, with regard to the Petition described below.

Hanjin Shipping Co., Ltd. (Petitioner), has petitioned the Commission pursuant to 46 CFR 502.69 of the Commission's Rules of Practice and Procedure, for an exemption from the Commission's rules requiring individual service contract amendments, 46 CFR 530.10. Specifically, Petitioner requests that the Commission permit the submission of a ''universal notice'' to the Commission of its upcoming corporate reorganization in lieu of requiring individual service contract amendment filings with respect to more than 2,700 service contracts. Petitioner separately commits to provide each service contract shipper counter-party with electronic notice of this

corporate change and instructions on how to request preparation of a ''formal consent'' should one be required.

Effective December 1, 2009, Petitioner's shipping business will be transferred to a new affiliate company using the same name ''Hanjin Shipping Co., Ltd.'', operating with the same vessels, equipment and personnel. Petitioner states that, under Korean law, the current corporation and the new corporation remain jointly and severally liable for Hanjin's contracts, and that the current corporation guarantees the performance of the new corporation, including its service contracts. Petitioner concludes that the change in contract party is primarily administrative in nature, and will cause no prejudice to any shipper counter-party.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than November 16, 2009. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Robert B. Yoshitomi, Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street, 46th Floor, Los Angeles, CA 90013. A copy of the reply shall be submitted in electronic form (Microsoft Word) by e-mail to *Secretary@fmc.gov.*

The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Petitions.asp.* Replies filed in response to this petition also will be posted on the Commission's Web site at this location.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

Karen V. Gregory,

Secretary.

[FR Doc. E9–27192 Filed 11–10–09; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin PBS–2009–B2]

Federal Management Regulation; Redesignations of Federal Buildings

AGENCY: Public Buildings Service (P), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignations of six Federal buildings.

DATES: *Expiration Date:* This bulletin expires April 2010. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration, Public Buildings Service (P), *Attn:* Anthony E. Costa, 1800 F Street, NW., Washington, DC 20405; *e-mail: anthony.costa@gsa.gov*; *telephone:* (202) 501–1100.

Dated: October 30, 2009.

Paul F. Prouty,

Acting Administrator of General Services.

U.S. GENERAL SERVICES ADMINISTRATION

FMR BULLETIN PBS–2009–B2

REDESIGNATIONS OF FEDERAL BUILDINGS

TO: Heads of Federal Agencies

SUBJECT: Designations and Redesignations of Federal Buildings

1. *What is the purpose of this bulletin*? This bulletin announces the designations and redesignations of six Federal buildings.

2. *When does this bulletin expire*? This bulletin expires April 2010. However, the building designations and redesignations announced in this bulletin will remain in effect until canceled or superseded.

3. *Designations.* The names of the buildings being designated are as follows:

Ronald H. Brown United States, Mission to the United Nations Building, 799 United Nations Plaza, New York, NY 10017.

Ralph Regula Federal Building and United States Courthouse, 301–401 McKinley Avenue, SW., Canton, OH 44707.

4. *Redesignations.* The former and new names of the redesignated buildings are as follows:

Former name	New name
Federal Building and United States Courthouse, 306 East Main Street, Elizabeth City, NC 27909.	J. Herbert W. Small Federal Building and United States Courthouse, 306 East Main Street, Elizabeth City, NC 27909
United States Courthouse, 525 Magoffin Avenue, El Paso, TX 79901 ...	Albert Armendariz, Sr., United States Courthouse, 525 Magoffin Avenue, El Paso, TX 79901
Federal Building, 844 North Rush Street, Chicago, IL 60611	William O. Lipinski Federal Building, 844 North Rush Street, Chicago, IL 60611
United States Courthouse, 301 Simonton Street, Key West, FL 33040	Sidney M. Aronovitz United States Courthouse, 301 Simonton Street, Key West, FL 33040.

5. *Whom should we contact for further information regarding redesignation of these Federal buildings*? U.S. General Services Administration, Public Buildings Service (P), *Attn:* Anthony E. Costa, 1800 F Street, NW., Washington, DC 20405; *telephone number:* (202) 501–1100; *e-mail: anthony.costa@gsa.gov.*

Paul F. Prouty,

Acting Administrator of General Services.

[FR Doc. E9–27029 Filed 11–10–09; 8:45 am]

BILLING CODE 6820–23–P

GENERAL SERVICES ADMINISTRATION

Motor Vehicle Management; Cancellation of GSA Bulletin FMR B–12

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This notice announces the cancellation of GSA Federal Management (FMR) Bulletin B–12.

DATES: The cancellation of GSA FMR Bulletin B–12 is effective November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. James Vogelsinger, General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1764 or via e-mail at *james.vogelsinger@gsa.gov* Please cite FTR Bulletin B–12 cancellation notice.

SUPPLEMENTARY INFORMATION:

A. Background

GSA Bulletin FMR B–12 was signed on January 18, 2006, and became effective on May 25, 2006. The Bulletin provided a list of agencies for which GSA granted unlimited exemptions from the display of U.S. Government license plates and motor vehicle identification. 41 CFR part 102–34 was amended on March 20, 2009 (74 FR 11870). It revised the unlimited exemption from the requirement to display motor vehicle identification to exempt motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties. The change recognizes the need for protecting agency missions and occupant safety and reduces the administrative burden of processing exemptions while maintaining the objective that Federal motor vehicles are required to be conspicuously identified unless exempted (see 40 U.S.C. 609). Therefore, GSA is canceling this Bulletin as unlimited exemptions are covered in 41 CFR 102–34.175.

B. Procedures

Bulletins regarding motor vehicle management are located on the Internet at *http://www.gsa.gov/fmrbulletin* as Federal Management Regulation (FMR) bulletins.

Dated: November 4, 2009.

James Vogelsinger,

Director, Motor Vehicle Management Policy.

[FR Doc. E9–27163 Filed 11–10–09; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Advisory Council for Faith-based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council for Faith-based and Neighborhood Partnerships announces the following meetings:

Name: President's Advisory Council for Faith-based and Neighborhood Partnerships Council Meetings.

Times and Dates:

Tuesday, November 17th, 4 p.m. Eastern.
Tuesday, December 15th, 4 p.m. Eastern.
Tuesday, January 19th, 4 p.m. Eastern.

Place: Meetings will by conference call. Please RSVP to receive the call-in information.

Status: Open to the public, limited only by the space available. Conference call line will be available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith- based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Mara Vanderslice, 202–260–1931, *mara.vanderslice@hhs.gov.*

Supplementary Information: Please contact Mara Vanderslice for more information about how to join via conference call line.

Agenda: Topics to be discussed include deliberation on draft recommendations for Council report.

Dated: November 1, 2009.

Mara Vanderslice,

Special Assistant.

[FR Doc. E9–27097 Filed 11–10–09; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Simpler Is Better: The Production of Young Cell Cultures From Tumor Infiltrating Lymphocytes (TIL) Yields More Effective Adoptive Cell Transfer (ACT) Immunotherapies

Description of Technology: Available for licensing is an improved method of adoptive cell transfer (ACT) immunotherapy that can be utilized to treat a variety of infectious diseases and cancers, most notably melanoma.

At its foundation, ACT involves isolating lymphocytes with high affinity for a particular antigen, expanding those cells *in vitro* to produce a greater quantity of reactive cells, and infusing the product cells into patients to attack cells expressing the antigen, such as tumor cells, bacterial cells, or viral particles. Previously utilized ACT procedures have been plagued by technical, regulatory, and logistical problems that have prevented consistently successful clinical outcomes. Through years of research, scientists at the National Institutes of Health (NIH) have made great strides in developing ACT into a viable approach to treat cancer patients. Of note, the ACT protocols developed by NIH scientists have successfully treated patients with refractory metastatic melanoma who started with very few effective treatment options. These NIH scientists have found that isolating cells from the tumor infiltrating lymphocytes (TIL) of a patient tumor sample provides a suitable initial lymphocyte culture for further *in vitro* manipulations. They have also discovered that taking the isolated cells through one cycle of rapid expansion (including exposure to IL–2), rather than multiple cycles, yields lymphocyte cultures with higher affinity and longer persistence in patients. Also, they have found that administering nonmyeloablative lymphodepleting chemotherapy prior to the reinfusion of lymphocytes creates a more favorable environment within patients for the transferred cells to execute target cell killing. These scientists envision that, for an ACT immunotherapy to gain regulatory approval and successfully treat a wide array of patients, it will need to be rapid, reliable, and technically simple. One of the most critical factors to this approach is the generation of effective lymphocyte cultures that will rapidly and repeatedly attack the target cells when infused into patients.

Scientists at the NIH have developed a method of generating CD8+ selected ''young'' lymphocyte cultures for infusion into cancer patients. Lymphocytes that spend fewer days *in vitro* between their initial isolation from TIL and their ultimate reinfusion into patients compared to lymphocytes cultured by previous ACT protocols are considered young lymphocyte cultures. Young lymphocytes, typically 19–35 days old when reinfused into patients, exhibit improved proliferation, survival, and enhanced anti-tumor activity within patients to yield greater tumor regression compared to older

lymphocytes, typically 44+ days old. Furthermore, the generation of young lymphocyte cultures is more rapid, reliable, and technically easier than previous ACT culturing methods. Young lymphocytes are isolated from TIL, directed against a single isolated tumor cell suspension, enriched for CD8 expression, and rapidly expanded once using autologous feeder cells without testing the culture for antigen specificity.

This approach to ACT offers a potentially significant improvement and a valuable new immunotherapeutic tool for attacking tumors many types of tumors. For diseases, such as metastatic melanoma, where patients may only have weeks or months of life expectancy, this technology, which provides for improved cell cultures prepared in less time, can make a difference between life and death. In addition, this method might be applicable in treating other diseases such as AIDS, immunodeficiency, or other autoimmunity for which immune effector cells can impact the clinical outcome.

Applications:

• An improved immunotherapy methodology to treat and/or prevent the recurrence of a variety of human cancers, such as melanomas and glioblastomas, infectious diseases, and autoimmune diseases by transferring young lymphocyte cultures engineered into cancer patients.

• A technically simpler, more rapid, more clinically reliable ACT procedure with greater potential to overcome the technical, regulatory, and logistical hurdles of past ACT methods. This technology could be broadly transferrable to a wide array of institutions to treat a wide array of patients.

• The immunotherapy component of a combination therapy regimen aimed at targeting the specific tumor-associated antigens expressed by the cancer cells of individual patients.

Advantages:

• *Technically simpler than previous ACT methods:* Decreased number of steps in the procedure and less analysis of the cell cultures prior to reinfusion into patients.

• *More rapid than previous ACT methods:* Adoptively transferred lymphocytes spend fewer days undergoing *in vitro* culturing, so they are introduced to patients with potentially short life expectancies more quickly.

• *Reliable, life-saving technology:* This technology is anticipated by the inventors to yield greater tumor regression and more objective clinical responses in patients compared to previous ACT protocols and all previously attempted treatments for metastatic melanoma.

Development Status: This technology is being utilized in a clinical protocol for adoptive cell transfer. The technology is a critical component of the successful immunotherapy regimen being used by the inventors and other clinicians at the NCI. Patients enrolled in ACT protocols are expected to show enhanced tumor regression and more objective responses compared to results obtained with previous protocols.

Market: Cancer continues to be a medical and financial burden on U.S. public health. According to U.S. estimates, cancer is the second leading cause of death with over 565,000 deaths reported in 2008 and almost 1.5 million new cases were reported (excluding some skin cancers) in 2008. In 2007, the NIH estimated that the overall cost of cancer was $219.2 billion dollars and $89 billion went to direct medical costs. Despite our increasing knowledge of oncology and cancer treatment methods, the fight against cancer will continue to benefit from the development of new therapeutics aimed at treating individual patients.

Inventors: Mark E. Dudley and Steven A. Rosenberg (NCI).

Related Publications:

1. KQ Tran et al. Minimally cultured tumor-infiltrating lymphocytes display optimal characteristics for adoptive cell therapy. J Immunother. 2008 Oct;31(8):742–751.

2. SA Rosenberg and ME Dudley. Adoptive cell therapy for the treatment of patients with metastatic melanoma. Curr Opin Immunol. 2009 Apr;21(2):233–240

Patent Status: HHS Reference No. E–273–2009/0—U.S. Provisional Application No. 61/237,889 filed 28 Aug 2009

Related Technologies: HHS Reference No. E–275–2002/1—U.S. Patent Application No. 10/526,697 filed 05 May 2005 (foreign counterparts in Europe, Canada, and Australia)

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov*

Collaborative Research Opportunity: The Center for Cancer Research, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize cell and gene therapy technologies, and personalized medicines. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Treating Cancer With Anti-Angiogenic Chimeric Antigen Receptors

Description of Technology: Metastasis, the growth and spread of cancer from a localized tumor to other sites in the body, is promoted by the formation of new blood vessels through angiogenesis to ''feed'' the tumor. There is an urgent need to develop new therapeutic strategies that combine fewer side-effects and more specific anti-tumor activity in order to block cancer metastasis in patients. Adoptive immunotherapy is a promising new approach to cancer treatment that engineers an individual's innate and adaptive immune system to fight against specific diseases, including the spread of cancer.

Chimeric antigen receptors (CARs) are hybrid proteins consisting of the portion of an antibody that recognizes a tumor-associated antigen (TAA) fused to protein domains that signal to activate the CAR-expressing cell. Human cells that express CARs, most notably T cells, can recognize specific tumor antigens in an MHC-unrestricted manner with high reactivity. CARs are able to mediate an immune response that promotes robust tumor killing in targeted cells.

Scientists at the National Institutes of Health (NIH) have developed CARs with high affinity for the vascular endothelial growth factor receptor 2 (VEGFR2) (also known as kinase domain region (KDR) in humans and fetal liver kinase-1 (Flk-1) in mice) to utilize as an antiangiogenic tumor therapy. VEGFR2 is expressed on non-cancerous vascular endothelia cells, but is overexpressed on tumor endothelial cells in a variety of cancers, especially solid tumors. VEGFR2 overexpression promotes tumor vasculature, growth, and metastasis. The VEGFR2-specific CARs feature the antigen binding domain of the KDR–1121 or DC101 antibody, which recognize portions of the human and mouse VEGFR2, respectively. This antibody component is fused to the transmembrane and intracellular signaling domains of a T cell receptor (TCR). These CARs combine high affinity recognition of VEGFR2 provided by the antibody portion with the target cell killing activity of a cell expressing an activated TCR. Infusion of these VEGFR2-specific CARs into patients could prove to be a powerful new immunotherapeutic tool for blocking angiogenic cancer metastasis by killing VEGFR2+ tumor cells.

Applications:

• Immunotherapeutics to treat and/or prevent the reoccurrence of a variety of

human cancers that overexpress human VEGFR2 by introducing anti-VEGFR2 CAR expressing T cells into patients with metastatic cancer.

• A possible prophylactic therapy to prevent the spread of cancer in patients whose cancer is predicted to metastasize.

• A drug component of a combination immunotherapy regimen aimed at targeting the specific tumor-associated antigens expressed by cancer cells within individual patients.

Advantages:

• *This discovery is widely applicable to many different cancers:* VEGFR2 is overexpressed in many metastatic cancers that utilize angiogenesis to spread from their initial site of development. An immunotherapy protocol using anti-VEGFR2 CAR could treat a variety of cancer types.

• *Antiangiogenic tumor therapy is anticipated to generate fewer side-effects compared to other treatment approaches:* These CARs can be delivered directly to the bloodstream to gain easy access to the targeted tumor vascular endothelial cells with minimal effects to normal tissues. Furthermore, destroying tumor blood vessels could accelerate tumor cell death so that the therapy can be administered for a shorter period of time. A reduced therapeutic timeframe and minimal access to normal tissues should contribute to reduced side-effects and lowered toxicity for this treatment.

• *The technology is anticipated to be highly effective and killing metastatic cells:* Most angiogenic tumor epithelial cells are believed to overexpress VEGFR2 to a similar degree. Administering a therapeutically effective amount of anti-VEGFR2 CARs to patients may leave no or little tumor cells remaining with an opportunity to metastasize. Many current angiogenesis therapies do not kill tumors, but rather stabilize the tumor, so they require long periods of administration.

Development Status: This technology could soon be ready for clinical development since the inventors plan to initiate clinical trials using CAR engineered lymphocytes for adoptive immunotherapy of cancer.

Market: The Food and Drug Administration (FDA) has approved eight therapies with antiangiogenic properties, including Avastin®, Erbitux®, Vectibix®, Herceptin®, Tarceva®, Nexavar®, Sutent®, Torisel™, Velcade®, and Thalomid®. The majority of these drugs produced worldwide sales exceeding an estimated $500 million in 2007. The fight against cancer and its spread will continue to benefit from the development of new therapeutics aimed at treating individual patients.

Cancer continues to be a medical and financial burden on U.S. public health. Statistically, in the U.S. cancer is the second leading cause of death with over 565,000 deaths reported in 2008 and almost 1.5 million new cases were reported (excluding some skin cancers) in 2008, many with the potential to metastasize. In 2007, the NIH estimated that the overall cost of cancer was $219.2 billion dollars and $89 billion went to direct medical costs.

Inventors: Steven A. Rosenberg et al. (NCI).

Patent Status: HHS Reference No. E–205–2009/0—U.S. Provisional Application No. 61/247,625 filed 01 Oct 2009.

Related Technologies:

• E–045–2009/0—U.S. Provisional Application No. 61/154,080 filed 20 Feb 2009

• E–312–2007/1—PCT Application No. PCT/US2008/077333 filed 23 Sep 2008

• E–059–2007/2—PCT Application No. PCT/US2008/050841 filed 11 Jan 2008, which published as WO 2008/089053 on 24 Jul 2008

• E–304–2006/0—U.S. Provisional Patent Application No. 60/847,447 filed 26 Sep 2006; PCT Application No. PCT/US2007/079487 filed 26 Sep 2007, which published as WO 2008/039818 on 03 Apr 2008

• E–093–1995/0—PCT Application No. PCT/US1996/04143 filed 27 Mar 1996, which published as WO 1996/30516 on 03 Oct 1996

• E–093–1995/2—U.S. Non-Provisional Application No. 08/084,994 filed 02 Jul 1993

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 3, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–27199 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Method of Identifying Cdk5/p35 Modulators, and Possible Diagnostic or Therapeutic Uses for Neurodegenerative Diseases

Description of Invention: Cyclin-dependent kinase 5 (Cdk5) is a serine/threonine cyclin-dependent kinase that is highly expressed in the central nervous system and controls many biological processes that impact learning and memory, as well as pain and drug addiction. Studies have indicated that abnormal Cdk5 activity may be associated with the onset of neurodegenerative diseases, such as Alzheimer's disease, Parkinson's disease, and amyotrophic lateral sclerosis (ALS). The kinase activity of Cdk5 is turned on when it binds to one of the two proteins considered to be neuronal activators, p35 and p39.

Scientists at the NIH designed a cell-based assay to screen for p35 transcriptional regulators that work as upstream regulators of Cdk5. This technology may be useful for assessing the presence and risk of conditions associated with atypical Cdk5 kinase activity or for finding drug modulators that could be promising drug targets.

Applications:

• Diagnostic tool for assessing risk of conditions associated with abnormal Cdk5 kinase activity.

• Tool for screening Cdk5 modulators.

Development Status: Early stage.

Inventors: Ashok B. Kulkarni and Elias S. Utreras Puratich (NIDCR).

Patent Status: U.S. Provisional Application No. 61/198,246 filed 03 Nov 2008 (HHS Reference No. E–012–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Charlene Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research, Laboratory of Cell and Developmental Biology, Functional Genomics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact David W. Bradley, Ph.D. at 301–402–0540 or *bradleyda@nidcr.nih.gov* for more information.

A Phantom for Diffusion MRI: A Method of Enhancing Performance and Reliability

Description of Invention: The technology offered for licensing is in the field of Diffusion Magnetic Resonance Imaging (Diffusion MRI). Specifically, a novel imaging phantom is described and claimed. Such a phantom is specifically optimized for Diffusion MRI and is expected to enhance the performance and reliability of this now widespread imaging technology.

The phantom provided in this invention comprises a stable aqueous solution with a concentration of at least 30%, by weight, of a mixture of a high molecular-weight polymer or copolymer and a low molecular-weight polymer or copolymer, the aqueous solution having a resulting water diffusivity from about 2×10^{-4} mm^2/s to about 3×10^{-3} mm^2/s. Polyvinyl Pyrrolidone (PVP) is the polymer of choice used in this invention. The phantoms of this invention are uniquely stable, non-toxic, and transportable, and have shown to maintain constant water diffusivity after two years.

Applications: Combining a Diffusion MRI phantom with a resolution phantom would allow the same device to be used to calibrate an MR scanner's image quality and the accuracy and precision of its diffusion measurements. This would be useful particularly for Radiological QA and for use in assuring data quality in longitudinal and multi-subject studies.

Advantages:

• The imaging phantoms provided in the invention are optimized specifically for Diffusion MRI. They possess the following features and characteristics:

—Made of non-toxic, non-hazardous, non-flammable and easily transportable materials.

—Possess diffusivities similar to those of water in biological tissues, particular brain parenchyma.

—Possess stable diffusion properties over time. No appreciable change in water diffusivity was detectable after two years.

—Offers option to tailor diffusiveness of the phantoms to different applications by varying the ratios of the chemical components.

• In addition, the inventors established a procedure to make concentrated solutions (up to 80 wt% polymer content) from mixtures of different molecular weight polyvinyl pyrrolidone (PVP) polymer and/or vinylpyrrolidone-based copolymers in water in the presence of physiologically relevant ions and gadolinium-based MRI contrast agents. In general, preparation of homogeneous polymer solutions from hydrophilic glassy polymers with high solute content is problematic due to the inter- and intra-molecular interactions (*e.g.,* hydrogen bonds) leading to formation of entanglements and gelation. This discovery indicates that at certain PVP-water compositions the new preparation procedure gives rise to disengagement of polymer chains and considerably improves polymer solubility. Moreover, the addition of lower molecular weight PVP and/or vinylpyrrolidone-based copolymers decreases the intra molecular association among the polymer molecules without significantly affecting the diffusive and relaxation properties of the solvent (water) in the MRI phantom.

Development Status: The invention is fully developed.

Market:

• The market for medical imaging equipment industry is approximately $9.0 billion dollars now and has been growing by approximately 7.6% annually. MRI instrumentation constitutes a significant portion of this market.

• Diffusion MRI is now a mature technology that has received FDA approval; Diffusion MRI methods are ''made, used and sold'' by all major MRI manufacturers. The installed base of clinical scanners using Diffusion MRI methods, including DTI, must now be in the thousands, worldwide.

• Imaging phantoms are necessary components of any imaging system as they provide the means for the systems' standardization and quality control, and are thus a required components for their reliable performance. Commercial success of these phantoms described in the invention is therefore expected, in particular in view of the unique characteristics possessed by these phantoms as outlined above. Due to these properties they can be stored in a medical facility without special permits or requirements.

• The phantoms described in this invention could be sold with new MRI scanners supporting DTI and other diffusion MRI methods or for existing MRI scanners that support diffusion MRI applications. These phantoms could be used by MRI companies internally for product sequence testing and development as well as to ensure that MRI scanners shipped to users operate properly and to within ''specs'' following installation. The phantoms should be of interest to medical physicists, technicians and bioengineers charged with the responsibility of assuring quality and reproducibility in their routine and research scans.

Inventors: Ferenc Horkay, Carlo Pierpaoli, Peter Basser (NICHD).

Patent Status: U.S. Provisional Application No. 61/147,314 filed 26 Jan 2009 (HHS Reference No. E–249–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov*; John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The Eunice Kennedy Shriver National Institute of Child Health and Human Development's Section on Tissue Biophysics & Biomimetics (STBB) is seeking statements of capability or interest from outside parties who are interested in entering into a Collaborative Research and Development Agreement (CRADA) to develop and commercialize the Diffusion MRI Phantom described above. Please contact Alan Hubbs, Ph.D. at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Viral Inactivation Using Crosslinkers and Detergents

Description of Invention: The subject technology is a method of inactivating enveloped viruses by hydrophobic photoactivatable chemical crossing-linking compounds and detergent treatment. The inactivated viruses may be used as vaccines against the diseases caused by those viruses or as reagents in experimental procedures that require

inactivated viral particles. The compounds diffuse into the lipid bilayer of biological membranes and upon UV irradiation will bind to proteins and lipids in this domain, thereby inactivating fusion of enveloped viruses with their corresponding target cells. Furthermore, the selective binding of these chemical crosslinking agents to protein domains in the lipid bilayer may preserve the structural integrity and therefore immunogenicity of proteins on the exterior of the inactivated virus. The additional detergent step effectively eliminates the infectivity of any residual viral particles that are not adequately crosslinked.

Applications:

• Vaccines for enveloped viruses.

• Vaccine for Human Immunodeficiency Virus.

Advantages:

• Novel method of inactivating enveloped viruses.

• May maintain native conformational structures and viral epitopes for generating an effective immune response.

Development Status: In vitro data can be provided upon request.

Market: Vaccines.

Patent Status: International Patent Application PCT/US2009/000623 filed 30 Jan 2009 (HHS Reference No. E–331–2007/2–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of hydrophobic crosslinkers for their use in vaccine development. Interested collaborators are also invited to provide statements for proposed *in vitro* or *in vivo* studies using various enveloped viruses. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

New Derivative of Dextromethorphan for Use in Neuronal Therapy

Description of Invention: This invention describes a derivative of dextromethorphan, which is a non-competitive inhibitor of the nicotinic acetylcholine receptor. Dextromethorphan is an antitussive drug used as one of the active ingredients to prevent coughs in many over-the-counter cold and cough medicines. It has also found other uses in medicine, ranging from pain relief to psychological applications. The disclosed compound may display attractive properties compared to the closely related dextromethorphan or other drugs currently in use as non-competitive inhibitors of the nicotinic acetylcholine receptors, including extended receptor inhibition and reduced side effects.

The nicotine acetylcholine receptor is a ligand gated ion channel. These receptors specifically control rapid permeation of cations through the postsynaptic cell membrane, and are key targets in drug discovery for a number of diseases such as Alzheimer's and Parkinson's disease. This superfamily of receptor proteins is separated into the nicotinic receptor superfamily (muscular and neuronal nicotinic), the excitatory amino acid superfamily, and the ATP purinergic ligand gated ion channels, and they differ only in the number of transmembrane domains found in each subunit. This newly discovered derivative of dextromethorphan may have potential therapeutic use for several conditions involving these nicotinic acetylcholine receptors.

Advantages:

• Derivative of dextromethorphan may have superior properties on target receptors including increased selectivity, potency and receptor occupancy.

• Potential other therapeutic uses for the new compound.

Development Status: Early stage.

Inventors: Irving W. Wainer *et al.* (NIA).

Publication: K Jozwiak *et al.* Displacement and non-linear chromatographic techniques in the investigation of the interaction of noncompetitive inhibitors with an immobilized alpha3beta4 nicotinic acetylcholine receptor liquid chromatographic stationary phase. Anal Chem. 2002 Sep 15;74(18):4618–4624.

Patent Status: U.S. Patent Application No. 10/820,809 filed 09 Apr 2004, claiming priority to 11 Apr 2003 (HHS Reference No. E–158–2003/1–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, Ph.D.; 301–435–5474; *jeffreyja@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Clinical Investigation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a series of noncompetitive inhibitors of neuronal nicotinic acetylcholine receptors based upon the dextromethorphan and levomethorphan scaffolds including molecular modeling and synthesis of new derivatives, receptor binding and occupancy studies and non-competitive inhibition of nicotinic acetylcholine receptors subtypes and related ligand gated ion channels. Please contact Nicole Darack, Ph.D. at 301–435–3101 or *darackn@mail.nih.gov* for more information.

Methods and Compositions for the Diagnosis of Neuroendocrine Lung Cancer

Description of Invention: The technology relates to the use of cDNA microarrays to facilitate the identification of pulmonary neuroendocrine tumors. In order to identify molecular markers that could be used to classify pulmonary tumors, the inventors examined the gene expression profiles of clinical samples from patients with small cell lung cancer (SCLC), large cell neuroendocrine carcinoma (LCNEC), and typical carcinoma (TC) tumors by cDNA microarray analysis to detect hybridization between cDNA from tumor cells and DNA from a panel of 8,897 human genes. Gene expression was found to be nonrandom and to exhibit highly significant clustering that divided the tumors into their assigned World Health Organization (WHO) classification with 100% accuracy. The inventors concluded that pulmonary neuroendocrine tumors could be classified based on the genome-wide expression profile of the clinical samples without further manipulations.

Applications:

• Method to differentiate three types of pulmonary neuroendocrine tumors.

• Method to diagnose pulmonary neuroendocrine cancer.

• Neuroendocrine Microarray.

Advantages: Accurate, rapid, easy to use diagnostic to stratify patients according pulmonary tumors.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• Cancer is the second leading cause of death in United States and it will be responsible for an estimated 562,340 deaths.

• It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Curtis C. Harris et al. (NCI)

Publication: P He *et al.* Identification of carboxypeptidase E and gamma-glutamyl hydrolase as biomarkers for pulmonary neuroendocrine tumors by

cDNA microarray. Human Pathol. 2004 Oct;35(10):1196–1209.

Patent Status: U.S. Patent Application No. 10/533,459 filed 02 May 2005 (HHS Reference No. E–248–2002/0–US–04).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Immunotoxin Useful for Treatment of AIDS

Description of Invention: Human Immunodeficiency Virus (HIV) attacks and destroys T cells, leading to the development of Acquired Immunodeficiency Syndrome (AIDS) in patients. Although significant progress has been made treating patients with AIDS, an effective cure has yet to be identified. For example, highly active antiretroviral therapy (HAART) has shown dramatic reduction of viral replication while allowing recovery of the immune system in HIV patients. However, HAART does not directly kill HIV-infected T cells, allowing the virus to persist in the body and resume replication and infection of T cells after HAART is stopped. This ultimately results in a return to pre-treatment levels of viral replication and the persistence of the disease in patients.

The current technology concerns an invention that can be used to address this limitation of HAART. An immunotoxin has been created that targets a toxin (PE38) to the HIV-specific Envelope glycoprotein (gp120) that is displayed on the surface of T cells that have been infected with the HIV virus. The immunotoxin kills the HIV-infected T cells and other infected cell types that serve as a viral reservoirs during HAART, thereby reducing the ability of the virus to replicate and infect other cells after HAART is stopped. Recent data shows that the immunotoxin blocks the spread of HIV–1 *in vitro* and does not induce hepatotoxicity in rhesus monkeys, suggesting the procedure could be effective in human patients. By combining the immunotoxin with a treatment regimen such as HAART, it may be possible to significantly improve treatment of HIV infection.

Applications:

- Reduction of HIV–1 infected cell populations in patients to reduce viral reservoirs.
- Treatment of HIV infection in combination with therapeutic regimens such as HAART.

Advantages:

- Overcomes a limitation of current HIV therapies by specifically depleting infected cell reservoirs.
- Specific targeting of HIV-infected cells allows depletion of infected cells without affecting uninfected cells.
- Combination therapy combines inhibition of HIV replication and selective killing of infected cells that still persist.

Development Status: Preclinical stage of development.

Patent Status:

- US Patent Application 09/673,707 (HHS Reference No. E–201–1998/0–US–06), pending.
- European Patent 1085908 (HHS Reference No. E–201–1998/0–EP–05).

For more information, see:

- PE Kennedy et al. Anti-HIV–1 immunotoxin 3B3(Fv)-PE38: enhanced potency against clinical isolates in human PBMCs and macrophages, and negligible hepatotoxicity in macaques. J Leukoc Biol. 2006 Nov;80(5):1175–1182.
- TK Bera et al. Specific killing of HIV-infected lymphocytes by a recombinant immunotoxin directed against the HIV–1 envelope glycoprotein. Mol Med. 1998 Jun;4(6):384–391.

Inventors: Ira Pastan *et al.* (NCI)

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov*.

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 4, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–27196 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0508]

Guidance for Industry on Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments.'' The guidance document is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. 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 20850–3229, 301–796–4800, *Michele.Mital@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 21, 2009 (74 FR 54052), FDA announced the availability of a draft guidance document entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments.'' The agency considered received comments as it finalized this guidance. This guidance document is designed to assist domestic owners and operators with submitting tobacco product establishment registration and tobacco product listing information. Under section 905(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387e(b)), added by the

Tobacco Control Act, every person who owns or operates any domestic establishments engaged in the manufacture, preparation, compounding, or processing of a regulated tobacco product must register with FDA by December 31 of each year. Moreover, all registrants must at the time of registration file with FDA a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution, along with certain accompanying information, including all labeling (see section 905(i)(1) of the act, as added by the Tobacco Control Act).

FDA does not intend to enforce the requirement to submit registration and product listing information under section 905 of the act by December 31, 2009, provided that the submission is received by FDA on or before February 28, 2010. We recognize that the forms developed by FDA are new to industry, and so may require additional time to complete accurately. While electronic submission of registration and listing information is not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data management and submission. FDA does recognize, however, that electronic submission requires several additional steps, such as obtaining an Electronic Submissions Gateway account and becoming familiar with the eSubmitter electronic application. FDA therefore believes that this additional time for the first submission of this registration and listing information should result in submission of higher quality information.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments.'' 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. 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. Paperwork Reduction Act of 1995

This guidance contains information collection provisions 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 collection of information in this guidance was approved under OMB control number 0910–0650.

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: November 6, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27182 Filed 11–6–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (NExT).

Date: December 9, 2009.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: Bethesda Marriott—Pooks Hill, 5115 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–4291, *mroczkowskib@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27217 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 18, 2009, 3 p.m. to November 18, 2009, 10 p.m., Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC, 20036 which was published in the **Federal Register** on November 3, 2009, 74 FR 56855.

The starting time of the meeting on November 18, 2009 has been changed to 6 p.m. until adjournment at 10 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27216 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 4, 2009, 1 p.m. to 5:30 p.m. EST. December 5, 2009, 9 a.m. to 12:30 p.m. EST.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, December 4 from 1 p.m. to 5:30 p.m. (EST) and Friday, December 5 from 9 a.m. to 12:30 p.m. (EST). The public can join the meeting via audio conference call by dialing 1–888–323–2713 on December 4 & 5 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the December meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov.*

Dated: November 4, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–27158 Filed 11–10–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Member Conflict HIV/AIDS Related Small Business Grant Applications.

Date: December 2, 2009.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodegenerative Disorders.

Date: December 2, 2009.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301–435–1224, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodevelopment and Plasticity.

Date: December 3, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–007: ARRA AREA Grants Panel 06.

Date: December 4, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–OD–09–007: ARRA AREA Grants Panel 04.

Date: December 11, 2009,

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27212 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: December 11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27209 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: December 3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27208 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetic Analysis, Systems, and Diseases.

Date: November 16, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, *301–435–1038, remondid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of BSPH Member Conflict Applications and K24 Applications.

Date: November 17, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27207 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Spina Bifida.

Date: December 4, 2009.

Time: 11:15 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27198 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control (CDC) and Prevention—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 3 p.m.–4 p.m., November 23, 2009.

Place: Teleconference. To participate, please dial (866) 919–3560 and enter passcode 4168828 for access.

Status: Open to the public; teleconference access limited only by availability of telephone ports. The public is welcome to participate during the public comment period, which is tentatively scheduled from 3:30 p.m. to 3:45 p.m.

Purpose: The Ethics Subcommittee will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matter to be Discussed: Ethical guidance for ventilator distribution during a severe pandemic. This notice is being published less than 15 days prior to the meeting due to the public health emergency declared on April 26, 2009. There is a critical need for this subcommittee to deliberate and discuss urgent matters related to the H1N1 virus and be actively engaged in the national preparedness and response efforts as dictated by circumstances and events.

The agenda is subject to change as priorities dictate.

Contact Person For More Information: Drue Barrett, Ph.D., Designated Federal Officer, ACD, CDC—ES, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone: (404) 639–4690. E-mail: *dbarrett@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 5, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–27269 Filed 11–9–09; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 7–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27195 Filed 11–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–134; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–134, Affidavit of Support; OMB Control No. 1615–0014.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 11, 2010.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–134. Should USCIS decide to revise Form I–134 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–134.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0014 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The use of Form I–134 is necessary to determine if an applicant for an immigration benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 1 hour and 30 minutes (1.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the website at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: November 5, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–27136 Filed 11–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5318–FA–01]

Announcement of Funding Awards for the Indian Community Development Block Grant Recovery Act Program

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the American Recovery and Reinvestment Act of 2009 (''Recovery Act'') Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of the award recipients under the ICDBG Recovery Act Program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Deborah M. Lalancette, Office of Native Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The awards announced in this Notice were selected for funding in a competition announced in a NOFA posted on the Department's Recovery Act Web site on May 27, 2009 (*http://www.hud.gov/recovery*). Applications were scored and selected for funding based on the selection criteria in that notice and Area ONAP geographic jurisdictional competitions.

The amount appropriated in the Recovery Act to fund the ICDBG was $10,000,000. The allocations contained in the NOFA for the Area ONAP geographic jurisdictions were adjusted to meet Area Office needs as allowed for in the NOFA. The final adjusted allocations are as follows:

Eastern/Woodlands	$1,480,885
Southern Plains	1,738,957
Northern Plains	1,612,431
Southwest	2,635,925
Northwest	1,200,000
Alaska	1,331,802
Total	$10,000,000

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 19 awards made under the regional competitions in Appendix A to this document.

Dated: October 29, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

RECOVERY ACT INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS

Name of applicant	Amount funded	Activity funded	Project description
Alaska Region			
Akiachak Native Community, George Peter, President, P.O. Box 70, Akiachak, AK 99551, (907) 825–4626.	$299,215	Public Facility Infrastructure	Construct 1,025 feet of access road to Aanaq Subdivision.
Chilkoot Indian Association, Gregory Stuckey, Tribal Administrator, P.O. Box 490, Haines, AK 99827, (907) 766–2323.	432,587	Housing Rehabilitation	Inspection and rehabilitation of 20 homes.
Yakutat Tlingit Tribe, Victoria Demmert, President, P.O. Box 418, Yakutat, AK 99689, (907) 784–3238.	600,000	Public Facility	Construction of Community Center/Facility.

RECOVERY ACT INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Total for Alaska Region	1,331,802		
Eastern Woodlands Region			
Hannahville Indian Community, Kenneth Meshigaud, Tribal Chairperson, N14911 Hannahville B1 Road, Wilson, MI 49894, (906) 466–2932.	$434,456	Public Facilities Infrastructure	Deer Ridge Infrastructure & Utilities.
Keweenaw Bay Indian Community, Warren Swartz, Jr., President, 16429 Beartown Road, Baraga, MI 49908, (906) 353–6623.	600,000	Public Facility Community Center.	Early Childhood Education Center.
White Earth Band Reservation Tribal Council, Michael Triplett, Planner, 26246 Crane Road, White Earth, MN 56591, (218) 983–32485.	446,429	Public Facility	White Earth Rediscovery Replacement Center.
Total for Eastern Woodlands Region	1,480,885		
Northern Plains Region			
Confederated Salish and Kootenai Tribes, James Steele, Jr., Tribal Chairman, P.O. Box 278, Pablo, MT 59855, (406) 675–2700.	$412,431	Public Facility Infrastructure	Install 288 water meters.
Northern Cheyenne Tribal Housing Authority, Lafe Jaugen, Executive Director, P.O. Box 327, Lame Deer, MT 59043, (406) 477–6419.	600,000	Housing Rehabilitation	Rehabilitate 20 units.
Utah Paiute Housing Authority, Jessie Laggis, Executive Director, 665 North, 100 East, Cedar City, UT 84721, (435) 586–1122.	600,000	Housing Rehabilitation	Rehabilitate 18 units.
Total for Northern Plains Region	1,612,431		
Northwest Region			
Confederated Tribes of the Grand Ronde Community of Oregon, Cheryle Kennedy, Tribal Chairwoman, 9615 Grand Ronde Road, Grand Ronde, OR 97347, (503) 879–2250.	$600,000	Public Facilities and Improvements.	(1) Design and construction of a 1,900 sq. ft. addition to the Tribe's Health and Wellness Center. (2) Remodel the front desk and lab spaces of the existing Dental Clinic.
Quileute Housing Authority, Anna Parris, Executive Director, PO Box 159, LaPush, WA 98350, (360) 374–9719.	600,000	Housing Construction	Construct five accessible 2-bedroom homes.
Total for Northwest Region	1,200,000		
Southern Plains Region			
Ottawa Tribe of Oklahoma, Margie Ross, Tribal Administrator, 13 South 69A, Miami, OK 74354, (918) 540–1536.	$600,000	Housing Rehabilitation	Rehabilitate 17–25 low- and moderate-income, single-family, owner-occupied homes with energy efficient products.
Pawnee Nation of Oklahoma, George E. Howell, President, Pawnee Business Council, P.O. Box 470, 881 Little Dee Drive, Pawnee, OK 74058, (918) 762–3621.	600,000	Public Facilities & Improvement.	Access improvements to the current facility used by the elderly, handicapped and low- to moderate-income families who receive food through the Food Distribution Center. Improvements will include energy efficient technologies.
Seneca-Cayuga Tribe of Oklahoma, LeRoy Howard, Chief, R2301 E. Steve Owens Blvd., Miami, OK 74355, (918) 542–6609.	538,957	Public Facilities & Improvement.	Establishment of an auxiliary power source for Tribal Water/Wastewater Systems & Emergency Response Facilities.
Total for Southern Plains Region	1,738,957		
Southwest Region			
Bear River Band of Rohnerville Rancheria, Leonard Bowman, Tribal Chairperson, 27 Bear River Drive, Loleta, CA 95551, (707) 733–1900.	$600,000	Housing Construction	Construct three 3-bedroom homeownership units that include accessible features for disabled persons.
Laguna Housing Development & Management Enterprise, William Sommers, Executive Director, P.O. Box 178, Laguna, NM 87026, (505) 552–6430.	600,000	Housing Rehabilitation	Rehabilitate 15 homeownership units for elderly/disabled persons.

RECOVERY ACT INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Los Coyotes Band of Cahuilla and Cupeno Indians, Diane McHenry, Grant Writer, P.O. Box 189, Warner Springs, Ca 92806, (760) 432–666.	235,925	Housing Rehabilitation	Rehabilitate 13 homes for low- and moderate-income tribal members.
Ohkay Owingeh Housing Authority, Tomasita Duran, Executive Director, P.O. Box 1059, Ohkay Owingeh, NM 87566, (505) 852–0189.	600,000	Housing Rehabilitation	Rehabilitate 14 homes that are occupied by low- and moderate-income families located outside of the Pueblo's historic area.
Quechan Tribally Designated Housing Entity, Robert Letendre, Executive Director, 1860 West Sapphire Lane, Winterhaven CA 92283, (760) 572–0243.	600,000	Housing Rehabilitation	Rehabilitate 10 homeownership housing units in an old subdivision.
Total for Southwest Region	2,635,925		
Grand total	10,000,000		

[FR Doc. E9–27341 Filed 11–10–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5362–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2010

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes, for 2010, operating cost adjustment factors (OCAFs). OCAFs are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

DATES: *Effective Date:* February 11, 2010.

FOR FURTHER INFORMATION CONTACT: Charles Capone, Director, Office of Evaluation, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–402–3237 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals or adjustments under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted.

LIHPRHA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRHA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use.

Additionally, MAHRA gives HUD broad discretion in setting OCAFs—referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

HUD calculates the average, per unit, change in operating costs (excluding debt service and bad debt expense), by state, for all projects submitting consecutive valid financial statement reports with fiscal year end dates between July 31, 2007 and July 31, 2009. The projects comprise all multifamily properties excluding nursing homes and hospitals. Furthermore, data for projects with unusually high or low expenses due to unusual circumstances were deleted from the analysis. These changes in actual operating costs experienced by properties within HUD's portfolio have become the FY 2010 OCAFs.

OCAFs continue to be published at the state level. States are the lowest level of geographical aggregation at which there are enough projects to permit statistically reliable analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas. Finally, due to limited data, Puerto Rico data was used to generate OCAFs for the Virgin Islands.

The Department continues to reexamine the methodology for computing the operating cost adjustment factors so that they more closely mirror actual operating expenses. Future OCAF releases will likely include methodology improvements.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market Program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at

the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i), 12 U.S.C. 4112 (a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor, to be determined by HUD to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: October 15, 2009.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

OPERATING COST ADJUSTMENT FACTORS FOR 2010

[U.S. Average: 4.7%]

Alabama	4.5
Alaska	11.0
Arizona	4.3
Arkansas	5.3
California	4.3
Colorado	3.0
Connecticut	8.2
Delaware	5.7
District of Columbia	5.2
Florida	1.8
Georgia	5.7
Hawaii	7.5
Idaho	4.5
Illinois	4.6
Indiana	4.1
Iowa	6.0
Kansas	3.9
Kentucky	5.8
Louisiana	3.7
Maine	6.3

OPERATING COST ADJUSTMENT FACTORS FOR 2010—Continued

[U.S. Average: 4.7%]

Maryland	5.0
Massachusetts	5.6
Michigan	3.8
Minnesota	5.3
Mississippi	4.7
Missouri	3.9
Montana	3.2
Nebraska	2.3
Nevada	5.1
New Hampshire	5.7
New Jersey	5.5
New Mexico	6.4
New York	5.4
North Carolina	4.1
North Dakota	6.6
Ohio	5.4
Oklahoma	4.7
Oregon	3.2
Pacific Islands	7.5
Pennsylvania	4.1
Puerto Rico	4.6
Rhode Island	5.2
South Carolina	4.1
South Dakota	3.5
Tennessee	3.6
Texas	5.5
Utah	5.1
Vermont	4.1
Virgin Islands	4.6
Virginia	5.1
Washington	3.9
West Virginia	2.2
Wisconsin	7.1
Wyoming	7.1

[FR Doc. E9–27340 Filed 11–10–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5355–N–01]

Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009: Reallocations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On May 5, 2009, HUD posted on its Web site its ''Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009.'' The Notice advised the public of statutory and regulatory waivers granted to grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act), which made $1 billion in Community Development Block Grant (CDBG) funds available to states and local governments to carry out, on an expedited basis, eligible activities under the CDBG program. The May 5, 2009, Notice also indicated that HUD would establish and publish in the **Federal Register** criteria for reallocating and awarding CDBG–R funds that are not awarded to any eligible jurisdiction. Only one jurisdiction did not apply to receive its Recovery Act allocation. Today's Notice announces the process HUD will use to reallocate this assistance.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410; telephone number 202–708–3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Interested parties may also visit the CDBG–R Web page on HUD's Recovery Act Web site, *http://www.hud.gov/recovery/*, for updated information and resources.

SUPPLEMENTARY INFORMATION:

Authority To Provide Alternative Requirements and Grant Regulatory Waivers

Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–005, approved February 17, 2009) appropriates $1 billion to carry out the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*) on an expedited basis. These funds will be distributed to grantees that received CDBG funding in Fiscal Year (FY) 2008, in accordance with the provisions of 42 U.S.C. 5306. The grant program under Title XII is commonly referred to as the CDBG–R program. When referring to a provision of the appropriations statute itself, this notice will refer to the Recovery Act; when referring to the grants, grantees, assisted activities, and implementation rules, this notice will use the term CDBG–R.

Under the authority of the Recovery Act, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds

and would not be inconsistent with the overall purpose of the statute. The Secretary finds that the additional alternative requirement outlined below is necessary to expedite the use of these funds for their required purposes.

Formula: Reallocation

Section I.B of the May 5, 2009, Notice stated that if a unit of general local government, State, or Insular Area receiving an allocation of CDBG–R funds under that notice fails to submit a substantial amendment to its program year 2008 action plan for its grant allocation by the deadlines specified in Section II.A.4. of the Notice, or submits an application for less than the total allocation amount, or if HUD is unable to approve any entity's submission, HUD may notify the jurisdiction of the cancellation of all or part of its allocation amount. The Notice further states that once HUD determines the amount of funds (if any) that are not awarded to any jurisdictions, the Secretary will establish criteria by which to award such funds to other entities, and the criteria will be published in the **Federal Register.** The Notice indicated that these criteria will be established only if funds become available for reallocation.

Fairbanks, Alaska is the only grantee that declined to apply for its CDBG–R funding. Every other grantee submitted a substantial amendment to its action plan for its full allocation amount, and each is likely to be awarded its funds. Fairbanks was a grantee under the regular annual CDBG Entitlement program through Federal Fiscal Year (FFY) 2008, but starting in FY 2009, Fairbanks relinquished its status as an entitlement community in order to participate in the State of Alaska CDBG program. The City declined to apply for its CDBG–R funds in part because of the small amount of funds involved and in part because it is discontinuing its participation in the CDBG Entitlement program.

Fairbanks' formula allocation of CDBG–R funds was one of the 50 smallest allocations in the program (out of nearly 1,200). Its allocation amount was $67,436. The amount of CDBG–R funds that are available for reallocation is a tiny fraction of the CDBG–R funds distributed to states and local governments (less than .007 percent of the appropriation).

The Department has determined that it is necessary to employ an alternative reallocation process in order to expedite the timely use of these reallocated funds. Under 42 U.S.C. 5306(c), any unawarded CDBG Entitlement funds are to be reallocated in the next fiscal year to other metropolitan cities or counties in the same metropolitan area that would be adversely affected by the loss of the funds. If there is no such other city or county in that metropolitan area, as is the case with Fairbanks, the funds are to be reallocated in the next fiscal year among all Entitlement grantees nationwide. Under the existing provisions of 42 U.S.C. 5306(c), this money would be reallocated as part of the process for allocating the next fiscal year's appropriation of regular CDBG funding, sometime in FFY 2010.

Reallocating the small amount of funds involved to almost 1,200 Entitlement grantees according to the regular CDBG reallocation method would impose a substantial administrative burden on both HUD and grantees. Delaying the reallocation of these funds until the next FFY would also cut into the time the eventual recipient has to expend funds before the September 30, 2012, expenditure deadline. The Department has further determined that it would not be time- or cost-effective to develop a formal process and set of selection criteria for awarding these funds to other grantees on a competitive basis. Most CDBG–R grantees have just begun to implement their programs, and no meaningful data are yet available on which to judge the relative performance of grantees. HUD believes it would be inconsistent with the purposes and requirements of the Recovery Act to wait for performance data to become available before establishing a reallocation process. Such a delay would be counter to the Recovery Act's intent to produce an immediate economic stimulus.

Weighing the fact that the reallocated funds were designated for Fairbanks, Alaska, which has now ceased its participation in the Entitlement CDBG program to instead participate in the State program, the need for economic stimulus in Alaska, and the governmental interest in putting these funds to expeditious use, the Secretary finds good cause to waive the existing requirements in order to reallocate $67,436 in unawarded CDBG–R funds to the State of Alaska. This additional increment of funding equals less than 10 percent of the State of Alaska's initial allocation of CDBG–R funds.

Paperwork Reduction Act

The information collection requirements in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2506–0184. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this issuance in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: October 13, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9–27093 Filed 11–10–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14877–B2, F–14935–B2; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to NANA Regional Corporation, Inc., Successor in Interest to Koovukmeut Incorporated and Isingnakmeut Incorporated, notice of which was published in the **Federal Register** on September 15, 2009, 74 FR 47269, is modified to correct T. 18 N., R. 17 E., Kateel River Meridian to read T. 18 N., R. 7 E., Kateel River Meridian.

Notice of the modified decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal on the change made by the modified decision are:

1. Any party claiming a property interest which is adversely affected by the changes made by the modified decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the modified decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–27079 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19148–12, F–19148–15; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arctic Slope Regional Corporation. The lands are in the vicinity of Point Lay, Alaska, and are located in:

Umiat Meridian, Alaska

T. 1 S., R. 44 W.,
Secs. 19 to 23, inclusive;
Secs. 26 to 30, inclusive.
Containing approximately 2,461 acres.

T. 1 S., R. 45 W.,
Secs. 25 to 28, inclusive;
Secs. 32, 33, and 34.
Containing approximately 1,695 acres.

T. 2 S., R. 45 W.,
Secs. 4, 5, 8, and 9.
Containing approximately 940 acres.
Aggregating approximately 5,096 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at (907) 271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Burea of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–27081 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8096–03; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chugach Alaska Corporation. The lands are in the vicinity of Wernicke River, Icy Bay, Cleave Creek, Bremner River, and Tasnuna River, Alaska, and are located in:

Copper River Meridian, Alaska

T. 9 S., R. 2 E.,
Sec. 34.
Containing approximately 634 acres.

T. 12 S., R. 5 E.,
Secs. 2, 3, 10, and 11;
Secs. 14, 15, 22, and 23;
Secs. 25, 26, and 27;
Secs. 34, 35 and 36.
Containing approximately 6,916 acres.

T. 10 S., R. 6 E.,
Secs. 25 to 30, inclusive.
Containing approximately 3,817 acres.

T. 12 S., R. 6 E.,
Secs. 30 and 31.
Containing approximately 1,277 acres.

T. 10 S., R. 7 E.,
Secs. 11 to 14, inclusive;
Secs. 24 and 25.
Containing approximately 3,786 acres.

T. 21 S., R. 25 E.,
Secs. 16 to 19, inclusive.
Containing approximately 2,505 acres.
Aggregating of approximately 18,934 acres.

Notice of the decision will also be published four times in the Cordova Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–27084 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22467; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited for 143.65 acres located southeasterly of the Native village of Huslia, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–27086 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22789; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited for 10.44 acres located southeasterly of the Native village of Tanana, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the Department's Hearings and Appeals Procedures (43 CFR part 4, subpart E), shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–27082 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12466, AA–84417, AA–87834; LLAK965–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Russian Mission, Marshall, Goodnews Bay, and Platinum, Alaska, and are located in:

Seward Meridian, Alaska

T. 16 N., R. 32 W.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive.
Containing approximately 5,561 acres.

T. 11 N., R. 60 W.,
Secs. 7 and 8;
Secs. 17 to 20, inclusive.
Containing approximately 3,759 acres.

T. 11 N., R. 61 W.,
Secs. 1 and 2;
Secs. 9 to 16, inclusive;
Secs. 21 to 26, inclusive;
Secs. 35 and 36.
Containing approximately 11,520 acres.

T. 12 N., R. 61 W.,
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
Containing approximately 3,840 acres.

T. 23 N., R. 65 W.,
Secs. 29 to 33, inclusive.
Containing 3,153.40 acres.

T. 21 N., R. 67 W.,
Sec. 24.
Containing 640 acres.

T. 21 N., R. 68 W.,
Secs. 17 and 18.
Containing approximately 1,274 acres.

T. 10 S., R. 71 W.,
Secs. 5, 6, 8, 17, and 18.
Containing 3,106.15 acres.

T. 10 S., R. 72 W.,
Secs. 4, 5, 8, and 9;
Secs. 12 to 17, inclusive.
Containing 6,400 acres.

T. 14 S., R. 74 W.,
Sec. 31.
Containing 620.08 acres.
Aggregating approximately 39,873 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 14, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Charles Lovely,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. E9–27080 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Contra Loma Reservoir and Recreation Area, Resource Management Plan/ Environmental Impact Statement, Antioch, CA—Central Valley Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) and notice of a Stakeholders Workshop.

SUMMARY: The Bureau of Reclamation (Reclamation) is preparing a RMP/EIS for Contra Loma Reservoir and Recreation Area to establish uniform policy and land management guidelines that promote an organized use, development, and management of the Contra Loma Reservoir and the surrounding recreational area lands. The RMP/EIS shall be prepared to meet all Federal and Reclamation standards. These standards include consideration of appropriate Federal, state, and local laws and ordinances including the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Federal Water Project Recreation Act, and the Reclamation Recreation Management Act, as applicable. Reclamation will conduct a workshop for the benefit of the various Stakeholders. The purpose of the workshop is to provide the Stakeholders information relative to Reclamation uniform policies, including land management guidelines that promote use, management, and development, of the Contra Loma Reservoir and the surrounding recreational area lands. A public scoping meeting will be announced at a later date for the purpose of soliciting input on the alternatives, concerns, and issues to be addressed in the RMP/EIS.

DATES: A workshop will be held on December 9, 2009 from 12:30 p.m. to 2:30 p.m., in Antioch, California.

ADDRESSES: The workshop will be held at the Lone Tree Golf Course and Event Center, 4800 Golf Course Road, Antioch, California.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Carter, Land Use & Resource Planning Specialist, South-Central California Area Office, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721; (559) 487–5299.

SUPPLEMENTARY INFORMATION: The RMP/ EIS is to guide future land resources management to ensure land and waters of the United States are maintained and protected as provided for under the authorizing purposes over a given period of time. This process is intended to establish uniform policy and land management guidelines that promote an organized use, development, and management of the Contra Loma Reservoir and the surrounding recreational area lands. These areas will be compatible with scenic surroundings and applicable Federal and State laws. An RMP incorporates into one document all the information pertinent to the future guidance of a management area and may serve as the basis for future resource decision making for the management area. The RMP is to chart the biological, physical, and social condition that Reclamation desires to see once all the RMP management actions have been implemented. In addition, the RMP provides sufficient detailed ways to efficiently and equitably provide recreational opportunities to meet public demand within its intended planning lifespan.

This RMP/EIS will be used to develop an integrated document that fulfills the requirements of an RMP and an EIS for the Contra Loma Reservoir and Recreation Area, Resource Management Plan/Environmental Impact Statement.

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

Dated: November 5, 2009.

Michael Chotkowski,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E9–27147 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Draft Revisions to 25 CFR Parts 81 & 82

AGENCY: Bureau of Indian Affairs.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings with Indian tribes reorganized under the Indian Reorganization Act (IRA) and the Oklahoma Indian Welfare Act, and other interested tribal leaders, to obtain oral and written comments concerning the potential revision of regulations at 25 CFR part 81, Tribal Reorganization under a Federal Statute, and 25 CFR part 82, Petitioning Procedures for Tribes Reorganized Under Federal Statute and Other Organized Tribes.

DATES: November 30—December 2, 2009, in Anchorage Alaska; January 12, 2010, in Brooks, California; January 14, 2010, in Pala, California; January 20, 2010, in Minneapolis, Minnesota; and January 26, 2010, in Oklahoma City, Oklahoma. See the **SUPPLEMENTARY INFORMATION** section of this notice for more details.

FOR FURTHER INFORMATION CONTACT: Elizabeth Colliflower, Tribal Relations Specialist, Division of Tribal Government Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC; Telephone (202) 513–7641; Fax (202) 501–0679.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, the BIA drafted revisions to 25 CFR part 81 and 25 CFR part 82 and held four consultation sessions. The BIA received comments and recommendations that are now in the

current draft version. The current draft version also:

• Incorporates the amendments made to section 16 of the IRA, 25 U.S.C. 476 (48 Stat. 984), as amended by the Act of November 1, 1988 (Pub. L. 100–581, 102 Stat. 2938), which established time frames within which the Secretary of the Interior must call and conduct Secretarial elections;

• Reflects the amendments made to section 17 of the IRA by the Act of May 24, 1990 (Pub. L. 101–301, 104 Stat. 207) under which additional tribes may petition for charter of incorporation and removes the requirement of a Secretarial election to ratify new charters;

• Reflects the addition of two new subsections to section 16 of the IRA by the Technical Corrections Act of 1994 (Pub. L. 103–363, 108 Stat. 707), which eliminates distinctions between Indians reorganized as historical tribes and those reorganized as communities of adult Indians;

• Includes language clarifying that an IRA tribe may amend its constitution to remove Secretarial approval of future amendments as indicated by the new subsection to Section 16 of the IRA with the enactment of the Native American Technical Corrections Act of 2004 (Pub. L. 106–179, 118 Stat. 453);

• Provides guidelines for the approval or disapproval of charters by the Secretary; and

• Corrects demonstrated weaknesses and clarifies confusing language in the existing regulations.

A consultation booklet containing the current draft version of the rule will be available for the meetings and will be distributed to federally recognized Indian tribes and BIA regional and agency offices.

II. Meeting Details

Tribal consultation meetings will be held at the following dates and locations:

Date	Location	Time
November 30–December 2, 2009	Egan Convention Center, 555 West 5th Avenue, Anchorage, Alaska; Telephone: (907) 263–2800.	9 a.m.–4:30 p.m. (Local Time).
January 12, 2010	Rumsey Rancheria, Cache Creek Casino & Resort, 14455 Highway 16, Brooks, California; Telephone: (888) 772–2243.	9 a.m.–4:30 p.m. (Local Time).
January 14, 2010	Pala Casino Resort & Spa, 11154 Hwy 76, Pala, California 92059; Telephone: (877) 946–7252.	9 a.m.–4:30 p.m. (Local Time).
January 20, 2010	Ramada Mall of America, 2300 East American Boulevard, Bloomington, Minnesota 55425–1228; Telephone: (952) 854–3411.	9 a.m.–4:30 p.m. (Local Time).
January 26, 2010	Embassy Suites Hotel, 1815 S. Meridian, Oklahoma City, Oklahoma 73108; Telephone: (405) 683–6000.	9 a.m.–4:30 p.m. (Local Time).

Dated: November 2, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–27181 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–WP–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ9120000.L12200000.AL00006100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on December 9, 2009, at the BLM Arizona State Office located at One North Central Avenue, Suite 800 in downtown Phoenix, from 8 a.m. until 4:30 p.m. Morning agenda items include: BLM State Director's update on statewide issues; update on BLM's Four-Tracks to Solar Energy Development in Arizona; update on BLM Scoping Process and Comments on the Development of the Environmental Impact Statement (EIS) on the Proposed Withdrawal of Mining in the Arizona Strip District; RAC questions on BLM District Managers' Reports; and reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on December 9, 2009, for any interested publics who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on December 9 will include review and discussion of the Recreation Enhancement Act (REA) Working Group Report, REA Working Group meeting schedule and future BLM/FS recreation fee proposals. The RRAC will not review any recreation fee proposals at this meeting.

DATES: *Effective Date:* December 9, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

Joanie Losacco,

Acting Arizona State Director.

[FR Doc. E9–27145 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold its next meeting in Miccosukee, Florida. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) on Indian children with disabilities.

DATES: The Advisory Board will meet on Monday, November 16, 2009, and Tuesday, November 17, 2009, from 8:15 a.m. to 4:30 p.m. Eastern Time.

ADDRESSES: The meetings will be held at the Miccosukee School, U.S. HWY 41 Mile Marker 70, P.O. Box 440021,

Tamiami Station, Miami, FL, 33144; telephone (305) 894–2364.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., P.O. Box 1088, Suite 332, Albuquerque, NM 87103; telephone (505) 563–5274.

SUPPLEMENTARY INFORMATION: The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Act of 2004 (Pub. L. 108–446). The meetings are open to the public.

The following items will be on the agenda:

- Advisory Board Ethics Training
- Advisory Board Orientation
- Advisory Board Priority Team Reports
- Report from Gloria Yepa, Supervisory Education Specialist, Bureau of Indian Education, Division of Performance and Accountability
- Public Comments (via conference call, November 16, 2009, meeting only*)
- Review of Advisory Board Annual Report—Dr. Billi Jo Kipp
- Setting Advisory Board Priorities for 2010–2011
- Advisory Board Advice and Recommendations
- Next Advisory Board meeting date and place

* During the November 16, 2009, meeting, time has been set aside for public comment via conference call from 1–1:30 p.m. Eastern Time. The call-in information is: Conference Number 1–888–387–8686, Passcode 4274201.

Dated: November 3, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–27179 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO0500.L58530000.ER0000; N–85687; 9–08807; TAS:14X5232)

Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Land, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 5.09 acres of public land in Clark County, Nevada. The City of North Las Vegas (City) proposes to use the land for a police substation, offices, and a yard site with related appurtenances.

DATE: Interested parties may submit written comments regarding the proposed lease and subsequent conveyance of the lands until December 28, 2009.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Cheryl G. Cote, (702) 515–5104.

SUPPLEMENTARY INFORMATION: The following described land in Clark County, Nevada, has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The parcel of land is located on the east side of Pecos Road approximately one-eighth mile north of the Pecos Road and Centennial Parkway intersection and is legally described as:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 19, portion of lot 19.

This description will be replaced by another lot designation on final approval of the official plat of survey. The area described contains 5.09 acres, more or less, in Clark County.

The City filed an R&PP application to develop the above described land as an offices and yard site. The proposed facilities consist of offices, a yard area, and related appurtenances for various City departments, such as police, parks and recreation, public works, and utilities. It will provide a critical hub for the City to provide essential maintenance, operations, and safety services to the public. Related facilities include a modular building, outdoor vehicle storage, public parking, utilities, landscaping, and an exterior chain link fence. Additional detailed information pertaining to this application, plan of development, and site plan is located in case file N–85687 at the Bureau of Land Management (BLM) Las Vegas Field Office at the address above.

The City is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act. The lease and subsequent conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest.

The lease and subsequent conveyance will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will be subject to the following terms, conditions and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;
3. Right-of-way N–54351 for fiber optic facilities purposes reserved to the U.S. Air Force, its successors and assigns, pursuant to section 507 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1767);
4. Valid existing rights;
5. Right-of-way N–42581 for a gas pipeline purposes granted to Kern River Gas Transmission Company, its successors and assigns, pursuant to section 501 of the Mineral Leasing Act of 1920 (30 U.S.C. 185);
6. Rights-of-way N–42592 and N–82352 for power line purposes granted to Nevada Power Company, its successors or assigns, pursuant to section 501 of FLPMA (43 U.S.C. 1761);
7. Right-of-way N–61878 for water pipeline purposes granted to Southern Nevada Water Authority, its successors and assigns, pursuant to section 501 of FLPMA (43 U.S.C. 1761);
8. Rights-of-way N–76342 and N–7634201 for fiber optic facility and work area purposes, respectively, granted to Nevada Power Company, its successors and assigns, pursuant to section 501 of FLPMA (43 U.S.C. 1761); and
9. An appropriate indemnification clause protecting the United States from claims arising out of lessee's/patentee's use, occupancy, or operations on the leased/patented real property.

Upon publication of this notice in the **Federal Register,** the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in

reaching the decision to lease and subsequently convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

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 may 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. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

In the absence of any adverse comments, the decision will become effective January 11, 2010. The lands will not be available for lease or subsequent conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Kimber Liebhauser,

Assistant Field Manager, Division of Lands.

[FR Doc. E9–27089 Filed 11–10–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29719), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC § 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 3, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–27194 Filed 11–10–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29719), Noramco Inc., Division of Ortho-McNeil, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tapentadol (9780), a basic class of controlled substance listed in schedule II.

The company plans to bulk manufacture the above listed controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 3, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–27180 Filed 11–10–09; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19599), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the

company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 3, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–27193 Filed 11–10–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,438]

Chrysler LLC, St. Louis South Assembly Division, Including On-Site Leased Workers From Haas TCM, Inc. and Robinson Solutions, Fenton, MO; 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 14, 2007, applicable to workers of Chrysler LLC, St. Louis South Assembly Division, Fenton, Missouri. The notice was published in the **Federal Register** on December 31, 2007 (72 FR 74343). The notice was amended November 18, 2008 to include on-site leased workers from Haas TCM, INC. The notice was published in the **Federal Register** on December 1, 2008 (73 FR 72848).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers assemble Chrysler Town and Country mini-van, and the Dodge Grand Caravan mini-van.

New information shows that leased workers from Robinson Solutions were employed on-site at the Fenton, Missouri location of Chrysler LLC, St. Louis South Assembly Division. The Department has determined that these workers were sufficiently under the control of Chrysler LLC, St. Louis South Assembly Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Robinson Solutions working on-site at the Fenton, Missouri location of the subject firm.

The intent of the Department's certification is to include all workers employed at Chrysler LLC, St. Louis South Assembly Division, Fenton, Missouri who were adversely affected by increased imports of Chrysler Town and Country mini-van and the Dodge Grand Caravan mini-van.

The amended notice applicable to TA–W–62,438 is hereby issued as follows:

All workers of Chrysler LLC, St. Louis South Assembly Division, including on-site leased workers from HAAS TCM, Inc. and Robinson Solutions, Fenton, Missouri, who became totally or partially separated from employment on or after November 7, 2006, through December 14, 2009, 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.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27100 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,086]

Ford Motor Company Product Development and Engineering Center Including On-Site Leased Workers From Roush Management LLC, Rapid Global Business Solutions, Inc., TAC Automotive, MSX, New Dimension Group, Kelly Services and TEK Systems, Dearborn, Michigan; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on August 8, 2007. The notice was published in the **Federal Register** on August 20, 2007 (72 FR 46515–46516). The Revised Determination on Reconsideration was amended on January 30, 2009, July 8, 2009 and August 26, 2009 to include on-site leased workers from Roush Management LLC, Rapid Global Businesses Solutions, Inc., TAC Automotive, MSX, New Dimension Group, and Kelly Services. The notices were published in the **Federal Register** on February 13, 2009 (74 FR 7269), July 14, 2009 (74 FR 34043) and September 22, 2009 (74 FR 48314–48315) respectively.

At the request of the State agency, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are in direct support of production of numerous assembly plants of Ford Motor Company whose workers were certified eligible to apply for adjustment assistance.

New information shows that workers leased workers from TEK Systems were employed on-site at the Dearborn, Michigan location of Ford Motor Company, Product Development Center. 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 revised determination to include workers leased from TEK Systems working on-site at the Dearborn, Michigan location of the subject firm.

The intent of the Department's certification is to include all workers employed at Ford Motor Company, Product Development and Engineering Center, Dearborn, Michigan who were adversely affected by increased imports.

The amended notice applicable to TA–W–60,086 is hereby issued as follows:

All workers of Ford Motor Company, Product Development and Engineering Center, including on-site leased workers from Roush Management LLC, Rapid Global Business Solutions, Inc., TAC Automotive, MSX, New Dimension Group, Kelly Services and TEK Systems, Dearborn, Michigan, who became totally or partially separated from employment on or after September 14, 2005, through August 8, 2009, 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 27th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27106 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,903]

JP Morgan Chase and Company, JP Morgan Investment Banking Global Corporate Financial Operations, New York, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 12, 2009, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on September 24, 2009. The Notice of Determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the finding that workers' separations or threat of separations was not related to an increase in imports or shift/acquisition of business research and clerical support operations to a foreign country.

In the request for reconsideration, the petitioner alleged that employment at the subject firm was negatively impacted by a shift in services from the subject firm to India. The petitioner also alleged that the services performed by workers of the subject firm were supplied to external customers.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27104 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,276]

Ecoquest Holdings Corporation, Greeneville, TN; 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, and Section 246 of the Trade Act of 1974 (26 USC 2813), as amended, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 1, 2009, applicable to workers of Ecoquest Holdings Corporation, Greeneville, Tennessee. The notice was published in the **Federal Register** on August 19, 2009 (74 FR 41932).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activity related to the production of air and water purification units.

Findings show that there was a previous certification, TA–W–60,799, issued on February 28, 2007, for the workers of the Greenville, Tennessee location of Ecoquest Holding Corporation. That certification expires February 28, 2009. To avoid an overlap in worker group coverage for the workers of the Greenville, Tennessee location of Ecoquest Holding Corporation, the certification is being amended to change the impact date from May 18, 2008 to March 1, 2009.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Ecoquest Holding Corporation who were adversely affected by a shift in production of air and water purification units to China.

The amended notice applicable to TA–W–70,276 is hereby issued as follows:

All workers of Ecoquest Holdings Corporation, Greeneville, Tennessee who became totally or partially separated from employment on or after March 1, 2009, through July 1, 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 in Washington, DC, this 27th day of October, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27103 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,045]

Victoria and Company, Ltd, a Division of Jones Apparel Group: Product Development Group, East Providence, RI; Determination Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

On October 22, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm.

The previous investigation initiated on May 18, 2009, resulted in a negative determination issued on September 10, 2009, and was based on the finding that imports of solid fragrance compacts did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioners supplied additional information and alleged that the workers of the subject firm also designed and fabricated jewelry master models and that the subject firm shifted these functions to China during the relevant period. The petitioners' intention was to file a request for reconsideration for workers engaged in design and fabrication of master models.

The Department contacted a company official of the subject firm to address this allegation. Upon further investigation, it was revealed that the workers of the subject firm not only manufactured solid fragrance compacts, but also performed technical design utilizing CAD systems and were engaged in model making and product coordination during the relevant period. These workers were Model Makers, Product Coordinators and Technical Designers and were employees of the Product Development Group. The workers were separately identifiable from other workers at the subject firm by job classification. The investigation further revealed that the subject firm shifted technical design, model making and product coordination functions to a third party located in Asia and that the

worker separations at the above mentioned department were directly attributed to this shift.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Victoria and Company, Ltd, a Division of Jones Apparel Group, Product Development Group, East Providence, Rhode Island, who are engaged in activities related to technical design, model making and product coordination meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19. U.S.C. 2273, I make the following certification:

Workers of Victoria and Company, Ltd, a Division of Jones Apparel Group, Product Development Group, East Providence, Rhode Island, who became totally or partially separated from employment on or after May 18, 2008, through two years from the date of this certification, 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 3rd day of November 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27102 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,052]

Chrysler LLC, St. Louis North Assembly Plant, Including On-Site Leased Workers From Haas TCM, Inc., Logistics Services, Inc., and Robinson Solutions, Fenton, MO; 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 April 14, 2008, applicable to workers of Chrysler LLC, St. Louis North Assembly Plant, Fenton, Missouri. The notice was published in the **Federal Register** on May 2, 2008 (73 FR 24317). The certification was amended on November 18, 2009 and December 9, 2009 to include on-site leased workers from HAAS TMC, Inc. and Logistics Services, Inc. The notices were published in the **Federal Register** on December 1, 2008 (73 FR 72848) and December 18, 2008 (73 FR 77069) respectively.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers assemble Dodge Ram full-sized pickup trucks.

New information shows that leased workers from Robinson Solutions were employed on-site at the Fenton, Missouri location of Chrysler LLC, St. Louis North Assembly Plant. The Department has determined that these workers were sufficiently under the control of Chrysler LLC, St. Louis North Assembly Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Robinson Solutions working on-site at the Fenton, Missouri location of the subject firm.

The intent of the Department's certification is to include all workers employed at Chrysler LLC, St. Louis North Assembly Plant, Fenton, Missouri who were adversely affected by increased imports of Dodge Ram full-sized pickup trucks.

The amended notice applicable to TA–W–63,052 is hereby issued as follows:

All workers of Chrysler LLC, St. Louis North Assembly Plant, including on-site leased workers from HAAS TCM, Inc., Logistics Services, Inc., and Robinson Solutions, Fenton, Missouri, who became totally or partially separated from employment on or after March 18, 2007, through April 14, 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 30th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27101 Filed 11–10–09; 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 November 23, 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 November 23, 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 3rd day of November 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions instituted between 10/19/09 and 10/23/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72609	Valeo Climate Control Corporation (Wkrs)	Auburn Hills, MI	10/19/09	10/16/09
72610	Brand Science, LLC (Comp)	Stearns, KY	10/19/09	10/16/09
72611	Ryder Systems, Inc. (Wkrs)	Auburn Hills, MI	10/19/09	10/15/09
72612	Pikotek (State)	Wheat Ridge, CO	10/19/09	10/16/09
72613	Bruckner Supply (Wkrs)	Glasgow, KY	10/19/09	10/16/09
72614	Parker-Hannifin Corporation (Portland Cylinder Division) (Wkrs).	Portland, OR	10/19/09	10/09/09
72615	International Thermal Systems (Wkrs)	West Milwaukee, WI	10/19/09	10/16/09
72616	Occupational Healthlab, Inc. (Comp)	Silver City, NM	10/19/09	10/15/09
72617	Bay Creek Mfg., Inc. (Comp)	Summersville, MO	10/19/09	10/16/09
72618	Baker Furniture (Wkrs)	Highpoint, NC	10/19/09	10/16/09
72619	ITW Shippers Paper Products (Wkrs)	Mt. Pleasant, TN	10/20/09	10/19/09
72620	Brand Science, LLC (Comp)	Dandridge, TN	10/20/09	10/19/09
72621	Agr International, Inc. (Comp)	Butler, PA	10/20/09	10/16/09
72622	Standard Steel Specialty Company (Union)	Beaver Falls, PA	10/20/09	10/19/09
72623	DELL (Other)	Miami, FL	10/20/09	10/16/09
72624	Impress USA (Union)	Weirton, WV	10/20/09	10/15/09
72625	Superior Sewing, Inc. (Comp)	Salem, AR	10/20/09	10/16/09
72626	Flextronics (Comp)	Durham, NC	10/20/09	10/19/09
72627	Millwork Distributors (One)	Oshkosh, WI	10/20/09	10/19/09
72628	BASF Corporation (Comp)	Belvidere, NJ	10/20/09	10/19/09
72629	Marmon/Keystone Corporation (Union)	Bolingbrook, IL	10/20/09	10/13/09
72630	Daedalus Technologies Inc. (Comp)	Kennesaw, GA	10/20/09	10/10/09
72631	Jin Feng Sewing Company, Inc. (Wkrs)	San Francisco, CA	10/20/09	10/12/09
72632	Modine Manufacturing Company (Wkrs)	Camdenton, MO	10/20/09	09/28/09
72633	H.B. Fuller (Wkrs)	Blue Ash, OH	10/21/09	10/15/09
72634	Cimarron Energy, Inc. (Wkrs)	Norman, OK	10/21/09	10/20/09
72635	ABB, Inc. (Comp)	Wickliffe, OH	10/21/09	10/20/09
72636	Dukes Titan Aviation, LLC (Comp)	Findlay, OH	10/21/09	10/20/09
72637	Lynn Ladder and Scaffolding Company (Comp)	Orwigsburg, PA	10/21/09	10/20/09
72638	AVX Corporation (Wkrs)	Myrtle Beach, SC	10/21/09	09/30/09
72639	Faurecia Seating (Comp)	Shelby Township, MI	10/21/09	10/20/09
72640	National Spinning Company, Inc. (Comp)	Washington, NC	10/21/09	10/20/09
72641	Chandler Lake, Inc. (Comp)	Ashland, ME	10/21/09	10/19/09
72642	Maui Process Technologies (Comp)	Makawao, HI	10/21/09	10/15/09
72643	Seagate Technology (Wkrs)	Scotts Valley, CA	10/21/09	05/29/09
72644	C&R Oilfield Service, Inc. (Comp)	San Angelo, TX	10/22/09	10/20/09
72645	Enterprise Tool and Die (Comp)	Grandville, MI	10/22/09	10/21/09
72646	Michigan Mechanical Services, Inc. (Comp)	Taylor, MI	10/22/09	10/21/09
72647	Graphic Packaging International, Inc. (Union)	Wellsburg, WV	10/22/09	10/21/09
72648	Fisher and Paykel Laundry Manufacturing, Inc. (Comp).	Clyde, OH	10/22/09	10/12/09
72649	Contech Castings, LLC (Wkrs)	Dowagiac, MI	10/22/09	10/19/09
72650	TI Group Automotive Systems (Comp)	Winchester, KY	10/22/09	10/21/09
72651	EDS an HP Company (Wkrs)	Vandalia, OH	10/22/09	09/22/09
72652	Legacy, Inc. (Wkrs)	Winston-Salem, NC	10/22/09	10/13/09
72653	Da-Tech Corporation (Wkrs)	Ivyland, PA	10/22/09	09/24/09
72654	Mt. Vernon Neon (State)	Mt. Vernon, IL	10/22/09	10/15/09
72655	Welco Lumber Company (Wkrs)	Naples, ID	10/23/09	10/22/09
72656	Chemtrade Logistics (Wkrs)	Kalama, WA	10/23/09	10/22/09
72657	Hilton Reservations and Customer Care—Hazleton (Wkrs).	Hazleton, PA	10/23/09	10/19/09
72658	The Hartford (Wkrs)	Charlotte, NC	10/23/09	10/22/09
72659	DTR Industries, Inc (Comp)	Bluffton, OH	10/23/09	10/22/09
72660	TECT Power (Wkrs)	Newinton, CT	10/23/09	10/19/09
72661	AirComp, LLC (Wkrs)	San Angelo, TX	10/23/09	10/22/09
72662	Monopanel Technologies (Wkrs)	West Allis, WI	10/23/09	10/22/09
72663	Mid-States Tool and Machine, Inc. (Comp)	Decatur, IN	10/23/09	10/22/09
72664	Bay Creek Manufacturing, Inc. (Comp)	Mountain View, MO	10/23/09	10/22/09

[FR Doc. E9–27105 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The authority of the ACVETEO is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO will conduct a business meeting on Tuesday, December 2, 2009 from 8:30 a.m. to 4 p.m., at the Madison Hotel, Montpelier room, 1177 Fifteenth Street, NW., Washington, DC 20005. The ACVETEO will discuss programs to assist veterans seeking employment and to raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Margaret Hill Watts at (202) 693–4744. Individuals needing special accommodations should notify Margaret Hill Watts at (202) 693–4744 by November 20, 2009.

Signed in Washington, DC, this 6th day of November 2009.

John M. McWilliam,

Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training Service.

[FR Doc. E9–27171 Filed 11–10–09; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION (NSF)

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Honorary Awards, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

Date and Time: Thursday, November 19, 2009 at 4 p.m.

Subject Matter: Discussion of candidates for the 2010 Vannevar Bush Award and 2010 National Science Board Public Service Award.

Status: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Jennifer Richards, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E9–27270 Filed 11–9–09; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Anh Bolles, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–0001, (202) 314–6355.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the National Transportation Safety Board:

The Honorable Christopher A. Hart, Vice Chairman, National Transportation Safety Board; PRB Chair.

The Honorable Robert L. Sumwalt, Member, National Transportation Safety Board.

Steven Goldberg, Chief Financial Officer, National Transportation Safety Board.

Sarah Bonilla, Director, Human Resources, Office of the Chief Human Capital Officer, Department of Energy.

Dr. John Cavolowsky, Director, Airspace Systems Program Office, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration.

Anthony P. Scardino, Acting Deputy Chief Financial Officer, Office of Chief Financial Officer, U.S. Department of Housing and Urban Development. (Alternate).

David L. Mayer, Managing Director, National Transportation Safety Board.

Dated: November 6, 2009.

Candi Bing,

Federal Register Coordinator.

[FR Doc. E9–27174 Filed 11–10–09; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0492]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–6008, ''Preparation of an Environmental Report to Support a Rulemaking Petition Seeking an Exemption for a Radionuclide-Containing Product.''

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6264 or e-mail *Catherine.Mattsen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''Preparation of an Environmental Report to Support a Rulemaking Petition Seeking an Exemption for a Radionuclide-Containing Product,'' is temporarily identified by its task number, DG–6008, which should be mentioned in all related correspondence. DG–6008 is proposed Revision 2 of Regulatory Guide 6.7, dated June 1976.

This guidance document provides general procedures for the preparation of environmental reports (ER), which are submitted to support a rulemaking petition for an exemption for a radionuclide-containing product, and it amends Revision 1 of Regulatory Guide 6.7 issued June 1976. Use of this regulatory guide will help to ensure the completeness of the information provided in the ER, assist staff of the U.S. Nuclear Regulatory Commission (NRC) and others in locating pertinent information, and facilitate the environmental review process. However, the NRC does not require conformance with the procedures, which are provided for guidance only.

II. Further Information

The NRC staff is soliciting comments on DG–6008. Comments may be accompanied by relevant information or supporting data and should mention DG–6008 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0492]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–6008 may be directed to the NRC contact, Catherine R. Mattsen at (301) 415–6264 or e-mail *Catherine.Mattsen@nrc.gov*.

Comments would be most helpful if received by January 8, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–6008 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML092170207.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

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Dated at Rockville, Maryland, this 4th day of November 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–27155 Filed 11–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–005; NRC–2009–0495]

Pennsylvania State University: Penn State Breazeale Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a renewed Facility Operating License No. R–2, to be held by Pennsylvania State University (PSU or the licensee), which would authorize continued operation of the Penn State Breazeale Reactor (PSBR), located in University Park, Centre County, Pennsylvania. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. R–2 for a period of twenty years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated December 6, 2005, as supplemented by letters dated October 31, 2008, and April 2, June 11, September 1, and October 21, 2009. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the PSBR to routinely provide teaching, research, and services to numerous institutions for a period of twenty years.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action to issue a renewed Facility Operating License No. R–2 to allow continued operation of the PSBR for a period of twenty years and concludes there is reasonable assurance that the PSBR will continue to operate safely for the additional period of time. The details of the NRC staff's safety evaluation will be

provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The PSBR is located on the main campus of PSU and is a part of the Radiation Science and Engineering Center. The reactor is housed in a multipurpose building constructed primarily of concrete, brick, steel, and aluminum which serves as a confinement. The reactor site comprises the reactor building and a small area immediately surrounding it, bounded by a chain-link fence. Adjacent to the site are athletic facilities to the north and west, fields and parking lots to the east, and academic and research buildings to the south. The nearest permanent residences are located approximately 360 meters (390 yards) from the site boundary. The nearest dormitories are located approximately 130 meters (120 yards) south of the reactor.

The PSBR is a pool-type, light water moderated and cooled research reactor licensed to operate at a steady-state power level of 1 megawatt thermal power (MW(t)). The reactor is also licensed to operate in a pulse mode. The fuel is located at the bottom of a polyurea-lined concrete pool with a volume of approximately 270,000 liters (71,000 gallons) and a depth of 7.3 meters (24 feet). The reactor is fueled with standard low-enriched uranium TRIGA fuel. A detailed description of the reactor can be found in the PSBR Safety Analysis Report (SAR). There have been no major modifications to the Facility Operating License since renewal of the license on January 27, 1986.

The licensee has not requested any changes to the facility design or operating conditions as part of the application for license renewal. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. As discussed in the NRC staff's safety evaluation, the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, there should be no increase in routine occupational or public radiation exposure as a result of license renewal. As discussed in the NRC staff's safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal should not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last five years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concluded that continued operation of the reactor should not have a significant environmental impact.

I. Radiological Impact

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are discharged by the facility exhaust system via vents located on the roof of the reactor building, at a volumetric flow rate of approximately 1.4 cubic meters per second (3000 cubic feet per second). Other release pathways do exist, however they are normally secured during reactor operation and have insignificant volumetric flow rates compared to the facility exhaust system. The only significant nuclide found in the gaseous effluent stream is Argon-41. The licensee performed measurements of Argon-41 production for conditions of low-power and high-power reactor operation. Licensee calculations, based on those measurements, indicate that annual Argon-41 releases result in an offsite concentration of 3.2E–10 microCuries per milliliter (±mCi/ml), which is below the limit of 1.0E–8 ±mCi/ml specified in 10 CFR 20, Appendix B for air effluent releases. The NRC staff performed an independent calculation and found the licensee's calculation to be reasonable. The licensee also performed measurements and calculations to estimate the potential release of tritium resulting from evaporation of the reactor pool water. The NRC staff performed independent calculations and found the licensee's calculations to be reasonable and the potential airborne tritium concentration to be a small fraction of the air effluent concentration limit specified in 10 CFR 20, Appendix B. Total gaseous radioactive releases reported to the NRC in the licensee's annual reports were less than four percent of the air effluent concentration limits set by 10 CFR 20, Appendix B. The potential radiation dose to a member of the general public resulting from this concentration is approximately 0.02 milliSieverts (mSv) (2 millirems (mrem)) and this demonstrates compliance with the dose limit of 1 mSv (100 mrem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the air emissions dose constraint of 0.1 mSv (10 mrem) specified in 10 CFR 20.1101(d).

The licensee disposes of liquid radioactive wastes by evaporation, discharge to the sanitary sewer, or transfer to the Radiation Protection Office (RPO) which is a part of the PSU Department of Environmental Health and Safety. Disposal by evaporation removes the liquid from the liquid radioactive waste, creating demineralized water and traces of solid radioactive waste that remain in the evaporator tank for decay. Discharge of liquid waste to the sanitary sewer requires the use of procedures and RPO approval to ensure that discharges meet the requirements of 10 CFR 20.2003 for disposal by release into sanitary sewerage. The licensee also transfers small quantities of liquid radioactive waste to the RPO for proper disposal under the University's broad scope byproduct material license. During the past five years, the licensee reported no routine releases of liquid radioactive waste by any of the disposal methods. One unplanned release occurred as a result of leakage of reactor pool water through the reactor pool liner to the earthen backfill surrounding the reactor pool. According to the licensee, the leakage resulted in the release of approximately 1.3 milliCuries of tritium, at a concentration of 2.8E–5 ±Ci/ml. This concentration is a fraction of the limit of 1E–3 ±Ci/ml specified in 10 CFR Part 20, Appendix B for liquid effluents. Offsite groundwater sampling conducted by the licensee showed no detectable elevation in tritium levels. The NRC inspection report related to the reactor pool leakage identified no findings of significance.

The RPO oversees the handling of solid low-level radioactive waste generated at the PSBR. The bulk of the waste consists of gloves, paper, plastic, and small pieces of metal. Upon removal from the facility by the RPO, the waste enters the campus-wide radioactive waste stream covered by the University's broad scope byproduct material license. The RPO disposes of the waste by decay in storage or shipment to a low level waste broker in accordance with all applicable regulations for transportation of radioactive materials. According to the licensee, no spent nuclear fuel has been shipped from the site to date. To comply with the Nuclear Waste Policy Act of

1982, PSU has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the PSBR and that DOE is obligated to take the fuel from the site for final disposition.

As described in Chapter 11 of the PSBR SAR, personnel exposures are well within the limits set by 10 CFR 20.1201, and as low as is reasonably achievable (ALARA). The RPO tracks personnel exposures, which are usually less than 0.5 mSv (50 mrem) per year. The PSU ALARA program requires the RPO to investigate any annual personnel exposures greater than 10 percent of the limit of 50 mSv (5000 mrem) specified in 10 CFR 20.1201. Personnel dosimeters mounted in the control room and reactor bay provide a quarterly measurement of total radiation exposures at those locations. These dosimeters typically measure annual doses of less than 0.5 mSv (50 mrem) in the control room and less than 2 mSv (200 mrem) in the reactor bay. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of PSBR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at four locations on the site boundary and at two control locations away from any direct influence from the reactor. The RPO administers the program and maintains the appropriate records. Over the past five years, the survey program indicated that radiation exposures at the monitoring locations were not significantly higher than those measured at the control locations. Year-to-year trends in exposures are consistent between monitoring locations. Also, no correlation exists between total annual reactor operation and annual exposures measured at the monitoring locations. Based on the NRC staff's review of the past five years of data, the NRC staff concludes that operation of the PSBR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents

Accident scenarios are discussed in Chapter 13 of the PSBR SAR. The maximum hypothetical accident (MHA) is the uncontrolled release of the gaseous fission products contained in the gap between the fuel and the fuel cladding in one fuel element to the reactor building and into the environment. The licensee conservatively calculated doses to facility personnel and the maximum potential dose to a member of the public. NRC staff performed independent calculations to verify that the doses represent conservative estimates for the MHA. Occupational doses resulting from this accident would be well below 10 CFR Part 20 limit of 50 mSv (5000 mrem). Maximum doses for members of the public resulting from this accident would be well below 10 CFR Part 20 limit of 1 mSv (100 mrem). The proposed action will not increase the probability or consequences of accidents.

II. Non-Radiological Impacts

The PSBR core is cooled by a light water primary system consisting of the reactor pool, a heat removal system, and a processing system. Cooling occurs by natural convection, with the heated coolant rising out of the core and into the bulk pool water. The large heat sink provided by the volume of primary coolant allows several hours of full-power operation without any secondary cooling. The heat removal system transfers heat to the secondary system via a 1–MW heat exchanger. The secondary system uses water pumped from the nearby Thompson Pond. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system, and ultimately the environment. The licensee conducts periodic leak tests of the heat exchanger to further reduce the likelihood of secondary system contamination.

Release of thermal effluents from the PSBR will not have a significant effect on the environment. A storm sewer returns the heated secondary coolant to Thompson Pond. According to the licensee, the University maintains and complies with the appropriate Pennsylvania Department of Environmental Protection permit for secondary water discharge, and no violations of the permit have occurred. Given that the proposed action does not involve any change in the operation of the reactor and the heat load dissipated to the environment, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act (NEPA) Considerations

NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898 Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

I. Endangered Species Act

The site occupied by the PSBR does not contain any Federally- or State-protected fauna or flora, nor do the PSBR effluents impact the critical habitats of any such fauna or flora.

II. Coastal Zone Management Act

The site occupied by the PSBR is not located within any managed coastal zones, nor do the PSBR effluents impact any managed coastal zones.

III. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists one historical site located on the PSU campus, the Ag Hill Complex. The location of the Ag Hill Complex is approximately 1 km (0.6 Miles) East of the PSBR. Given the distance between the facility and the Ag Hill Complex, continued operation of the PSBR will not impact any historical sites. In 1991, the PSBR received the American Nuclear Society Nuclear (ANS) Historic Landmark Award, commemorated by a plaque located at the site. Continued operation of the PSBR will not affect this historic designation. During a telephone conversation between the NRC staff and the licensee on October 2, 2009, the licensee stated that PSU has no plans to apply to have the PSBR listed in the NRHP. Additionally, the licensee stated that any modifications to the facility exterior must go through Campus Planning and Design in the PSU Office of Physical Plant. This provides assurance that any modifications would be made only after an appropriate review by the University. Based on this information, the NRC finds that the potential impacts of license renewal would have no adverse effect on historic and archaeological resources at PSBR.

IV. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

IV. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the PSBR. Such effects may include ecological, cultural, human health, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the PSBR, and all are exposed to the same health and environmental effects generated from activities at the PSBR.

Minority Populations in the Vicinity of the PSBR—According to 2000 census data, 4.3 percent of the population (approximately 634,000 individuals) residing within a 50-mile radius of PSBR identified themselves as minority individuals. The largest minority group was Black or African American (12,000 persons or 1.9 percent), followed by Asian (7,700 or 1.2 percent). According to the U.S. Census Bureau, about 9.4 percent of Centre County population identified themselves as minorities, with persons of Asian origin comprising the largest minority group (4.4 percent). According to census data 3-year average estimates for 2005–2007, the minority population of Centre County, as a percent of total population, had increased to 11.4 percent.

Low-Income Populations in the Vicinity of the PSBR—According to 2000 census data, approximately 13,000 families and 78,000 individuals (approximately 7.9 and 12.4 percent, respectively) residing within a 50-mile radius of the PSBR were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to Census data in the 2005–2007 American Community Survey 3-Year Estimates, the median household income for Pennsylvania was $47,913, while 11.9 percent of the state population was determined to be living below the Federal poverty threshold. Centre County had a lower median household income average ($42,976) and higher percentages (18.5 percent) of individuals living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the NRC staff concludes that the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the PSBR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC staff considered denial of the proposed action. If the Commission denied the application for license renewal, facility operations would end and decommissioning would be required. The NRC staff notes that, even with a renewed license, the PSBR will eventually require decommissioning, at which time the environmental effects of decommissioning will occur. Decommissioning will be conducted in accordance with an NRC-approved decommissioning plan which will require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce radioactive effluents. However, as previously discussed in this environmental assessment, radioactive effluents resulting from facility operations constitute only a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and denial of the application for license renewal are similar. In addition, denial of the application for license renewal would cause the benefits of teaching, research, and services provided by facility operation to be lost.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 23 to Facility Operating License No. R–2 for the Penn State Breazeale Reactor dated January 27, 1986, which renewed the Facility Operating License for a period of 20 years.

Agencies and Persons Consulted

In accordance with the agency's stated policy, on September 28, 2009, the staff consulted with the State Liaison Officer regarding the environmental impact of the proposed action. The consultation involved a thorough explanation of the environmental review, the details of this environmental assessment, and the NRC staff's findings. The State official stated the he understood the NRC review and had no comments regarding the proposed action. The State official did comment on the designation of the PSBR as an ANS Nuclear Historic Landmark. The comment was informational in nature and the NRC staff responded by including this information in this environmental assessment and noting that continued operation of the facility will not adversely impact the ANS Nuclear Historic Landmark designation.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 6, 2005 (ML091250487), as supplemented by letters dated October 31, 2008 (ML092650603); and April 2 (ML093030395), June 11 (ML092030312), September 1 (ML092580215), and October 21, 2009 (ML092990409). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of November 2009.

For the Nuclear Regulatory Commission.

Linh Tran,

Senior Project Manager, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27282 Filed 11–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0110]

Office of New Reactors; Final Interim Staff Guidance on Review of Evaluation To Address Adverse Flow Effects in Equipment Other Than Reactor Internals

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092890285). The purpose of this ISG is to modify and provide additional clarity in the guidance for the review of analyses of adverse flow effects in equipment other than reactor internals performed by combined license (COL) and design certification (DC) applicants. This ISG would revise the staff guidance previously issued in March 2007 in the Standard Review Plan (SRP) NUREG 0080, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Section 3.9.2, ''Dynamic Testing and Analysis of Systems, Structures, and Components,'' Section 3.9.5, ''Reactor Pressure Vessel Internals,'' and Regulatory Guide 1.20, ''Comprehensive Vibration Assessment Program for Reactor Internals During Pre-Operational and Initial Startup Testing.'' The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISG–010 into the next revision of the SRP and related guidance documents.

Disposition: On March 9, 2009, the NRC staff issued the proposed DC/COL–ISG–010 on ''Disposition of Review of Evaluation to Address Adverse Flow Effects in Equipment Other than Reactor Internals,'' ADAMS Accession No. ML090510728. There were no comments received on the proposed ISG. Therefore, the guidance is issued as final with only minor editorial changes to the proposed notification as above.

ADDRESSES: The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Dixon-Herrity, Chief, Engineering Mechanics Branch 2, Division of Engineering, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–2967 or by e-mail at *jennifer.dixon-herrity@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 3rd day of November 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–27154 Filed 11–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0494]

Office of New Reactors; Proposed Interim Staff Guidance; Review of Evaluation To Address Gas Accumulation Issues in Safety Related Systems

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC staff is soliciting public comment on its proposed Interim Staff Guidance (ISG) DC/COL–ISG–019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092360375). The purpose of this ISG is to clarify the NRC staff guidance to address issues of gas accumulation in safety related systems. This ISG revises and updates the guidance provided to the staff in Standard Review Plan (SRP) Sections 5.4.7, ''Residual Heat Removal System,'' 6.3 ''Emergency Core Cooling System,'' and 6.5.2 ''Containment Spray System'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' March 2007. The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for design certifications and combined licenses by the Office of New Reactors. The NRC staff intends to incorporate the final approved DC/COL–ISG–019 into the next revision of the SRP and related guidance documents.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0494 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0494. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Donoghue, Chief, Reactor Systems, Nuclear Performance and Code Review Branch, Division of Safety Systems & Risk Assessment, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1193 or e-mail at *joseph.donoghue@nrc.gov*.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

The NRC staff is issuing this notice to solicit public comments on the proposed DC/COL–ISG–019. After the NRC staff considers any public comments, it will make a determination regarding the proposed DC/COL–ISG–019.

Dated at Rockville, Maryland, this 3rd day of November 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–27151 Filed 11–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0488]

Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 1.83.

FOR FURTHER INFORMATION CONTACT: John N. Ridgely, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7458 or e-mail *John.Ridgely@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is withdrawing Regulatory Guide (RG) 1.83, ''Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes,'' Revision 1, which was issued July 1975. RG 1.83 describes a program of periodic inservice inspection and nondestructive examination using a prescriptive sampling approach of steam generator tubing to detect defects and deterioration of the tubes in pressurized water reactors (PWRs). The RG was developed to demonstrate compliance with portions of General Design Criterion (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary.''

RG 1.83 is being withdrawn because it no longer describes a preferred approach. It is a prescriptive regulatory guide which recommends the use of eddy current testing for the inspection of steam generator tubes. RG 1.83 may not ensure steam generator tube integrity as required by other rules/regulations. In addition, many of the methods/techniques discussed in the regulatory guide would not be considered acceptable, feasible, or practical given improvements in technology. Given the technological improvements and the recognition of the importance of maintaining tube integrity from a safety and economic perspective, the need for such prescriptive guidance has been superseded. In addition, simply following this guidance may not be sufficient to ensure tube integrity consistent with NRC regulations.

The NRC now endorses a more risk-informed and performance-based approach to regulatory compliance. The performance-based approach relies upon measurable (or calculable) outcomes (*i.e.,* performance results) to be met, but provides more flexibility to the licensee as to the means of meeting those outcomes.

The high level requirements that must be met are contained in the standard technical specifications. These technical specifications are based on Nuclear Energy Institute (NEI) 97–06, ''Steam Generator Program Guidelines,'' and Technical Specification Task Force (TSTF) Traveller, TSTF–449. This latter document has been reviewed and approved by the NRC staff as documented in Generic Letter 2006–01. In addition, the current version of this Standard Review Plan discusses the high level requirements which an acceptable steam generator program must meet. RG 1.83 is no longer needed since the NRC has adopted the performance-based approach. The use of a performance-based approach to steam generator tube inspection does not supplant or displace the requirement for compliance with NRC regulations.

II. Further Information

Withdrawal of RG 1.83 does not, in and of itself, alter any prior or existing licensing commitments based on its use. The guidance provided in this regulatory guide is no longer necessary. Regulatory guides may be withdrawn when their guidance is superseded by Congressional action, the methods or techniques described in the Regulatory Guide no longer describe a preferred approach, or the Regulatory Guide does not provide useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under ''Regulatory Guides'' in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections*. Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR's mailing address is US NRC PDR, Washington, DC 20555–0001. You can reach the staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov*.

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Dated at Rockville, Maryland, this 3rd day of November 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–27058 Filed 11–10–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0208; Form RI 38–115)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Representative Payee Survey'' (OMB Control No. 3206–0208, Form RI 38–115), is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of

the public burden of the collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 11,000 RI 38–115 forms are completed annually. The form takes approximately 20 minutes to complete. The annual estimated burden is 3,667 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–0623, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW.—Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–27138 Filed 11–10–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0228; Standard Form 3112)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''CSRS/FERS Documentation in Support of Disability Retirement Application'' (OMB Control No. 3206–0228; Standard Form 3112), collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms 3112B, 3112D and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 12,100 applicants for disability retirement complete this application annually. The SF 3112C requires approximately 60 minutes to complete. A burden of 12,100 hours is estimated for SF 3112C. SF 3112A is used each year by approximately 1,350 persons who are not Federal employees. SF 3112A requires approximately 30 minutes to complete and a burden of 675 hours is estimated for SF 3112A.

All 12,100 respondents must use SF 3112C; of the 12,100, only 1,350 of the applicants are not Federal Employees and use SF 3112A. The total annual burden for SF 3112 is 12,775 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–27139 Filed 11–10–09; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28991; File No. 812–13638]

FaithShares Trust, et al.; Notice of Application

November 5, 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; and 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) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

APPLICANTS: FaithShares Trust (''Trust''), FaithShares Advisors, LLC (''Advisor'') and SEI Investments Distribution Company.

SUMMARY OF APPLICATION: Applicants request an order that would permit: (a) Series of an open-end management investment company to issue shares (''Fund Shares'') that can be redeemed only in large aggregations (''Creation Unit Aggregations''); (b) secondary market transactions in Fund Shares to occur at negotiated prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Fund 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 Unit Aggregations; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Fund Shares.

FILING DATES: The application was filed on March 4, 2009, and amended on April 21, 2009, October 23, 2009, and November 4, 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 November 30, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: FaithShares Trust and FaithShares Advisors, LLC, c/o Mr. J. Garrett Stevens, 3555 Northwest 58th Street, Suite 410, Oklahoma City, OK 73112 and SEI Investments Distribution Company, c/o John Munch, Esq., 1 Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel at (202) 551–6811 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 under the Act and is organized as a Delaware statutory trust. The Trust will initially offer Fund Shares of five series (''Initial Funds''), each of which will track a specified equity securities index (''Underlying Index'').[1] Applicants may offer additional series of the Trust (together with any other future registered open-end investment company and its series advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor, the ''Future Funds,'' and the Future Funds together with the Initial Funds, the ''Funds'').[2]

2. The Advisor, an Oklahoma limited liability company, or an entity controlling, controlled by or under common control with the Advisor will be the investment adviser to the Funds. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). The Advisor may enter into sub-advisory agreements with one or more additional investment advisers to act as sub-advisors to one or more Funds (''Sub-Advisors''). Any Sub-Advisor will be registered under the Advisers Act. SEI Investments Distribution Company, a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), will act as the principal underwriter and distributor for the Creation Unit Aggregations of Fund Shares (each such broker-dealer, a ''Distributor''). Applicants request that the requested order also apply to any other Distributor to the Funds in the future that complies with the terms and conditions of the application.

3. The Funds will seek investment results that correspond, before fees and expenses, generally to the price and yield performance of a specified Underlying Index.[3] The Initial Funds' Underlying Indexes are comprised of domestic equity securities (securities which are issued by U.S. issuers and non-U.S. issuers meeting the requirements for trading in U.S. markets). A Future Fund's Underlying Index may be based on domestic equity securities or foreign equity securities (securities traded on a non-U.S. securities market) (such Future Fund, a ''Foreign Fund''). Any entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') will not 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, the Advisor, any promoter of the Funds, Sub-Advisor or Distributor.[4]

4. The investment objective of each Fund will be to seek to track the performance, before fees and expenses, of its Underlying Index.[5] Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day except for the values of Underlying Indices based on foreign equity securities which will be disseminated every 60 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus (''Prospectus'').[6] A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in approximately the same proportions as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when one or more Component Securities is less liquid, illiquid or unavailable, 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 anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. The Funds will issue Creation Unit Aggregations in groups of 50,000 Fund Shares. Applicants expect that the initial price of a Creation Unit Aggregation will fall in the range of $1,000,000 to $2,000,000. All orders to purchase Creation Unit Aggregations 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)

[1] The Initial Funds are: FaithShares Baptist Values Fund, FaithShares Catholic Values Fund, FaithShares Christian Values Fund, FaithShares Lutheran Values Fund and FaithShares Methodist Values Fund.

[2] All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] The Underlying Indexes for the Initial Funds are the: FaithShares Baptist Values Index, FaithShares Catholic Values Index, FaithShares Christian Values Index, FaithShares Lutheran Values Index and FaithShares Methodist Values Index.

[4] The Index Provider to the Initial Funds is FTSE/KLD Research and Analytics, Inc.

[5] Applicants represent that each Fund will invest at least 80% of its assets in the component securities (''Component Securities'') of its Underlying Index. In the case of Foreign Funds, at least 80% of the Fund's assets will be invested in Component Securities and Depositary Receipts (as defined below) representing such Component Securities. A Fund may invest up to 20% of its assets in cash and cash equivalents, such as money market instruments or other types of investments not included in its Underlying Index, but which the Advisor or Sub-Advisor believes will help the Fund track its Underlying Index. ''Depositary Receipts'' will typically be American Depositary Receipts, as well as Global Depositary Receipts and Euro Depositary Receipts.

[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] Under the representative sampling strategy, the Advisor and any Sub-Advisor will seek to construct a Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Fund Shares of each Fund generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor or Sub-Advisor to correspond generally to the price and yield performance of the relevant Underlying Index (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Balancing Amount,'' together with the Deposit Securities, the ''Portfolio Deposit''). The Balancing Amount is an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit Aggregation) of a Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.[8] Each Fund may permit a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the Deposit Securities if a Fund and the Advisor believe such method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.[9]

6. An investor purchasing or redeeming a Creation Unit Aggregation 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 Unit Aggregations.[10] The maximum Transaction Fees, and any variations or waivers thereof, will be disclosed in each Fund's Prospectus. The Distributor will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Unit Aggregations, and for maintaining records of both the orders placed and the confirmations of acceptance furnished. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Fund Shares.

7. Purchasers of Fund Shares in Creation Unit Aggregations may hold such Fund Shares or may sell such Fund Shares into the secondary market. Fund Shares will be listed and traded on an Exchange. It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist or a market maker (each, a ''Market Maker'') and maintain a market for Fund Shares trading on the listing Exchange. The price of Fund Shares trading on an Exchange will be based on the current bid/offer market. Fund Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). A Market Maker, in providing a fair and orderly secondary market for the Fund Shares, also may purchase Creation Unit Aggregations for use in its market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional investors and retail investors.[11] Applicants expect that the price at which Fund Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that Fund Shares will not trade at a material discount or premium in relation to their NAV.

9. Fund Shares will not be individually redeemable, and owners of Fund Shares may acquire those Fund Shares from a Fund, or tender such Fund Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit Aggregation redemptions on the date that the request for redemption is made (''Fund Securities'')[12] and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Fund Securities are not identical to the Deposit Securities on that day. 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. No Fund will be advertised or 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'' or ''ETF,'' ''investment company'' and ''fund.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations or Fund Shares, or refer to redeemability, will prominently disclose that Fund Shares are not individually redeemable and that the owners of Fund Shares may acquire or redeem Fund Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the statement of additional information (''SAI''), shareholder reports and investor educational materials issued or circulated in connection with the Fund Shares. Each Fund will provide copies of its 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 12(d)(1)(B) of the Act.

[8] Each Fund will sell and redeem Creation Unit Aggregations only on a ''Business Day,'' which is any day that a Fund is required to be open under Section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Exchange (defined below), the list of names and the required number of shares of each security included in the current Portfolio Deposit and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Fund Shares are listed will disseminate, every 15 seconds during its regular trading hours, an amount per Fund Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[9] Applicants state that 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 a Foreign Fund to operate exclusively on an ''in-kind'' basis. Applicants also note that when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind securities so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

[10] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[11] Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Fund Shares.

[12] The Funds 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 of 1933. As a general matter, the Deposit Securities and Fund Securities will correspond *pro rata* to the securities held by a Fund, although Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with the purchase of Creation Unit Aggregations for the same day.

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 purposes 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 holder, upon its presentation to the issuer, is entitled to receive approximately the holder's proportionate share of the issuer's current net assets, or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit each Fund to issue Fund Shares that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Fund Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants state that because Creation Unit Aggregations may always be purchased and redeemed at NAV, the market price of Fund 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 Fund 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 Fund 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 Fund 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) ensure 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 Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares do not directly involve Fund assets and will not cause dilution of an investment in Fund 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 Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Fund 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 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 for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on the delivery cycles in local markets for the underlying foreign securities held by Foreign Funds. Applicants state that delivery cycles currently practicable for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will, in certain circumstances, require a delivery process longer than seven calendar days for Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to permit Foreign Funds to pay redemption proceeds up to a maximum of 14 calendar days following the tender of a Creation Unit Aggregation of such Funds. Except as disclosed in a Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign 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 where more than seven days will be needed to deliver redemption proceeds and the maximum number of days needed to deliver the proceeds. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect redemptions of Creation Unit Aggregations 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, or any other broker or dealer from selling

[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.

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 (''Investing Management Companies'') and unit investment trusts (''Investing Trusts,'' and collectively with the Investing Management Companies, ''Investing Funds'') registered under the Act that are not sponsored or advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor 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 to acquire Fund Shares beyond the limits of section 12(d)(1)(A). Investing Funds do not include the Funds. In addition, applicants seek relief to permit the Distributor and any broker or dealer that is registered under the Exchange Act to sell Fund 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 Advisor'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund Sub-Advisor''). Any Investing Fund Advisor or Investing Fund Sub-Advisor 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 Advisor or a Sponsor, any person controlling, controlled by, or under common control with an Investing Fund Advisor 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 Advisor or Sponsor, or any person controlling, controlled by, or under common control with an Investing Fund Advisor 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 Sub-Advisor, any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, 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 Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisor Group'').

14. 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 Advisor, Investing Fund Sub-Advisor, employee or Sponsor of an Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, 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).

15. Applicants assert that the 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 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 11, an Investing Fund Advisor or a trustee (''Trustee'') or Sponsor of an Investing Trust, 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–1 under the Act) received by the Investing Fund Advisor or Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, from a Fund in connection with the investment by the Investing Fund in the Fund. Applicants also state that any sales charges 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]

16. Applicants submit that the proposed conditions address the concern about complexity. Applicants note that no Fund may 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 except as permitted pursuant to rule 12d1–1 under 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 written agreement with such Fund regarding the terms of such Investing Fund's investment (''Participation Agreement'') requiring the Investing Fund to adhere to the terms and conditions of the requested order. The 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.

[14] An ''Investing Fund Affiliate'' is an Investing Fund Advisor, Investing Fund Sub-Advisor, 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.

[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.

17. Applicants also note that a Fund may choose to reject a direct purchase of Fund Shares in Creation Unit Aggregations by an Investing Fund. To the extent that an Investing Fund purchases Fund Shares in the secondary market, a Fund would still retain its ability to reject purchases of Fund Shares made in reliance on the requested order by declining to enter into the 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

18. 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.

19. Applicants request an exemption from section 17(a) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or Second-Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Fund Shares of 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 any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor.

20. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Unit Aggregations through ''in-kind transactions.'' The procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. 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 Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of a Fund.

21. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Investing Fund to sell its Fund Shares to and redeem its Fund 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 Fund Shares directly from a Fund will be based on the NAV of the Fund.[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 purchase of Creation Unit Aggregations by an Investing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. The Participation Agreement will require any Investing Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

[16] Applicants acknowledge that 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 Fund Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Fund Shares to an Investing Fund may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

[17] Applicants believe that most Investing Funds will purchase Fund Shares in the secondary market and will not purchase Creation Unit Aggregations directly from a Fund. However, the requested relief would apply to direct sales of Creation Unit Aggregations by a Fund to an Investing Fund and redemptions of those Fund Shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[18]

ETF Relief

1. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, the Fund Shares are issued by the Funds, which are registered investment companies, and that the acquisition of Fund Shares by investment companies 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 Participation Agreement with the Fund regarding the terms of the investment.

2. As long as a Fund operates in reliance on the requested order, its Fund Shares 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 Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable, and that owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only.

4. The Web sites maintained for the Funds, which are and will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis: (a) The prior Business Day's NAV and the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV 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.

5. Each Fund's Prospectus and annual report will also include: (a) The

[18] *See* note 6, *supra.*

information listed in condition 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, as applicable; and (b) the following data, calculated on a per Fund 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 ETFs.

Section 12(d)(1) Relief

7. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) any Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund's Sub-Advisor Group will not control (individually or in the aggregate) any Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Fund Shares, an Investing Fund's Advisory Group or an Investing Fund's Sub-Advisor Group, each in the aggregate, becomes a holder of more than 25 percent of the Fund Shares, it will vote its Fund Shares in the same proportion as the vote of all other holders of the Fund Shares. This condition does not apply to the Investing Fund's Sub-Advisor Group if the Investing Fund Sub-Advisor or a person controlling, controlled by, or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. 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 Investing Fund Affiliate and the Fund or Fund Affiliate.

9. 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 ensure that the Investing Fund's Advisor and any Investing Fund Sub-Advisor 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.

10. Once an investment by an Investing Fund in Fund Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''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: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) 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 (c) 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.

11. An Investing Fund Advisor, Trustee or Sponsor will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by the Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor by the Fund, in connection with the investment by the Investing Management Company or Investing Trust in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, 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 Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by a Fund, in connection with the investment by the Investing Management Company in a Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

12. 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.

13. The Board, including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once an investment by an Investing Fund in the 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: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) 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 (c) 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 interests of shareholders.

14. 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 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 Fund Shares 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 material upon which the Board's determinations were made.

15. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Investing Fund and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, and the 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 such Fund a list of names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of names 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 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.

16. 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 advisory 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.

17. 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.

18. No Fund will acquire securities of any investment company or companies 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, except as permitted pursuant to rule 12d1–1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60957; File No. SR–CBOE–2009–070]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Preferred Market Makers

November 6, 2009.

I. Introduction

On September 28, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 8.13, ''Preferred Market-Maker Program'' to establish a participation entitlement for complex orders designated to Preferred Market Makers and to clarify the operation of the Hybrid System with respect to the existing Preferred Market Maker participation entitlement for individual options orders. The proposed rule change was published for comment in the **Federal Register** on October 7, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The CBOE proposes to amend CBOE Rule 8.13 to: (1) Establish a participation entitlement for complex orders entered into the Complex Order Book (''COB'') or the complex order RFQ auction (''COA'') that are designated to a Preferred Market Maker; and (2) clarify the operation of the Hybrid System with respect to the Preferred Market Maker participation entitlement for individual options orders.

A. Participation Entitlement for Complex Orders

Under the proposal, any Designated Primary Market Maker, Lead Market Maker, or Market Maker with an appointment/allocation in the relevant options class may be designated as a Preferred Market Maker for complex orders.[4] A Preferred Market Maker must comply with the quoting obligations applicable to its Market Maker type under CBOE's rules and must provide continuous electronic quotes (as defined in CBOE Rule 1.1(ccc)) in at least 90% of the series of each class for which it receives Preferred Market Maker orders.[5] In addition, to receive a participation entitlement for orders entered into the COB, the Preferred Market Maker must be quoting at the best net priced bid/offer when the order is received.[6] For orders in a COA, the Preferred Market Maker must: (1) At the beginning of the auction, be quoting at either (A) the best bid/offer on the CBOE in at least one of the component series of the complex order, or (B) the best net priced bid/offer for the complex order; and (2) be quoting at the best net priced bid/offer at the conclusion of the auction.[7]

CBOE prohibits an order flow provider from notifying a Preferred Market Maker of its intention to submit a preferenced complex order so that the Preferred Market Maker could change its quotation to match the national best bid or offer (''NBBO'') immediately prior to the submission of the preferenced order.[8] CBOE states that CBOE Rule 4.18, ''Prevention of the Misuse of Material, Nonpublic Information,'' prohibits this misuse of material non-public information.[9] CBOE represents that it will conduct surveillance for, and enforce against, such violations.[10]

The participation entitlement for a complex order is based on the contracts remaining after equivalent net priced orders and quotes on the EBook and equivalent net priced public customer complex orders resting in the COB that have priority over Preferred Market Makers have been filled.[11] After these orders have been filled, the participation entitlement for a Preferred Market Maker that satisfies the requirements in CBOE Rule 8.13, Interpretation and Policy .01 is: (1) 40% when there are two or more Market Makers also quoting at the best net priced bid/offer execution price; and (2) 50% when there is one other Market Maker quoting at the best net priced bid/offer execution price.[12] The participation entitlement percentages for complex orders are the same as the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60746 (September 30, 2009), 74 FR 51626 (''Notice'').

[4] *See* CBOE Rule 8.13, Interpretation and Policy .01(a).

[5] *See* CBOE Rule 8.13, Interpretation and Policy .01(c).

[6] *See* CBOE Rule 8.13, Interpretation and Policy .01(a)(ii).

[7] *See* CBOE Rule 8.13, Interpretation and Policy .01(a)(iii).

[8] *See* Notice, *supra* note 3, at note 3.

[9] *Id.*

[10] *Id.*

[11] *See* CBOE Rule 8.13, Interpretation and Policy .01(b)(ii).

[12] *See* CBOE Rule 8.13, Interpretation and Policy .01(b).

participation entitlement percentages for individual options orders currently provided under CBOE Rule 8.13(c). If a Preferred Market Maker receives a participation entitlement for a complex order in the COB or a COA, no other participation entitlement provided in the CBOE's rules for complex orders will apply to the complex order.[13]

B. Clarification of the Participation Entitlement for Individual Orders

CBOE is amending CBOE Rule 8.13(b) to more clearly reflect the operation of the Hybrid System with respect to Preferred Market Makers. Specifically, CBOE is revising CBOE Rule 8.13(b) to indicate that the Hybrid System is programmed so that the recipient of a Preferred Market Maker order will receive a participation entitlement if: (1) The Preferred Market Maker has an appointment/allocation in the relevant options class; and (2) the Preferred Market Maker is quoting at the CBOE's best bid or offer. CBOE is adding paragraph (d) to CBOE Rule 8.13, which will incorporate the quoting obligations applicable to Preferred Market Makers that are currently set forth in CBOE Rule 8.13(b)(iii), including the requirement that a Preferred Market Maker provide continuous electronic quotes, as defined in CBOE Rule 1.1(ccc), in at least 90% of the series of each class for which it receives Preferred Market Maker orders. CBOE notes that this quoting obligation, like other Market Maker quoting obligations, is subject to CBOE market performance, surveillance, and disciplinary programs to assess and enforce compliance.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal establishes a Preferred Market Maker participation entitlement for complex orders submitted to the COB and the COA. Under the proposal, the Preferred Market Maker participation entitlement percentages for complex orders are the same as the Preferred Market Maker participation entitlement percentages provided currently in CBOE Rule 8.13(c) for individual options orders.[16] Because the proposal does not provide a participation entitlement for complex orders that is greater than the currently acceptable participation entitlement threshold for individual options orders, the Commission does not believe that the proposal will negatively impact quote competition for complex orders on CBOE. Under the proposal, the remaining portion of each complex order will still be allocated based on the competitive bidding of market participants.

A Preferred Market Maker must satisfy certain requirements to be eligible for a participation entitlement in complex orders. Specifically, a Preferred Market Maker must comply with the quoting obligations applicable to its Market Maker type under the CBOE's rules and must provide continuous electronic quotes (as defined in CBOE Rule 1.1(ccc)) in at least 90% of the series for each class for which it receives Preferred Market Maker orders.[17] In addition, to receive a participation entitlement for orders entered into the COB, the Preferred Market Maker must be quoting at the best net priced bid/offer when the order is received.[18] For orders in a COA, the Preferred Market Maker must: (1) At the beginning of the auction, be quoting at either (A) the best bid/offer on the CBOE in at least one of the component series of the complex order, or (B) the best net priced bid/offer for the complex order; and (2) be quoting at the best net priced bid/offer at the conclusion of the auction.[19] These quoting requirements are analogous to the current requirement in CBOE Rule 8.13(b)(ii) that a Preferred Market Maker be quoting at the CBOE's best bid/offer to be eligible for a participation entitlement for an individual options order.

The Commission believes that it is critical that, to be eligible for a participation entitlement for a complex order, a Preferred Market Maker may not step up and match the CBOE's best bid/offer after it receives an order, but must be publicly quoting at the CBOE's best net priced bid/offer when the order is received (for orders in the COB), or, for orders in a COA, quoting at either the CBOE's best/bid offer for a least one component of a complex order or at the CBOE's best net priced bid/offer for the complex order at the start of the auction.[20] As noted above, CBOE states that it would be a misuse of material non-public information in violation of CBOE Rule 4.18 for an order flow provider to notify a Preferred Market Maker of its intention to submit a preferenced complex order immediately prior to sending the order to allow the Preferred Market Maker to modify its quotation.[21] CBOE represents that it will conduct surveillance for, and enforce against, such violations of its rules.[22]

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. The Commission has discussed the duty of best execution in previous orders approving proposals to implement participation entitlements,[23] and hereby incorporates those discussions by reference into this order.

Finally, the Commission finds that the changes to CBOE Rule 8.13(b) are

[13] *See* CBOE Rule 8.13, Interpretation and Policy .01(b)(iii). However, if a complex order executes, in part, against a Preferred Market Maker's interest in the COB or the COA and, in part, against the Preferred Market Maker's interest in the individual series legs in the EBook, a Preferred Market Maker entitlement may apply on both the individual series legs and on the COB or COA execution. *See* Notice, *supra* note 3, at note 5.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission also has approved similar participation entitlement percentages for individual options orders on other options exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 56269 (August 15, 2007), 72 FR 47086 (August 22, 2007) (File No. SR–Amex–2007–75) (order approving an American Stock Exchange directed order program that provides a 40% participation entitlement on directed orders) (''Amex Order''); 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (File No. SR–Phlx–2004–91) (order approving a directed order program on the Philadelphia Stock Exchange that allows the directed order recipient to receive a 40% participation entitlement on designated orders) (''Phlx Order''); and 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (File No. ISE–2005–18) (order approving a preferencing program on the International Securities Exchange that allows a preferenced market maker to receive a 40% participation entitlement on designated orders).

[17] *See* CBOE Rule 8.13, Interpretation and Policy .01(c). This quoting obligation also applies currently to the Preferred Market Maker participation entitlement for individual options orders.

[18] *See* CBOE Rule 8.13, Interpretation and Policy .01(a)(ii).

[19] *See* CBOE Rule 8.13, Interpretation and Policy .01(a)(iii).

[20] A Preferred Market Maker will not be allocated a total quantity greater than the quantity it is quoting at the best net priced bid/offer execution price. *See* CBOE Rule 8.13, Interpretation and Policy .01(b)(i).

[21] *See* notes 8 and 9, *supra,* and accompanying text.

[22] *See* note 10, *supra,* and accompanying text.

[23] *See, e.g.,* Amex Order and Phlx Order, *supra* note 16; and Securities Exchange Act Release No. 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (File No. SR–CBOE–2004–71) (order approving a modification of the participation entitlement for Preferred Designated Primary Market Makers).

consistent with the Act because they clarify the operation of the Hybrid System with respect to Preferred Market Maker participation entitlements.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (File No. SR–CBOE–2009–070) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

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[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60933; File No. SR–FINRA–2008–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Adopt Rules Governing Financial Responsibility in the Consolidated FINRA Rulebook

November 4, 2009.

I. Introduction

On December 30, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new, consolidated set of financial responsibility rules as part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'')[3] without material change. The proposed rule change was published for comment in the **Federal Register** on January 28, 2009.[4] The Commission received two comment letters in response to the proposed rule change,[5] along with one letter from FINRA addressing certain of the comments.[6] FINRA filed Amendment No. 1 to the proposed rule change on June 17, 2009.[7] FINRA filed Amendment No. 2 to the proposed rule change on June 30, 2009.[8] This Order approves the proposed rule change, as modified by Amendment No. 1 and issues notice of, and solicits comments on, Amendment No. 2, and approves the filing, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The proposed rule change would adopt FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) in the Consolidated FINRA Rulebook and delete NASD Rules 3130 and 3131, NASD IM–3130, Incorporated NYSE Rules 312(h), 313(d), 325, 326, 328, 416.20, 418, 420, 421 and NYSE Rule Interpretations 313(d)/01, 313(d)/02, 325(c)(1), 325(c)(1)/01 and 416/01. FINRA also proposed to revise FINRA Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). Lastly, FINRA proposed to make conforming revisions to Section 4(g) of Schedule A to the FINRA By-Laws.

A. Background

Currently, both NASD and NYSE Rules[9] contain provisions governing financial responsibility. These provisions have played an important role in supporting the SEC's minimum net capital and other financial responsibility requirements by establishing criteria promoting the permanency of member's capital, requiring the review and approval of material financial transactions and establishing criteria intended to identify member firms approaching financial difficulty and to monitor their financial and operational condition. For that reason, FINRA has placed high priority on expeditiously developing the unified set of proposed rules for inclusion in the Consolidated FINRA Rulebook. FINRA believes that the proposed rules would incorporate many of the provisions in the existing rules but would streamline and reorganize the provisions. In addition, FINRA has tiered many provisions to apply only to those firms that clear or carry customer accounts.[10]

B. Proposed FINRA Rule 4110 (Capital Compliance)

1. Authority to Increase Capital Requirements

Proposed FINRA Rule 4110(a), based primarily on NYSE Rule 325(d), would enable FINRA to prescribe greater net capital requirements for carrying and clearing members, or require any such member to restore or increase its net capital or net worth, when deemed necessary for the protection of investors or in the public interest. The authority to act under the proposed rule would reside with FINRA's Executive Vice President charged with oversight for financial responsibility (or his or her written officer delegate) (referred to as ''FINRA's EVP''). To execute such authority, FINRA would be required to issue a notice pursuant to Proposed FINRA Rule 9557 (a ''Rule 9557 notice''). FINRA believes that proposed FINRA Rule 9557, much like the current rule, would afford a member adequate safeguards because, among other things,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992 (January 28, 2009) (hereinafter the ''Proposing Release'').

[5] *See* letters from Holly H. Smith and Eric A. Arnold of Sutherland, Asbill & Brennan, LLP on behalf of the Committee of Annuity Insurers dated February 18, 2009 (the ''CAI Letter'') and Julian Rainero of Bracewell & Guiliani, LLP dated April 17, 2009 (the ''B&G Letter'').

[6] *See* letter from Adam H. Arkel of FINRA, dated April 14, 2009 (the ''FINRA Letter'').

[7] Amendment No. 1 is a technical amendment designed to clarify one sentence in the rule text.

[8] Amendment No. 2 adds Supplementary Material to the proposed FINRA Rules 4110, 4120 and 4521 to clarify that, for purposes of each of those rules, all requirements that apply to a member that clear or carry customer accounts also shall apply to any member that, operating pursuant to the exemptive provisions of Rule 15c3–3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder. FINRA explained this aspect of the rule change in its Notice to Members 08–23, and in greater detail in its original filing with the Commission. Further, one of the two commenters commented on this aspect of the proposed rule changes (*See* the CAI Letter). FINRA believes that incorporating this Supplementary Material will reduce any possible ambiguity with respect to this issue.

[9] For convenience, the Incorporated NYSE Rules are referred to as the ''NYSE Rules.''

[10] All requirements set forth in the proposed rules that would apply to firms that clear or carry customer accounts would also apply to firms that operate pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i). For further clarification in response to commenter concerns, *see* Section 2 under Item II C. *See also infra* note 12.

it provides opportunity for an expedited hearing pursuant to Proposed FINRA Rule 9559.[11]

Proposed FINRA Rule 4110(a) would be a new provision for FINRA members that are not Dual Members (''non-NYSE members'') that are carrying or clearing members. However, it would not apply to introducing firms or to certain firms with limited business models (together, ''non-clearing firms'').[12] In this regard, certain Dual Members that currently are subject to NYSE Rule 325(d)—namely those NYSE member firms that are not carrying or clearing members (''NYSE non-clearing firms'')—would not be subject to the similar requirement in the FINRA Rule. All member firms that are subject to the requirement would have an opportunity to request an expedited hearing if they receive a Rule 9557 notice, which would be a new procedural right not available under NYSE Rule 325(d).

As FINRA has explained in the Notice, the NYSE staff historically employed NYSE Rule 325(d) in limited circumstances, and FINRA anticipates that it would apply Proposed FINRA Rule 4110(a) in similar fashion. The proposed rule would enable FINRA to respond promptly to extraordinary, unanticipated or emergency circumstances. Under Proposed FINRA Rule 4110(a), FINRA's EVP could require a carrying or clearing member to comply with increased capital requirements in circumstances such as where unanticipated systemic market events threaten the member firm's capital, or where the member firm maintains an undue concentration in illiquid products. In such instances, FINRA's EVP may, for example, find it appropriate, in the public interest, to raise the applicable ''haircut'' (that is, to increase the percentage of the market value of certain securities or commodities positions by which the member must reduce its net worth) or treat certain assets as non-allowable in computing net capital.

2. Suspension of Business Operations

Proposed FINRA Rule 4110(b)(1) is based in part on NASD Rule 3130(e) and would provide that, unless otherwise permitted by FINRA, a member firm must suspend all business operations during any period of time in which it is not in compliance with SEA Rule 15c3–1. This requirement is consistent with current law.[13]

As with NASD Rule 3130(e), Proposed FINRA Rule 4110(b)(1) is self-operative (that is, a firm would automatically be required to comply with the provision without any direction from FINRA). Notwithstanding that the proposed provision is self-operative, FINRA may issue a Rule 9557 notice directing a member that is not in compliance with SEA Rule 15c3–1 to suspend all or a portion of its business. Upon receipt of a Rule 9557 notice, the firm would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member firm's non-compliance with Proposed FINRA Rule 4110(b)(1).

3. Withdrawal of Equity Capital

To further the goal of financial stability, Proposed FINRA Rule 4110(c)(1) would prohibit a member from withdrawing equity capital for a period of one year, unless otherwise permitted by FINRA in writing. In response to commenter[14] requests for clarification of this provision, the proposed rule expressly provides that, subject to the requirements of Proposed FINRA Rule 4110(c)(2), members would not be precluded from withdrawing profits earned.

FINRA anticipates that approvals for the early withdrawal of equity capital pursuant to Proposed FINRA Rule 4110(c)(1) would be granted on a limited basis.[15]

Proposed FINRA Rule 4110(c)(2) would apply only to carrying or clearing members and would prohibit any such member, without the prior written approval of FINRA, from withdrawing capital, paying a dividend or effecting a similar distribution that would reduce the member's equity, or making any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any rolling 35-calendar-day period, on a net basis, would exceed 10 percent of the member's excess net capital.[16] This provision is based in part on NYSE Rule 312(h) and SEA Rule 15c3–1(e). While it would be a new requirement for non-NYSE members that are carrying or clearing members, it would not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 312(h) would not be subject to the similar provision in the FINRA Rule. FINRA further notes that the 10 percent limit set forth in Proposed FINRA Rule 4110(c)(2) would provide a *de minimis* exception; current NYSE Rule 312(h) does not include such an exception.

4. Sale-and-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

To ensure the permanency of net capital in contemplated sale-and-leaseback, factoring, financing and similar arrangements, Proposed FINRA Rule 4110(d)(1)(A) would provide that no carrying or clearing member may consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10 percent or more,[17] without the prior written authorization of FINRA.

Proposed FINRA Rule 4110(d)(1)(A) is based on NYSE Rule 328(a), but would apply only to carrying and clearing members. While the provision would be new for non-NYSE members that are carrying or clearing members, it would not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 328(a) would no longer be subject to the similar provision in the FINRA Rule. Moreover, unlike NYSE Rule 328(a), Proposed FINRA Rule 4110(d)(1)(A) includes a *de minimis* exception by permitting a member to consummate, without FINRA's prior authorization, a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with

[11] *See also* Section F under this Item.

[12] For clarification, introducing firms and firms with limited business models (for example, firms that engage exclusively in subscription-basis mutual fund transactions, direct participation programs, or mergers and acquisitions activities) are not deemed carrying or clearing members and therefore would not be subject to Proposed FINRA Rule 4110(a), or for that matter any of the other provisions of the proposed rules that would apply only to carrying or clearing members.

[13] The Commission notes that the net capital rule requires that ''every broker or dealer shall at all times have and maintain'' certain specified levels of net capital. The Commission further notes that to the extent a broker-dealer fails to maintain at least the amount of net capital specified in that rule, it must cease doing a securities business. [*See* 72 FR 12862, at 12872.]

[14] All references to ''commenters'' are to persons that submitted comments in response to the Notice. For further information on this issue, *see infra* Item II C.

[15] *See* Section 4 under Item II C.

[16] The calculation of 10 percent of excess net capital must be based on the member's excess net capital position as reported in its most recently filed Form X–17A–5. The member must assure itself that the excess net capital so reported has not materially changed since the time the form was filed.

[17] The calculation of 10 percent of tentative net capital must be based on the member's tentative net capital position as reported in its most recently filed Form X–17A–5. The member must assure itself that the tentative net capital so reported has not materially changed since the time the form was filed.

respect to any unsecured accounts receivable where the arrangement would not increase the member firm's tentative net capital by 10 percent or more.[18]

Proposed FINRA Rule 4110(d)(1)(B), which is also based on NYSE Rule 328(a), would provide that no carrying member may consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA. The provision would be new for non-NYSE members that are carrying members.

Proposed FINRA Rule 4110(d)(2) is based on NYSE Rule 328(b), but would apply only to carrying and clearing members. The provision would require FINRA's prior approval for any loan agreement entered into by such a member, the proceeds of which exceed 10 percent of the member's tentative net capital [19] and that is intended to reduce the deduction in computing net capital for fixed assets and other assets that cannot be readily converted into cash under SEA Rule 15c3–1(c)(2)(iv). Because the provision would apply only to carrying and clearing members, NYSE non-clearing firms would be relieved from current requirements under NYSE Rule 328(b). In addition, unlike NYSE Rule 328(b), the proposed rule would include a *de minimis* exception.

Proposed FINRA Rule 4110(d)(3) provides that any member that is subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2) of Proposed FINRA Rule 4110 would be prohibited from consummating, without FINRA's prior written authorization, any arrangement pursuant to those paragraphs if the aggregate of all such arrangements would exceed 20 percent of the member's tentative net capital.[20]

Proposed FINRA Rule 4110(d)(4) implements a requirement of the SEC's net capital rule and therefore would apply to all members. It provides that any agreement relating to a determination of a ''ready market'' for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3–1(c)(11)(ii) must be submitted to, and be acceptable to, FINRA before the securities may be deemed to have a ''ready market.'' When determining the acceptability of a loan agreement, pursuant to Proposed FINRA Rule 4110(d)(4), FINRA staff would, as a general matter, consider such factors as whether the bank would have sole recourse under the agreement and whether the term of the loan is at least one year. FINRA expects that a determination of acceptability can generally be made within approximately one week.

5. Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings

Proposed FINRA Rule 4110(e) is based in part on current NYSE Rule 420 and would address the requirements for subordinated loans and loans made to general partners of members that are partnerships.

Proposed FINRA Rule 4110(e)(1) would implement Appendix D of SEA Rule 15c3–1 and require that all subordinated loans or notes collateralized by securities must meet such standards as FINRA may require to ensure the continued financial stability and operational capability of a member, in addition to meeting those standards specified in Appendix D of SEA Rule 15c3–1.[21] Appendix D of SEA Rule 15c3–1 requires that all subordination agreements must be found acceptable by the Examining Authority before they can become effective.

Proposed FINRA Rule 4110(e)(2) would require that, unless otherwise permitted by FINRA, each member whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, must, in order for the proceeds to qualify as capital acceptable for inclusion in computation of the member's net capital, submit to FINRA for approval a signed copy of the loan agreement. The loan agreement must have at least a 12-month duration and provide non-recourse to the assets of the member firm. Moreover, because a general partner's interest may allow the lender to reach into the assets of the broker-dealer, FINRA is requiring a provision in the loan agreement that would estop the lender from having that right.

C. Proposed FINRA Rule 4120 (Regulatory Notification and Business Curtailment)

1. Regulatory Notification

Proposed FINRA Rule 4120(a) is based on current NYSE Rule 325(b), but would apply only to carrying and clearing members. The proposed rule would require any such member promptly, but in any event within 24 hours, to notify FINRA when certain specified financial triggers are reached.[22] This would be a new notification requirement for non-NYSE members that are carrying or clearing members; it would not, however, apply to non-clearing firms. Accordingly, NYSE non-clearing firms would no longer be subject to these requirements.

2. Restrictions on Business Expansion

Proposed FINRA Rule 4120(b) is based on NASD Rule 3130(c) and NYSE Rule 326(a) and addresses circumstances under which a member would be prohibited from expanding its business.

Proposed FINRA Rule 4120(b)(1), which is self-operative, would apply only to carrying and clearing members, and requires any such member, unless otherwise permitted by FINRA, to refrain from expanding its business during any period in which any of the conditions described in Proposed FINRA Rule 4120(a)(1) continue to exist for the specified time period. While NASD Rule 3130(c) includes comparable provisions, the requirement would now be self-operative for non-NYSE members that are carrying or clearing members. Proposed FINRA Rule 4120(b) also provides that FINRA may issue a Rule 9557 notice directing any such member not to expand its business, in which case the member would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with Proposed FINRA Rule 4120(b)(1).

Unlike the self-operative nature of paragraph (b)(1), Proposed FINRA Rule 4120(b)(2) authorizes FINRA, for any financial or operational reason, to restrict any member's ability to expand its business by the issuance of a Rule 9557 notice. In all such cases, the member would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(c)(2).

3. Reduction of Business

Proposed FINRA Rule 4120(c) is based on NASD Rule 3130(d) and NYSE

[18] *See supra* note 17.

[19] *See supra* note 17.

[20] *See supra* note 17.

[21] *See* SEA Rule 15c3–1d. Note that the proposed Supplementary Material would require that, for purposes of Proposed FINRA Rule 4110(e)(1), the member must assure itself that any applicable provisions of the Securities Act of 1933 and/or state Blue Sky laws have been satisfied, and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement. *See* Proposed FINRA Rule 4110.01 (Compliance with Applicable Law).

[22] The determination of whether the financial triggers were reached must be based on the member's financial position as reported in its most recently filed Form X–17A–5. The member must assure itself that its financial position so reported has not materially changed since the time the form was filed.

Rule 326(b) and addresses circumstances under which a member would be required to reduce its business.

Proposed FINRA Rule 4120(c)(1), which is self-operative, would apply only to carrying and clearing members, requiring any such member, unless otherwise permitted by FINRA in writing, to reduce its business to a point enabling its available capital to exceed the standards set forth in Proposed FINRA Rule 4120(a)(1) when any of the enumerated conditions continue to exist for the specified time period. While NASD Rule 3130(d) includes comparable provisions, the requirement would now be self-operative for non-NYSE members that are carrying or clearing members. Proposed FINRA Rule 4120(c)(1) also provides that FINRA may issue a Rule 9557 notice directing any such member to reduce its business, in which case the member would have the right to an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with Proposed FINRA Rule 4120(c)(1).

Unlike the self-operative nature of paragraph (c)(1), proposed FINRA Rule 4120(c)(2) authorizes FINRA, for any financial or operational reason, to require any member firm to reduce its business by the issuance of a notice in accordance with Rule 9557. In all such cases, the member firm would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(d)(2).

D. Proposed FINRA Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)

Proposed FINRA Rule 4130 would be substantially identical to NASD Rule 3131 except that the proposed rule would reflect FINRA as the designated examining authority and make other conforming revisions. The proposed rule would apply only to certain firms that are subject to the Treasury Department's liquid capital requirements.

E. Proposed FINRA Rule 4140 (Audit)

Proposed FINRA Rule 4140 would incorporate FINRA's existing authority under NASD Rule 3130 and NASD IM–3130 and NYSE Rule 418 to request an audit or an agreed-upon procedures review under certain circumstances. The proposed rule would impose a late fee of $100 for each day that a requested report is not timely filed, up to a maximum of 10 business days.

F. Proposed FINRA Rule 4521 (Notifications, Questionnaires and Reports)

Drawing in part on NASD IM–3130 and Rule 3150 and NYSE Rules 325(b)(2), 416 [23] and 421(2),[24] Proposed FINRA Rule 4521 would address FINRA's authority to request certain information from members to carry out its surveillance and examination responsibilities. As further described below, many of the provisions would apply only to carrying and clearing members.

Proposed FINRA Rule 4521(a) would provide that each carrying or clearing member must submit to FINRA such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest. The provisions would be new for certain non-NYSE members that are carrying or clearing members.[25]

Proposed FINRA Rule 4521(b) would require every member approved by the SEC pursuant to SEA Rule 15c3–1 to use the alternative method of computing net capital contained in Appendix E to that Rule to file such supplemental and alternative reports as may be prescribed by FINRA.

Proposed FINRA Rule 4521(c) would require each carrying or clearing member to notify FINRA in writing no more than 48 hours after its tentative net capital, as computed pursuant to SEA Rule 15c3–1, has declined 20 percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. This would be a new requirement for non-NYSE members that are carrying or clearing members.

Proposed FINRA Rule 4521(d) would require that, unless otherwise permitted by FINRA in writing, member firms carrying margin accounts for customers must submit, on a settlement date basis: (1) The total of all debit balances in securities margin accounts; and (2) the total of all free credit balances contained in cash or margin accounts. This would be a new requirement for non-NYSE member firms that carry margin accounts.

In response to commenter suggestion, Proposed FINRA Rule 4521(e) has been revised to provide that a late fee of $100 would be imposed for each day that any report, notification or information a member is required to file pursuant to Rule 4521 is not timely filed, up to a maximum of 10 business days.

G. Proposed FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series)

FINRA Rules 9557 and 9559 address service of notice to member firms that are experiencing financial or operational difficulties and the related hearing procedures. The proposed rule change would make a number of conforming revisions to FINRA Rules 9557 and 9559 in light of several of the proposed financial responsibility rules (Proposed FINRA Rules 4110, 4120 and 4130). In response to commenter concerns, FINRA re-iterates that the proposed rule change also would include new provisions to afford members with an appeals process that is both more expedited than that currently provided under FINRA Rules 9557 and 9559 and provides members with adequate safeguards.[26] For example:

- Proposed FINRA Rule 9557(d) would provide that the requirements referenced in a Rule 9557 notice served upon a member are immediately effective. Under the proposed rule change, a timely request for a hearing would stay the effective date for 10 business days after the service of the notice or until a written order is issued pursuant to Proposed FINRA Rule 9559(o)(4)(A) (whichever period is less), unless it is determined that such a stay cannot be permitted with safety to investors, creditors or other member firms;

[23] NYSE Rules 416(a), 416(c) and 416.10 will remain in the Transitional Rulebook to be addressed later in the rulebook consolidation process. On July 11, 2008, the SEC approved FINRA's proposal to delete NYSE Rule 416(b). *See* Securities Exchange Act Release No. 58149 (July 11, 2008), 73 FR 42385 (July 21, 2008) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR–FINRA–2008–034).

[24] Because FINRA proposes to delete NYSE Rule 421(2) and its related provision Rule 421.40, the proposed rule change would, in combination with rule change SR–FINRA–2008–033 (which was approved by the SEC on September 4, 2008 and took effect on December 15, 2008), delete NYSE Rule 421 in its entirety. *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR–FINRA–2008–033); *see also* FINRA *Regulatory Notice* 08–57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

[25] FINRA notes that NASD Rule 3150 (Reporting Requirements for Clearing Firms) currently requires most carrying and clearing members to submit such data to FINRA. Rule 3150 will be addressed later in the rulebook consolidation process.

[26] *See* Section 7 under Item II.C.

• To ensure an expedited process, Proposed FINRA Rule 9557(e) would require a member to file with the Office of Hearing Officers any written request for a hearing within two business days after service of the Rule 9557 notice;

• Proposed FINRA Rule 9559(f)(1) would provide that, after a respondent subject to a Rule 9557 notice files a written request for a hearing with the Office of Hearing Officers, the hearing must be held within five business days of such filing;

• Proposed FINRA Rule 9559(o)(4)(A) would provide that, within two business days of the date of the close of the hearing, the Office of Hearing Officers must issue the Hearing Panel's written order. The Hearing Panel order would be effective when issued. (The proposed rule change provides that, pursuant to Proposed FINRA Rules 9559(o)(4)(B) and 9559(p), the written decision explaining the reasons for the Hearing Panel's determinations must be issued within seven days of the issuance of the written order.)

Proposed FINRA Rules 9557 and 9559 set forth a number of other enhancements and clarifications of procedure. For example, Proposed FINRA Rule 9557(e)(1) provides that a member served with a Rule 9557 notice may request from FINRA staff a letter of withdrawal of the notice. The member may make this request either in lieu of or in addition to filing with the Office of Hearing Officers the written request for a hearing. The proposed rule change would enable FINRA staff, in response to the member's request, either to withdraw the Rule 9557 notice or to reduce its requirements and/or restrictions.[27] The member may submit a request for a letter of withdrawal to FINRA staff at any time after the notice is served. If such request is denied by FINRA staff, the proposed rule change provides that the member shall not be precluded from making a subsequent request or requests.[28]

If a member requests a hearing within two business days after service of a 9557 notice, the member may seek to contest (1) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal issued by FINRA staff pursuant to Rule 9557(g)(2), where applicable) and/or (2) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member. The Hearing Panel may then either approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions.

FINRA intends to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

III. Comment Letters

The proposed rule change was published for comment in the **Federal Register** on January 28, 2009 and the comment period closed on February 18, 2009. The Commission received two comment letters in response to the proposing release; the CAI Letter and the B&G Letter.[29] While neither commented generally on FINRA's rule proposal, both raised specific, discreet issues relating to those rules.

A. Members Operating Pursuant to SEA Rule 15c3–3(k)(2)(i) Exemption

FINRA stated in its filing with the Commission that ''the requirements set forth in the proposed rules that would apply to carrying and clearing members would also apply to members that operate pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i).[30] '' One commenter stated that it believes the definition of ''carrying or clearing'' firm should be revised in two respects: first, it believes that FINRA should include firms distributing variable annuities or life insurance within the types of firms FINRA has described as having ''limited business models;'' and second, it believes FINRA should take into consideration the extremely different profile of firms that use the exemption provided in SEC Rule 15c3–3(k)(2)(i) versus the profile of traditional carrying and clearing firms.[31]

With respect to the commenter's first point, FINRA, in its response letter, stated that the commenter may have misinterpreted the purpose of FINRA's reference to limited business models, and ''it is not FINRA's intention to create business model or other exemptions from the proposed rules.'' [32] To clarify further, FINRA stated, ''[i]f a firm engages in any carrying or clearing activity, including operating pursuant to the exemptive provisions of 15c3–3(k)(2)(i), then such firm would be expected to comply with all requirements set forth in the proposed rules that apply to carrying and clearing firms. A firm that does not engage in any such activity would not be subject to those requirements.'' [33]

With respect to the commenter's second point, FINRA noted that firms that operate pursuant to the Rule 15c3–3(k)(2)(i) exemption receive customer funds for the purpose of settling customer transactions and perform a clearing function, irrespective of how short the period they may hold customer funds.[34] Accordingly, FINRA stated that it believes that firms operating pursuant to the Rule 15c3–3(k)(2)(i) exemption should, as a matter of investor protection, be subject to all requirements set forth in the proposed rules that apply to carrying and clearing firms.[35]

B. Ability to Increase Capital Requirements

One commenter argued that FINRA should build objective standards into Proposed Rule 4110(a) to ensure that firms have some predictability in their cash management functions and so the standards are applied equitably to all FINRA members. In response to similar comments it received in response to its Notice to Members 08–23, FINRA stated that it ''does not agree that it is in the public interest to limit the rule's application by listing specific circumstances under which FINRA would exercise its authority'' because ''Proposed Rule 4110(a) is intended to enable FINRA to respond promptly to extraordinary, unanticipated or emergency circumstances.'' [36] FINRA also stated that Proposed FINRA Rule 4110(a) does not lend itself to prescribed parameters.[37]

C. Suspension of Business Operations

One commenter requested clarification on the interplay between FINRA's Proposed Rule 4110(b) and Exchange Act Rule 17a–11. Proposed Rule 4110(b) states, ''[u]nless otherwise permitted by FINRA, a member shall suspend business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3–1.'' In

[27] *See* Proposed FINRA Rule 9557(g)(2).

[28] *See* Proposed FINRA Rule 9557(e)(1).

[29] *See supra,* note 5.

[30] The Notice explained that ''operating'' pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i) is not meant to include firms that have elected the exemption but do not operate as such.

[31] *See* the CAI Letter.

[32] *See* the FINRA Letter

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *See* the Proposing Release, at 22 (74 FR at 4997). These comments are also reiterated by FINRA in the FINRA Letter, at page 3.

[37] *Id.*

response, FINRA reiterated that ''the requirements set forth in the Proposed Rule are consistent with current law.'' FINRA also highlighted that the Commission, in the Proposing Release, stated ''the net capital rule requires that 'every broker or dealer shall at all times have and maintain' certain specified levels of net capital,'' and further, ''to the extent a broker-dealer fails to maintain at least the amount of net capital specified in that rule, it must cease doing a securities business.'' [38]

D. Withdrawals of Equity Capital

Both commenters raised issues with respect to FINRA's Proposed Rule 4110(c), arguing that it should be amended or that the Commission should reject it because it goes further than Exchange Act Rule 15c3–1(e). In response to this comment, FINRA noted that ''its mandate is to design in enforce rules to ensure investor protection.'' [39] Further, as FINRA explained in the FINRA Letter ''regulation of withdrawal of equity capital serves to promote the financial stability of member firms and, accordingly, is an important element of investor protection.'' [40]

One commenter also asserted that, ''if FINRA believes it must establish a pre-approval requirement, then it needs to give member firms certainty regarding how long firms will have to wait for FINRA's approval.'' [41] In response, FINRA, in the FINRA Letter, reiterated the explanation it provided in its original filing with the Commission that ''requests for withdrawal can be handled in a routine manner and [..] decisions typically would be issued in approximately three business days.'' [42]

Finally, one commenter requested clarification with respect to whether the staff's review and decision will be based on an intra-month net capital computation.[43] FINRA, in the FINRA letter reiterated the explanation it provided in its original filing with the Commission, stating that, for purposes of Proposed FINRA Rule 4110(c)(2), ''the calculation of 10 percent of excess net capital must be based on the member's excess net capital position as reported in its most recently filed Form X–17A–5.'' [44] Further, FINRA stated that, ''the member must assure itself that the excess net capital so reported has not materially changed since the time the form was filed.'' [45]

This commenter further suggests that ''it would be appropriate to revise [Proposed FINRA Rule 4110(b)] to take into account whether the Net Capital Rule violation actually results in the broker-dealer currently being under-capitalized and is a continuing condition.'' [46] In response FINRA, in the FINRA Letter, notes that ''the firm's obligations, both under the current regulatory framework and under the proposed rules, are clear—the firm must maintain the required net capital at all times.'' [47] Further, ''[t]he firm may resume its business when it returns to net capital compliance.'' [48]

E. Service of Notice and Hearing Procedures

Finally, one commenter raised two issues relating to Proposed FINRA Rules 9557 and 9559. First, this commenter argues that FINRA should provide member firms with any or all of the documents on which FINRA relied in imposing restrictions on the member as soon as a hearing is requested to provide member firms with a fair opportunity to present their cases. First, FINRA highlights the fact that, pursuant to Proposed Rule 9559, it is the member firm that requests a hearing and that the hearing must take place within five business days after the member firm files the written hearing request. Further, FINRA states that ''irrespective of document deliver, the proposed rule ensures that a respondent would be fully informed of the factual basis of the action'' pursuant to Proposed FINRA Rule 9557(c).[49]

The second issue raised by this commenter is that the Proposed Rule, which would allow the Hearing Panel to approve or withdraw the requirements and/or restrictions imposed by the notice, ''would have no authority to modify any of the restrictions or limitations FINRA imposed.'' FINRA, in the FINRA letter, disagrees with the commenter's assertion that the Hearing Panel should have the authority to modify the restrictions or limitations imposed by FINRA and states that ''FINRA believes that authorizing the Hearing Panel, apart from action by FINRA staff, to modify the requirements and/or restrictions imposed by a Rule 9557 notice would not be conducive to the efficient and expedited resolution of the action.''

IV. Discussion and Findings

Generally, the Commission agrees with FINRA's responses to the commenters' issues. More specifically, with respect to the inclusion of (k)(2)(i) firms in the definition of carrying and clearing firms, the Commission believes that firms that operate pursuant to the Rule 15c3–3(k)(2)(i) exemption and that receive customer funds and/or securities for the purpose of settling customer transactions perform a clearing function and should be subject to additional scrutiny designed to protect investors. Further, with respect to FINRA's ability to increase capital requirements for its members, the Commission believes that in extraordinary, unanticipated, or emergency situations it is important for FINRA to have flexibility to quickly impose restrictions on its members to protect investors as the situation warrants. With respect to FINRA's requirement that a broker-dealer cease business operations if it is not in compliance with Exchange Act Rule 15c3–1, the Commission notes that this is a restatement of the requirements of the Exchange Act, which states that ''no broker or dealer [..] shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security [..] in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility.'' Rule 15c3–1 is considered to be a financial responsibility rule.[50] Consequently, to the extent that a broker-dealer fails to ''have and maintain net capital no less than the greater of the highest minimum requirement applicable'' under Rule 15c3–1, the Act would prohibit the broker-dealer from effecting securities transactions. With respect to FINRA's proposed limitations on withdrawals of equity capital set forth in FINRA

[38] *See* the FINRA Letter at page 4. *See also,* note 10 to the Proposing Release, at page 6 (74 FR at 4994). *See also, Amendments to Financial Responsibility Rules for Broker-Dealers,* Securities Exchange Act Release No. 55431 (March 9, 2007) (72 FR 12862, at 12872 (March 19, 2007)), wherein the Commission states, ''section 15(c)(3) of the Exchange Act generally prohibits a broker-dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security in contravention of the Commission's financial responsibility rules (which include Rule 15c3–1).'' (15 U.S.C. 78o)

[39] *See* the FINRA Letter, at page 3.

[40] *Id.* In its original filing with the Commission, FINRA stated that financial stability was one of the goals that Proposed FINRA Rule 4110(c) was designed to address (*see* Proposing Release, at page 6 (74 FR at 4994)).

[41] *See* the CAI Letter, at page 5.

[42] *See* the FINRA Letter, at page 3.

[43] *See* the CAI Letter, at page 5.

[44] *See* the FINRA Letter, at page 3. *See also,* note 13 in the Proposing Release, at page 7 (74 FR at 4994).

[45] *Id.*

[46] *See* the CAI Letter, at page 6.

[47] *See* the FINRA Letter, at page 4. See also NTM 07–16, Q&A #1 (April, 2007). *See also,* FINRA's *Interpretations of Financial and Operational Rules,* pages 1 and 13.

[48] *See* the FINRA Letter, at page 4.

[49] *See* the FINRA Letter, at page 4.

[50] *See* 17 CFR 240.3a40–1.

Proposed Rule 4110(c), the Commission believes that each SRO should closely monitor significant withdrawals of capital by its members which could have a material affect on the firm's financial position in order to fulfill its requirement to enforce its members' compliance with the Exchange Act, the rules promulgated thereunder and its own rules.[51]

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[52] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[53] (which requires, among other things, that FINRA rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest), because the proposed rule change is designed to, among other things, protect investors and the public interest by requiring that each broker-dealer maintain sufficient net capital to allow it to self-liquidate if it experiences financial difficulty. Further, as the proposed rule change consolidates the NYSE and NASD financial responsibility rules into one rule in the consolidated FINRA rulebook, it should provide greater clarity with respect to financial responsibility requirements for broker-dealers.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[54] for approving the proposed rule change, as amended by Amendment No. 2 thereto, prior to the 30th day after the date of publication in the **Federal Register**. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

[51] *See* Exchange Act section 19(g).

[52] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 17c(f).

[53] 15 U.S.C. 78o–3(b)(6).

[54] 15 U.S.C. 78o–3(b)(2)

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2008–067 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 Number SR–FINRA–2008–067. 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 change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–067 and should be submitted on or before December 3, 2009.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2008–067) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Florence E. Harmon,

Deputy Secretary.

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[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60938; File No. SR–CBOE–2009–081]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Marketing Fee Program

November 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Marketing Fee Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Currently, CBOE's marketing fee is assessed only on transactions of Market-Makers, e-DPMs, and DPMs, resulting from (i) customer orders for less than 1,000 contracts from payment accepting firms, or (ii) customer orders for less than 1,000 contracts that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13. CBOE proposes to amend its marketing fee program and delete the 1,000 contract limit.[5] As a result, the fee will be assessed on transactions of Market-Makers, e-DPMs, and DPMs resulting from customer orders contracts from payment accepting firms, and customer orders that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13. CBOE believes that deleting the 1,000 contract cap is appropriate and will allow its DPMs and Preferred Market-Makers to compete for order flow. CBOE also believes that this change will make CBOE's marketing fee program competitive with other exchanges' plans, as no other exchange currently maintains a cap on the size of orders on which a marketing fee is assessed. CBOE proposes to implement this change to the marketing fee program beginning on November 1, 2009.

CBOE is not amending its marketing fee program in any other respects.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of [sic] 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–081. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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 Number SR–CBOE–2009–081 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27129 Filed 11–10–09; 8:45 am]

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[5] CBOE believes that the 1,000 contract cap was initially adopted as part of the Marketing Fee Plan in December 2005. *See* Securities Exchange Act Release No. 53016 (12/22/05), 70 FR 77209 (/12/29/05) [sic], granting immediate effectiveness to SR–CBOE–2005–107.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60922; File No. SR–NYSE–2009–105]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting NYSE Rule 49 To Provide the Exchange With the Authority To Declare an Emergency Condition With Respect to Trading on or Through the Systems and Facilities of the Exchange and To Transfer Trading of Exchange-Listed Securities to Its Corporate Affiliate, NYSE Arca, Inc.

November 3, 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 October 13, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 adopt NYSE Rule 49 to provide the Exchange with the authority to declare an Emergency Condition (defined below) with respect to trading on or through the systems and facilities of the Exchange and to transfer trading of Exchange-listed securities to its corporate affiliate, NYSE Arca, Inc. (''NYSE Arca'') as necessary in the public interest and for the protection of investors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt NYSE Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange (for the purposes of this filing, an ''Emergency Condition'') and to act as necessary in the public interest and for the protection of investors.[4]

This rule filing responds to an initiative of the Commission to ensure that regulatory agencies and self-regulatory organizations have rules and procedures in place to effectively address an Emergency Condition. The Exchange has been participating as a member of the inter-regulatory ''Pandemic Planning and Regulatory Coordination Working Group,'' which is working on developing effective strategies and coordination among regulators to prepare for an Emergency Condition.

As described more fully below, the authority contemplated in the proposed rule could be exercised when, due to an Emergency Condition, the NYSE Euronext facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, are inoperable. In this situation, the Exchange has made arrangements for trading to be conducted using the systems and facilities of corporate affiliate NYSE Arca.

Proposed NYSE Rule 49 is intended to be invoked only in the event of emergencies as defined in Section 12(k)(7) of the Act.[5] As proposed, the rule would provide the Exchange with regulatory flexibility to mitigate the effects of an Emergency Condition so that the securities markets in general, and, as a primary market, the Exchange's systems and facilities in particular, may continue to perform in a manner consistent with the protection of investors and in pursuit of the public interest.

Proposed NYSE Rule 49

Under current Exchange rules, in the event of an Emergency Condition that would impact the Exchange's ability to operate normally, the Exchange does not currently have authority to transfer trading to the systems and facilities of NYSE Arca. The Exchange proposes to add NYSE Rule 49 to provide such authority to the Exchange, working in conjunction with NYSE Arca. As defined in the proposed rule, such authority would be available only in the rare event of exigent circumstances that would prevent the Exchange from operating normally, such as a pandemic or similar occurrence that affects its facilities in New York City.

The proposed rule would provide the Exchange with emergency powers so that in the event of an Emergency Condition, the Exchange can act as necessary in the public interest and for the protection of investors. As noted above, to ensure consistency among the Commission and other exchanges, the Exchange proposes adopting the definition of ''emergency'' set forth in Section 12(k)(7) of the Act. Such definition is broad enough to ensure that the Exchange will have the authority to invoke its emergency powers as necessary to respond to both regional and national emergencies, such as a pandemic crisis, or other situations where trading on the Exchange's Trading Floor is substantially impaired, such as by government action or environmental causes.

Under the proposed rule, when an Emergency Condition exists that would prevent the Exchange from operating normally, a ''qualified Exchange officer'' would have the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and as necessary in the public interest and for the protection of investors. A ''qualified Exchange officer'' is defined as the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation Inc. (''NYSER'') Chief Executive Officer or his or her designee. In the event that none of these individuals is able to assume this responsibility due to incapacitation, the next most senior officer of NYSE Euronext or NYSER would be a ''qualified Exchange officer'' for purposes of the proposed rule.

Emergencies During Which the Trading Floor Is Inoperable

To address emergencies that are so disruptive as to render the Trading Floor effectively inoperable, the Exchange has developed a contingency plan that would allow for the receipt, processing and execution of Exchange orders on or through the systems and facilities of NYSE Arca.[6] This designation of NYSE Arca as a back-up facility of the NYSE requires several accommodations that are addressed either in this rule filing or in the companion rule filing by NYSE Arca regarding its own business continuity planning.[7]

1. Use of NYSE Arca Trading Systems and Facilities

Under the proposed arrangement between the two exchanges, the systems and facilities of NYSE Arca would effectively become the systems and facilities of the NYSE, such that NYSE members, member organizations and Sponsored Participants[8] would be able

[4] NYSE Arca has submitted a companion filing to provide for the same emergency authority proposed herein. *See* SR–NYSEArca–2009–90.

[5] 15 U.S.C. 78l(k)(7). [sic]

[6] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the ''NYSE Arca Marketplace''. For the purposes of this filing and in the text of proposed NYSE Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca.

[7] *See* SR–NYSEArca–2009–90.

[8] A ''Sponsored Participant'' is a person (as defined in NYSE Rule 2(e)) who has entered into a sponsorship arrangement with a Sponsoring Member Organization to obtain authorized access to

to submit bids and offers and execute trades in NYSE-listed securities on or through the systems and facilities of NYSE Arca, regardless of whether such members, member organizations or Sponsored Participants are members or sponsored participants of NYSE Arca at the time the Emergency Condition is declared (*see* part 2 below). During these times, quotes or orders of NYSE-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be published as quotes and executions of the NYSE (*see* part 3 below).[9]

Under such circumstances, the Exchange would broadcast to the market using any and all methods available that it has declared an Emergency Condition and would then halt all trading conducted on the Exchange's Trading Floor. All unexecuted orders would remain on the Exchange's systems unless cancelled by the entering member or member organization. The Exchange would open trading on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than at least the next trading day. As soon as practicable following the commencement of trading on the systems and facilities of NYSE Arca, any unexecuted orders shall be purged from the Exchange's own systems and facilities.

It is important to note that, in the event that the Exchange's Trading Floor is rendered inoperable, it is not technically feasible for the Exchange to route unexecuted orders from the Trading Floor to the systems and facilities of NYSE Arca. As a result, NYSE members and member organizations are required to have corresponding contingency plans for changing the routing instructions for their order entry systems such that orders for NYSE-listed securities are sent to the systems and facilities of NYSE Arca. Those members and member organizations that have open orders on the Exchange's Trading Floor at the time an Emergency Condition is declared should cancel those orders and re-enter them on the systems and facilities of NYSE Arca as soon as possible thereafter.[10]

NYSE members, member organizations and Sponsored Participants that are not members or sponsored participants of NYSE Arca at the time of an Emergency Condition would be provided temporary membership and/or access to NYSE Arca so that they could execute trades on that exchange (*see* part 2 below). It is important to note in this regard that the Exchange would not provide any connectivity to NYSE Arca on behalf of its members, member organizations or Sponsored Participants; in order to continue trading in NYSE-listed securities, NYSE members, member organizations and Sponsored Participants would need separately to establish connectivity to NYSE Arca.

2. Member and Member Organization Obligations During an Emergency Condition

In the event of an Emergency Condition, NYSE Arca would provide temporary membership and/or access to those NYSE members, member organizations and Sponsored Participants that are not already members or sponsored participants of NYSE Arca.

NYSE Arca will establish inactive equity trading permits and connectivity for such members, and member organizations that would become active in the event that NYSE Arca is designated as an alternative facility of the NYSE. These trading permits would have the same trading rights and obligations as current ETP Holders on NYSE Arca. Sponsored Participants of the Exchange that are not set up with sponsored access to NYSE Arca at the time of an Emergency Condition would be permitted to obtain such access through either an existing NYSE Arca member or through an NYSE member or member organization that is granted temporary access in accordance with proposed NYSE Arca Equities Rule 2.100, provided the Sponsored Participants could establish connectivity and complete the required documentation incident to such sponsored access. Such temporary membership or access would be valid only for the duration of the Emergency Condition until regular trading resumes on the Trading Floor.[11]

NYSE members, member organizations and Sponsored Participants that quote or trade NYSE-listed securities on or through the systems and facilities of NYSE Arca following an Emergency Condition declaration by the NYSE would be bound by the rules and procedures of NYSE Arca and would be required to comply with the NYSE Arca Equities Rules governing trading. Such rules would be considered the rules of the Exchange for the duration of the Emergency Condition.[12]

Because of differences between the systems of the NYSE and NYSE Arca, NYSE Arca is not able to support the NYSE's Designated Market Makers (''DMMs'') operating in the same manner that they operate on the NYSE. In particular, DMMs would not have access to orders on the NYSE Arca system any different than other market participants. Thus, NYSE DMMs would not be able to fulfill their DMM obligations, including the affirmative obligation to make a market in a reasonable depth and with reasonable price continuity, and would be severely hampered in their ability to stabilize the market. As a result, in the event that the NYSE is unable to operate its Trading Floor and instead designates NYSE Arca to receive and process quotes and trades, NYSE DMMs would not be considered DMMs under the NYSE Rules for the duration of the designation. In order to ensure that there continues to be a market for NYSE-listed securities, DMM member firms would be designated as ''Market Makers'' in accordance with NYSE Arca Equities Rules and would be required to meet the requirements of those Rules for the duration of an Emergency Condition.[13] Once trading resumed on the Exchange's Trading Floor, DMM member firms would resume their roles as DMMs and would be subject to their obligations under the Exchange's rules.

the Exchange pursuant to this rule. *See* NYSE Rule 123B.30(a)(ii)(B). A ''Sponsoring Member Organization'' is a NYSE member or member organization that enters into a written sponsorship agreement to provide a Sponsored Participant with authorized access to the Exchange. *See* NYSE Rule 123B.30(a)(ii)(A).

[9] Currently, NYSE Arca trades NYSE-listed securities on a UTP basis. However, in the event of the declaration of an Emergency Condition under proposed NYSE Rule 49 such that the Exchange's Trading Floor is inoperable and trading is conducted on or through the systems and facilities of NYSE Arca, NYSE-listed securities traded on NYSE Arca's trading platform would be NYSE trades rather than NYSE Arca trades. Under such circumstances, the Exchange would use NYSE Arca as the execution engine for NYSE trades and would ensure that these trades are executed in compliance with Regulation NMS.

[10] Upon the invocation of the proposed Rule, orders in NYSE-listed securities entered on the NYSE Arca systems and facilities on a UTP basis that are unexecuted prior to the declaration of an Emergency Condition would remain available for execution on the NYSE Arca systems (that is they will not be cancelled). Once trading on the Exchange resumes on the NYSE Arca systems executions of such orders would be printed with an ''N'' modifier on the Consolidated Tape (*see* part 3 below). *See also* SR–NYSEArca–2009–90.

[11] *See* SR–NYSEArca–2009–90.

[12] Even though the Exchange would apply the applicable NYSE Arca Equities Rules governing trading for the duration of an emergency, the Exchange's rules governing member firm conduct would continue to apply to its members, member organizations and Sponsored Participants, including membership requirements and net capital requirements. In addition, the Exchange's listing requirements for its listed securities would continue to apply.

[13] DMMs will be required to meet the same margin requirements as NYSE Arca Market Makers.

Similarly, in the event of an Emergency Condition, the Exchange would provide temporary membership and/or authorized access to those NYSE Arca members or sponsored participants that are not already members, member organizations or Sponsored Participants of the Exchange. The temporary designation of NYSE Arca-only members as members of the Exchange is necessary because, in the event of an Emergency Condition when Exchange-listed securities are trading on NYSE Arca systems and facilities and are being printed as NYSE trades, the system would not be able to prevent NYSE Arca-only members from trading Exchange-listed securities. By granting NYSE Arca-only members temporary NYSE membership, the Exchange seeks to avoid any issue as to the legitimacy of such trades.

NYSE Arca-only members that are granted a temporary membership will not be required to meet any of the Exchange's membership requirements, including the requirement that all Exchange member organizations also be members of the Financial Industry Regulatory Authority. NYSE Arca sponsored participants that are not set up with sponsored access to the Exchange would be authorized to obtain such access through either an existing Exchange member or member organization or an NYSE Arca member that is granted temporary membership in accordance with proposed NYSE Rule 49. Such temporary membership or authorized access would be valid only for the duration of the Emergency Condition until regular trading resumes.

3. Processing NYSE Trades Executed on or Through NYSE Arca Systems and Facilities

As noted above, for the duration of the Emergency Condition, trades in NYSE-listed securities would print as ''N'' trades on the Consolidated Tape and quotes would be designated as NYSE quotes in the Consolidated Quote Stream, notwithstanding the fact that they were processed on or through the NYSE Arca systems and facilities. Because the NYSE would, as a practical and legal matter, continue to operate—albeit using a different system for processing trades and quotes—the Exchange submits that no modifications would be necessary to either the Consolidated Quote Plan or the Consolidated Tape Association Plan.[14]

The surveillance of the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca would be conducted by NYSE Arca on behalf of the Exchange.[15] In the event that an NYSE member or member organization failed to comply with NYSE Arca's rules while trading NYSE-listed securities, they would—for jurisdictional reasons—be referred to the Exchange and be investigated by, and if warranted, prosecuted by, NYSE Regulation, Inc. on behalf of the Exchange rather than on behalf of NYSE Arca.

The Exchange recognizes that, by cross-designating NYSE-only and NYSE Arca-only members and member organizations and requiring that all trades of NYSE-listed securities executed on the systems of NYSE Arca be printed as NYSE trades, its business continuity plan effectively combines the two markets for those securities. The Exchange believes, however, that its business continuity plan is appropriate and consistent with the provisions of the Act. To begin with, such consolidation would only be on a temporary basis. In addition, the Exchange notes that this arrangement would not harm customers or unfairly advantage the Exchange by distorting the allocation of market data revenue or quoting revenue to the various exchanges; because NYSE and NYSE Arca share a common corporate parent, NYSE Euronext, and revenues are reported on a consolidated basis, there is no net economic benefit to NYSE Euronext.

The Exchange believes that any confusion caused by designating all prints of NYSE-listed securities executed on NYSE Arca as NYSE trades is far outweighed by the benefits of maintaining the ability for the Exchange to provide primary market prints to market participants during an Emergency Condition. Among other things, the Exchange notes that certain indices, funds and derivative products require primary market prints for pricing and valuation, and that, similarly, private corporate transactional contracts involving stock purchase or valuation frequently make reference to the primary market print rather than to the Consolidated Tape print. The Exchange believes that without a primary market print, there could be unnecessary disruption to other areas of an already fragile marketplace that is likely facing significant challenges in dealing with other consequences of the Emergency Condition.

Limitations on Invocation of Authority Under Proposed NYSE Rule 49

Before invoking the proposed emergency powers, the Exchange will make concerted efforts to alert and consult with the Commission via electronic, telephonic and in-person communications, and to continue to maintain an open dialogue with the Commission regarding the responses being taken. In the event that Exchange staff is unable to communicate with Commission staff, the proposed rule permits the Exchange to take appropriate action and to subsequently advise the Commission of such action at the earliest available time.

The Exchange's authority under this rule would be available for up to 10 calendar days from the date that the Exchange invoked such authority. At any time after invoking such emergency powers, the Exchange, with Commission approval, may cease or alter such emergency powers. If conditions are warranted, and subject to Commission approval of a rule filing pursuant to Section 19(b)(2) of the Act, the Exchange could extend this emergency authority for a specific amount of time longer than the initial 10 calendar day period.

Before seeking Commission approval for such an extension, the Exchange will re-evaluate the specific regulatory actions taken and determine whether to extend such actions. The Commission may also unilaterally direct that the Exchange cease or alter such emergency powers. Once such authority has been invoked, the Exchange will use its available communications resources, including its Web site and other public channels, as well as regulatory channels such as Information Memos or the Exchange's Electronic Filing Platform (''EFP''),[16] to provide members and member organizations with advance notice of when such actions will expire. The Exchange shall provide adequate prior notice to members, member organizations, Sponsored Participants

[14] The Exchange notes that there is precedent for this type of arrangement: after the collapse of the World Trade Centers on September 11, 2001, the American Stock Exchange (''Amex'') was unable to open its trading floor because of its proximity to the collapse site. To ensure that the Amex could continue to operate, the Amex utilized the systems and facilities of the Exchange (and a portion of the Exchange's Trading Floor) to process and trade Amex-listed securities. Indeed, for the duration of that emergency, Amex quotes and trades were considered to have originated from the Amex, notwithstanding that they were processed on the systems and facilities of the Exchange.

[15] The Exchange's mnemonic identification system for its members and member organizations is different than that used by NYSE Arca for its ETP holders. Thus, trades executed by Exchange-only members or member organizations can be readily identified if necessary.

[16] EFP is an extranet built by the Exchange to support authenticated, encrypted, two-way communications between the Exchange and its membership. It is used to communicate information to certain key personnel of member organizations.

and investors regarding its intention to terminate the actions taken.

Conclusion

Because the purpose of the proposed rule is to grant authority to the Exchange to act in the event of an Emergency Condition, the terms of the rule are necessarily inclusive and flexible. At all times, the Exchange will continue to act in a manner consistent with the public interest and for the protection of investors, and it intends to be bound by and guided by these underlying precepts should there be a need to invoke proposed NYSE Rule 49 and exercise such proposed emergency powers.

2. Statutory Basis

The basis for this proposed rule change is the requirement under Section 6(b)(5) [17] of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Proposed NYSE Rule 49 would provide the Exchange with the regulatory flexibility to take action, as necessary, in the event of an Emergency Condition, as defined.

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[17] 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 Number SR–NYSE–2009–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 Number SR–NYSE–2009–105 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27128 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60921; File No. SR–NYSEArca–2009–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 2.100 To Provide the NYSE Arca With the Authority to Declare an Emergency Condition With Respect to Trading on or Through the Systems and Facilities of the NYSE Arca and Enable the NYSE Arca to Act as a Back-Up Trading Facility for Affiliated Exchanges Owned and Operated by NYSE Euronext

November 3, 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 October 13, 2009, NYSE Arca Inc. (the ''Corporation'' or ''NYSE Arca'') 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

NYSE Arca proposes to amend NYSE Arca Equities Rule 2.100 governing the Corporation's equities trading systems and facilities (also referred to as the ''NYSE Arca Marketplace''). The proposed rule change would (i) provide the Corporation with the authority to declare an Emergency Condition (defined below) with respect to trading on or through the systems and facilities of the Corporation as necessary in the public interest and for the protection of investors, and (ii) under such circumstances, enable the Corporation to act as a back-up trading facility for affiliated exchanges owned and operated by NYSE Arca's corporate

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

parent, NYSE Euronext.[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca proposes to amend NYSE Arca Equities Rule 2.100 to (1) delete the existing text as obsolete; (2) provide the Corporation with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Corporation (for the purposes of this filing, an ''Emergency Condition'') as necessary in the public interest and for the protection of investors; and (3) under such circumstances, enable the Corporation to act as a back-up trading facility for an Affiliated Exchange in the event that it is unable to trade because of an emergency condition declared under its rules.

This rule filing responds to an initiative of the Commission to ensure that regulatory agencies and self-regulatory organizations have rules and procedures in place to effectively address an Emergency Condition. The Corporation has been participating as a member of the inter-regulatory ''Pandemic Planning and Regulatory Coordination Working Group,'' which is working on developing effective strategies and coordination among regulators to prepare for an Emergency Condition.

As described more fully below, the authority contemplated in the proposed rule could be exercised when, due to an Emergency Condition, NYSE Euronext facilities located at 11 Wall Street, New York, New York, including the Trading Floor of an Affiliated Exchange, are inoperable. As proposed for amendment, NYSE Arca Equities Rule 2.100 is intended to be invoked only in the event of emergencies, as defined in Section 12(k)(7) of the Act.[5] As proposed, the rule would provide the Corporation with regulatory flexibility to mitigate the effects of an Emergency Condition so that the securities markets in general, and the systems and facilities of the Corporation or an Affiliated Exchange in particular, may continue to perform in a manner consistent with the protection of investors and in pursuit of the public interest.

The proposed amendments are described in detail below:

1. Deletion of Current NYSE Arca Equities Rule 2.100 as Obsolete

Current NYSE Arca Equities Rule 2.100 was adopted in November 2000 in connection with the proposal by Pacific Stock Exchange, Inc., through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), to create a new electronic trading facility of PCXE called the Archipelago Exchange (''Arca''). Rule 2.100 provided a mechanism for allowing PCXE members to trade uninterrupted when PCXE transitioned to Arca.[6] The circumstances that originally required the adoption of Rule 2.100 are no longer applicable, as all former PCXE members either became NYSE Arca ETP Holders or opted not to become members of NYSE Arca. Accordingly, the Corporation is proposing to delete the current language of Rule 2.100.

2. Establishing Emergency Powers under Proposed New NYSE Arca Equities Rule 2.100

Under current NYSE Arca Equities rules, in the event of an Emergency Condition that would impact the Corporation's and/or an Affiliated Exchange's ability to operate normally, the Corporation does not currently have authority to permit it to accept the transfer of trading from an Affiliated Exchange to the Corporation. The Corporation is proposing to amend NYSE Arca Equities Rule 2.100 to provide such authority to the Corporation. As defined in the proposed rule, such authority would be available only in the rare event of exigent circumstances that would prevent the Corporation or an Affiliated Exchange from operating normally, such as a pandemic or similar occurrence that affects its facilities.

The proposed amendments to NYSE Arca Equities Rule 2.100 would provide the Corporation with emergency powers so that in the event of an Emergency Condition, the Corporation can act as necessary in the public interest and for the protection of investors. As noted above, to ensure consistency among the Commission and other exchanges, the Corporation proposes adopting the definition of ''emergency'' set forth in Section 12(k)(7) of the Act. Such definition is broad enough to ensure that the Corporation will have the authority to invoke its emergency powers as necessary to respond to both regional and national emergencies, such as a pandemic crisis, or other situations in which trading on the systems and facilities of the Corporation and/or an Affiliated Exchange is restricted or substantially impaired, such as by government action or environmental causes.

Under the proposed rule, when an Emergency Condition exists that would prevent the Corporation and/or an Affiliated Exchange from operating normally, a ''qualified Corporation officer'' would have the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Corporation and/or the Affiliated Exchange and as necessary in the public interest and for the protection of investors. A ''qualified Corporation officer'' is defined as the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. (''NYSER'') Chief Executive Officer[7] or his or her designee. In the event that none of these individuals is able to assume this responsibility due to incapacitation, the next most senior officer of NYSE Euronext or NYSER would be a ''qualified Corporation officer'' for purposes of the proposed rule.

[4] The Corporation's affiliated exchange is New York Stock Exchange LLC (''NYSE'' or ''Affiliated Exchange''). The NYSE has submitted a companion filing to provide for the same emergency authority proposed herein. *See* SR–NYSE–2009–105.

[5] 15 U.S.C. 78l(k)(7) [sic].

[6] *See* Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78821 (December 15, 2000) (SR–PCX–00–25). In April 2006, although Rule 2.100 was no longer being used, the names of the entities in Rule 2.100 were changed in a rule filing that made global name changes to all NYSE Arca Equities rules to reflect changes resulting from the merger of NYSE Group, Inc. and Archipelago Holdings, Inc. *See* Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR–PCX–2006–24). The substance of the rule, however, did not change.

[7] Upon completion of the merger between NYSE Group, Inc. and Archipelago Holdings, Inc. on March 7, 2006, the regulatory personnel of the Corporation were re-designated as NYSER employees. Therefore, the NYSER Chief Executive Offer or his or her designee may make such determinations and decisions as contemplated by proposed NYSE Arca Equities Rule 2.100 on behalf of the Corporation.

3. Contingency Trading Facility for an Affiliated Exchange

NYSE Euronext has determined to designate the Corporation, and specifically the NYSE Arca Marketplace, as a back-up trading facility for an Affiliated Exchange. In the event that an Emergency Condition is so disruptive as to render the trading systems and facilities of an Affiliated Exchange effectively inoperable, a contingency plan has been developed to allow for the Corporation to receive, process and execute orders for members, member organizations and sponsored participants of the Affiliated Exchange (designated as ''Affiliated Participants'') in its listed and traded securities.

a. Use of the Corporation's Trading Systems and Facilities

Under the proposed arrangement between the Corporation and the Affiliated Exchange, the systems and facilities of the Corporation would effectively become the systems and facilities of the Affiliated Exchange, as necessary, such that its Affiliated Participants would be able to submit bids and offers and execute trades in Affiliated Exchange-listed securities on or through the NYSE Arca Marketplace systems and facilities, regardless of whether such Affiliated Participants are ETP Holders [8] or Sponsored Participants [9] of the Corporation at the time the Emergency Condition is declared (*see* part ''b'' below). During these times, quotes or orders of Affiliated Exchange-listed securities entered or executed on or through NYSE Arca Marketplace would be published as quotes and executions of the Affiliated Exchange (*see* part ''c'' below).[10]

Under such circumstances, the Corporation and the Affiliated Exchange would broadcast to the market using any and all methods available that they have declared a triggering event and the Affiliated Exchange would then halt all trading conducted on its systems and facilities. All unexecuted orders would remain on the Affiliated Exchange's systems unless cancelled by the entering member or member organization. The Corporation and the Affiliated Exchange would then open trading of the Affiliated Exchange-listed securities on the systems and facilities of the Corporation as soon thereafter as possible, but not earlier than at least the next trading day. As soon as practicable following the commencement of trading on the Corporation's systems and facilities, any unexecuted orders shall be purged from the Affiliated Exchange's own systems and facilities.[11]

Orders in Affiliated Exchange-listed securities entered on the Corporation's systems and facilities on a UTP basis that are unexecuted prior to the declaration of an Emergency Condition would remain available for execution on the NYSE Arca systems (that is they will not be cancelled). Once trading on the Affiliated Exchange resumes on the Corporation's systems executions of such orders would be printed with an ''N'' modifier on the Consolidated Tape (*see* part ''c'' below).[12]

b. Obligations of Affiliated Participants During Emergency Condition

The use of NYSE Arca as a back-up facility for the Affiliated Exchange presents certain logistical hurdles. Specifically, NYSE Arca Equities Rule 7.29(a) provides that only ''Users'' having authorized access to the NYSE Arca Marketplace may enter and execute orders. Pursuant to NYSE Arca Equities Rule 1.1(yy), a ''User'' is defined as an ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace. However, it is almost certain that some Affiliated Participants will not be ETP Holders or Sponsored Participants at the time of an Emergency Condition and, therefore, would not be able to trade directly on the NYSE Arca Marketplace in the event that an Affiliated Exchange is required to close its systems and facilities. Although such Affiliated Participants can become ETP Holders or Sponsored Participants of the Corporation if they so choose, some choose not to for business reasons (*i.e.,* to avoid the payment of additional registration fees).

To effectuate the business continuity plan in which trades of securities listed on an Affiliated Exchange are executed on or through the systems and facilities of the Corporation, the Corporation is proposing to amend NYSE Arca Equities Rule 2.100 in order to provide temporary membership and/or access to the NYSE Arca Marketplace if an Affiliated Exchange declares an Emergency Condition.

The Corporation will establish inactive equity trading permits and connectivity for Affiliated Participants that are not current ETP Holders of NYSE Arca Marketplace that would become active in the event that the Corporation is designated as an alternative facility of an Affiliated Exchange. Similarly, Affiliated Participants that trade on an Affiliated Exchange pursuant to sponsored access that do not have sponsored access to the NYSE Arca Marketplace at the time of an Emergency Condition would be permitted to obtain such access through either an existing NYSE Arca ETP Holder or through an Affiliated Participant that is granted temporary membership in accordance with proposed NYSE Arca Equities Rule 2.100, provided the sponsored Affiliated Participants could establish connectivity and complete the required documentation incident to such sponsored access. Temporary membership or access granted under the proposed Rule will be valid only for the duration of the Emergency Condition.

The ability to trade directly on the NYSE Arca Marketplace in this manner would be available only in the event that an Affiliated Exchange declared an emergency condition under its own rules and designated the Corporation as the back-up execution facility. During the pendency of an Emergency Condition, the Affiliated Participants would be subject to the NYSE Arca Equities rules governing trading (*e.g.* NYSE Arca Equities Rule 7) and such rules would be considered the rules of the Affiliate Exchange for the duration of the declaration.[13]

[8] An ''ETP Holder'' is a broker or dealer registered pursuant to Section 15 of Act that has been issued an Equity Trading Permit (''ETP'') by the Corporation for effecting approved equities securities transactions on NYSE Arca Marketplace. *See* NYSE Arca Equities Rule 1.1(m)-(n).

[9] A ''Sponsored Participant'' is a person or entity that has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to NYSE Arca Equities Rule 7.29. *See* NYSE Arca Equities Rule 1.1(tt). A ''Sponsoring ETP Holder'' is a broker-dealer that has been issued an ETP by the Corporation who has been designated by a Sponsored Participant to execute, clear and settle transactions on NYSE Arca Marketplace. The Sponsoring ETP Holder must be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *See* NYSE Arca Equities Rule 1.1(uu).

[10] Currently, the Corporation trades NYSE-listed equities securities on a UTP basis. However, in the event of the declaration of an emergency condition under proposed NYSE Rule 49 such that the NYSE Trading Floor and systems and facilities are inoperable and trading is conducted on or through the systems and facilities of the Corporation, NYSE-listed securities traded on the NYSE Arca Marketplace would be NYSE trades rather than NYSE Arca trades. Under such circumstances, the NYSE would use NYSE Arca Marketplace as the execution engine for NYSE trades and would ensure that these trades are executed in compliance with Regulation NMS.

[11] *See* SR–NYSE–2009–105.

[12] *See* SR–NYSE–2009–105.

[13] Even though the applicable NYSE Arca Equities Rules governing trading would apply for the duration of an emergency condition, the Affiliated Exchange's rules governing member firm conduct would continue to apply to its Affiliated Participants, including membership requirements and net capital requirements. In addition, the

Continued

Because of differences between the systems of the Affiliated Exchange and the Corporation, NYSE Arca Marketplace is not able to support ''Designated Market Makers'' (''DMMs'') operating in the same manner that they operate on the Affiliated Exchange. In particular, DMMs would not have access to orders on NYSE Arca Marketplace any different than other market participants. Thus, DMMs of an Affiliated Exchange would not be able to fulfill their DMM obligations, including the affirmative obligation to make a market in a reasonable depth and with reasonable price continuity, and would be severely hampered in their ability to stabilize the market. As a result, in the event that an Affiliated Exchange is unable to operate its systems and facilities and instead designates the Corporation to receive and process quotes and trades, such DMMs would not be considered DMMs under the NYSE Arca Equities Rules for the duration of the designation. In order to ensure that there continues to be a market for Affiliated Exchange-listed securities, DMMs would be designated as ''Market Makers'' in accordance with NYSE Arca Equities Rule 7.23 and would be required to meet the requirements of that Rule for the duration of an Emergency Condition.[14] Once trading resumed on the Affiliated Exchange, DMMs would resume their roles as DMMs and would be subject to their obligations under the Affiliated Exchange rules.

Similarly, in the event of a declaration of an Emergency Condition, the Affiliated Exchange would, as applicable, provide temporary membership and/or authorized access to those Corporation ETP Holders and Sponsored Participants that are not already members or sponsored participants of the Affiliated Exchange at the time of an Emergency Condition. The temporary designation of NYSE Arca-only ETP Holders as members of the Affiliated Exchange is necessary because, in the event of an Emergency Condition when Affiliated Exchange-listed securities are trading on the Corporation's systems and facilities and are being printed as trades of the Affiliated Exchange, the system would not be able to prevent NYSE Arca-only ETP Holders from trading Affiliated Exchange-listed securities. By granting NYSE Arca-only ETP Holders temporary membership in the Affiliated Exchange, the Affiliated Exchange seek to avoid any issue as to the legitimacy of such trades.

Corporation-only members that are granted a temporary membership by an Affiliated Exchange will not be required to meet any of the Affiliated Exchange's membership requirements. Sponsored Participants of the Corporation that are not set up with sponsored access to the Affiliated Exchange would be authorized for such access through either an existing member of the Affiliated Exchange or a Corporation ETP Holder that is granted temporary membership in accordance with the rules of the Affiliated Exchange. Such temporary memberships and/or authorized access would be valid only for the duration of the Emergency Condition.

c. Processing Trades of Affiliated Exchange-Listed Securities Executed on or Through the Corporation's Systems and Facilities

For the duration of the Emergency Condition, trades in securities listed on an Affiliated Exchange would print on the Consolidated Tape as trades of the Affiliated Exchange, and quotes would be designated as quotes of the Affiliated Exchange in the Consolidated Quote Stream, notwithstanding the fact that they were processed on or through the Corporation's systems and facilities. Because an Affiliated Exchange would, as a practical and legal matter, continue to operate—albeit using different systems and facilities for processing trades and quotes—the Corporation submits that no modifications would be necessary to either the Consolidated Quote Plan or the Consolidated Tape Association Plan.[15]

The surveillance of the trading of Affiliated Exchange-listed securities on or through the systems and facilities of the Corporation would be conducted by NYSE Arca on behalf of the Affiliated Exchange.[16] In the event that an Affiliated Participant failed to comply with the Corporation's rules while trading Affiliated Exchange-listed securities, they would—for jurisdictional reasons—be referred to the Affiliated Exchange and be investigated by, and if warranted, prosecuted by, NYSE Regulation, Inc. on behalf of the Affiliated Exchange rather than on behalf of the Corporation.

A description of the procedures that Affiliated Participants would need to follow in order to access and effect transactions through the facilities and systems of the Corporation will be made available through the normal communication systems of the Corporation and the Affiliated Exchange. In addition, members of the Corporation are required to take appropriate actions as instructed by the Corporation to accommodate the use of its systems and facilities to trade Affiliated Exchange-listed securities pursuant to this Rule.

The Corporation recognizes that, by cross-designating Affiliated Exchange-only and NYSE Arca-only members and member organizations and requiring that all trades of Affiliated Exchange-listed securities executed on the NYSE Arca Marketplace be printed as trades of the Affiliated Exchange, its business continuity plan effectively combines the two markets for those securities. The Corporation believes, however, that its business continuity plan is appropriate and consistent with the provisions of the Act. To begin with, such consolidation would only be on a temporary basis. In addition, the Corporation notes that this arrangement would not harm customers or unfairly advantage the Corporation by distorting the allocation of market data revenue or quoting revenue to the various exchanges; because NYSE and NYSE Arca share a common corporate parent, NYSE Euronext, and revenues are reported on a consolidated basis, there is no net economic benefit to NYSE Euronext.

The Corporation believes that any confusion caused by designating all prints of Affiliated Exchange-listed securities executed on the NYSE Arca Marketplace as trades of those exchanges is far outweighed by the benefits of maintaining the ability for the Affiliated Exchange to provide primary market prints to market participants during an Emergency Condition. Among other things, the Corporation notes that certain indices, funds and derivative products require primary market prints for pricing and valuation, and that, similarly, private corporate transactional contracts involving stock purchase or valuation frequently make reference to the primary market print rather than to the

Affiliated Exchange's listing requirements for its listed securities would continue to apply.

[14] DMMs will be required to meet the same margin requirements as NYSE Arca Market Makers.

[15] The Corporation notes that there is precedent for this type of arrangement: after the collapse of the World Trade Centers on September 11, 2001, the American Stock Exchange (''Amex'') was unable to open its trading floor because of its proximity to the collapse site. To ensure that the Amex could continue to operate, the Amex utilized the systems and facilities of the NYSE (and a portion of its trading floor) to process and trade Amex-listed securities. Indeed, for the duration of that emergency, Amex quotes and trades were considered to have originated from the Amex, notwithstanding that they were processed on the systems and facilities of the NYSE.

[16] The Corporation's mnemonic identification system for its ETP Holders is different than that used by the Affiliated Exchange for its members and member organizations. Thus, trades executed by Affiliated Exchange-only members or member organizations can be readily identified if necessary.

Consolidated Tape print. The Corporation believes that without a primary market print, there could be unnecessary disruption to other areas of an already fragile marketplace that is likely facing significant challenges in dealing with other consequences of the Emergency Condition.

4. Limitations on Invocation of Authority Under Proposed NYSE Arca Equities Rule 2.100

Before invoking the proposed emergency powers, the Corporation will make concerted efforts to alert and consult with the Commission via electronic, telephonic and in-person communications, and to continue to maintain an open dialogue with the Commission regarding the responses being taken. In the event that Corporation staff is unable to communicate with Commission staff, the proposed rule permits the Corporation to take appropriate action and to subsequently advise the Commission of such action at the earliest available time.

The Corporation's authority under this rule would be available for up to 10 calendar days from the date that the Corporation invoked such authority. At any time after invoking such emergency powers, the Corporation, with Commission approval, may cease or alter such emergency powers. If conditions are warranted, and subject to Commission approval of a rule filing pursuant to Section 19(b)(2) of the Act, the Corporation could extend this emergency authority for a specific amount of time longer than the initial 10 calendar day period.

Before seeking Commission approval for such an extension, the Corporation will re-evaluate the specific regulatory actions taken. The Commission may also unilaterally direct that the Corporation cease or alter such emergency powers. Once such authority has been invoked, the Corporation will use its available communications resources, including its Web site and other public channels, as well as regulatory channels such as Regulatory Bulletins, to provide ETP Holders and Sponsored Participants with advance notice of when such actions will expire. The Corporation shall provide adequate prior notice to ETP Holders, Sponsored Participants and investors regarding its intention to terminate the actions taken.

Trading Halts Due to Extraordinary Market Volatility

NYSE Arca currently has the authority to halt all stocks eligible for trading on NYSE Arca Equities in the event of extraordinary market volatility,[17] consistent with the authority granted to other self-regulatory organizations (''SROs'').[18] The Corporation believes that the NYSE is currently the only SRO that monitors for the thresholds (*i.e.*, a specified decline of the Dow Jones Industrial Average℠ (''DJIA'') from such index's previous close during a trading day, based on a quarterly calculation of the average closing value for DJIA during such quarter) as noted within these common rules. Due to this, the Corporation shall establish a mechanism to calculate these thresholds in the event trading on the NYSE becomes inoperable and the Corporation acts as the alternative trading facility of that Affiliated Exchange, as contemplated by this proposed rule.

Conclusion

Because the purpose of the proposed rule is to grant authority to the Corporation to act in the event of an Emergency Condition, the terms of the rule are necessarily inclusive, and flexible. At all times, the Corporation will continue to act in a manner consistent with the public interest and for the protection of investors, and it intends to be bound by and guided by these underlying precepts should there be a need to invoke proposed NYSE Arca Equities Rule 2.100 and exercise such proposed emergency powers.

2. Statutory Basis

The basis for this proposed rule change is the requirement under Section 6(b)(5)[19] of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Proposed NYSE Arca Equities Rule 2.100 would provide the Corporation with the regulatory flexibility to take action, as necessary, in the event of an Emergency Condition, as defined.

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.

[17] *See* NYSE Arca Equities Rule 7.12.

[18] *See, e.g.*, NYSE Rule 80B, Rule 80B–NYSE Amex Equities, NASDAQ Stock Market Rules 4120 and 4121.

[19] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–90. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 Number SR–NYSEArca–2009–90 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27127 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60942; File No. SR–Phlx-2009–93]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Sponsored Access Pilot Program

November 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 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 extend its sponsored access rule for a pilot period ending on January 31, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to attract additional business by extending its sponsored access rule, which is similar to that of other exchanges. During the previous pilot program, very few member organizations availed themselves of the program, but the Exchange seeks to make it available for an additional pilot period expiring January 31, 2010.

A Sponsored Participant is a non-member of the Exchange, such as an institutional investor, that gains access to the Exchange and trades under a Sponsoring Member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and a member organization. Specifically, the Exchange proposes to permit Sponsored Participants to be sponsored by Sponsoring Member Organizations, and thereby access the Exchange, subject to certain requirements. These requirements are intended to confirm that the Sponsored Participant is required to and had procedures in place to comply with Exchange rules, and that the Sponsoring Member Organization takes responsibility for the Sponsored Participant's activity on the Exchange.

First, the Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained an Access Agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in an addendum to the Access Agreement.

Second, there must be a Sponsored Participant Agreement between the Sponsoring Member Organization and the Sponsored Participant that contains the following sponsorship provisions, enumerated in full in Rule 1094(b)(ii):

(i) The orders of the Sponsored Participant are binding in all respects on the Sponsoring Member Organization;

(ii) the Sponsoring Member Organization is responsible for the actions of the Sponsored Participant;

(iii) in addition to the Sponsoring Member Organization being required to comply with the Exchange Certificate of Incorporation, By-laws, Rules and procedures of the Exchange, the Sponsored Participant shall do so as if such Sponsored Participant were an Exchange member organization;

(iv) the Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to the Exchange on behalf of the Sponsored Participant;

(v) the Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange;

(vi) the Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Exchange;[3]

(vii) the Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Exchange, including unauthorized entry of information into the Exchange, and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof;

(viii) the Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and Participants' use and access to the Exchange for compliance with the terms of this agreement;

(ix) the Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] If the Exchange determines that an authorized individual has caused a Member Organization to violate the Exchange's Rules, the Exchange could direct the Member Organization to suspend or withdraw the person's status as an authorized individual.

Organization, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.

Third, the Sponsoring Member Organization must provide the Exchange with a Sponsored Participant Addendum to its Access Agreement acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by helping market participants seeking access to a marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. The Commission notes that the proposal is substantially similar to the rules of other national securities exchanges.[10] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[11]

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–Phlx–2009–93 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–Phlx–2009–93. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–93 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27092 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 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. Phlx has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] *See, e.g.,* International Securities Exchange, LLC Rule 706 and NYSE Arca, Inc. Rule 7.29.

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60939; File No. SR–NYSEAmex–2009–79]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes to the Penny Pilot Program

November 4, 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 November 3, 2009, NYSE Amex LLC (''NYSEAmex'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to identify the next 75 options classes to be added to the Penny Pilot Program for Options (''Penny Pilot'' or ''Pilot'') on November 2, 2009. There are no changes to the Rule text. 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

NYSE Amex proposes to identify the next 75 options classes to be added to the Penny Pilot effective November 2, 2009. The Exchange recently filed to extend and expand the Pilot through December 31, 2010.[4] In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiple listed options classes based on national average daily volume for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[5]

NYSE Amex proposes adding the following 75 options classes to the Penny Pilot on November 2, 2009, based on national average daily volume from April 1, 2009 through September 30, 2009:

Nat'l ranking	Symbol	Company name
118	ABX	Barrick Gold Corp.
48	AXP	American Express Co.
134	AUY	Yamana Gold Inc.
93	BA	Boeing Co/The.
115	BBT	BB&T Corp.
111	BBY	Best Buy Co Inc.
94	BP	BP PLC.
67	CHK	Chesapeake Energy Corp.
58	CIT	CIT Group Inc.
78	COF	Capital One Financial Corp.
68	CVX	Chevron Corp.
130	DE	Deere & Co.
104	DOW	Dow Chemical Co/The.
49	DRYS	DryShips Inc.
88	EFA	iShares MSCI EAFE Index Fund.
64	ETFC	E*Trade Financial Corp.
32	EWZ	iShares MSCI Brazil Index Fund.
25	FAS	Direxion Daily Financial Bull 3X Shares.
33	FAZ	Direxion Daily Financial Bear 3X Shares.
112	FITB	Fifth Third Bancorp.
70	FSLR	First Solar Inc.
26	FXI	iShares FTSE/Xinhua China 25 Index Fund.
82	GDX	Market Vectors—Gold Miners ETF.
127	GG	Goldcorp Inc.
18	GLD	SPDR Gold Trust.
129	HGSI	Human Genome Sciences Inc.
62	HIG	Hartford Financial Services Group Inc.
72	HPQ	Hewlett-Packard Co.
59	IBM	International Business Machines Corp.
45	IYR	iShares Dow Jones US Real Estate Index Fund.
105	JNJ	Johnson & Johnson.
131	JNPR	Juniper Networks Inc.
98	KO	Coca-Cola Co/The.
39	LVS	Las Vegas Sands Corp.
87	MCD	McDonald's Corp.
71	MGM	MGM Mirage.
113	MON	Monsanto Co.
63	MOS	Mosaic Co/The.
120	MRK	Merck & Co Inc/NJ.
35	MS	Morgan Stanley.
73	NLY	Annaly Capital Management Inc.
99	NOK	Nokia OYJ.
121	NVDA	Nvidia Corp.
80	ORCL	Oracle Corp.
61	PALM	Palm Inc.
37	PBR	Petroleo Brasileiro SA.
85	PG	Procter & Gamble Co/The.

[4] *See* SR–NYSEAmex–2009–74, filed October 26, 2009.

[5] Index products would be included in the expansion if the underlying index level was under 200.

Nat'l ranking	Symbol	Company name
41	POT	Potash Corp of Saskatchewan Inc.
74	RF	Regions Financial Corp.
124	RIG	Transocean Ltd.
132	RMBS	Rambus Inc.
103	S	Sprint Nextel Corp.
83	SDS	ProShares UltraShort S&P500.
122	SKF	ProShares UltraShort Financials.
107	SLB	Schlumberger Ltd.
91	SLV	iShares Silver Trust.
84	SRS	ProShares UltraShort Real Estate.
119	SSO	ProShares Ultra S&P500.
101	STI	SunTrust Banks Inc.
125	SVNT	Savient Pharmaceuticals Inc.
92	TBT	ProShares UltraShort 20+ Year Treasury.
14	UNG	United States Natural Gas Fund LP.
117	UNH	UnitedHealth Group Inc.
110	UPS	United Parcel Service Inc.
81	USB	US Bancorp.
44	USO	United States Oil Fund LP.
60	UYG	ProShares Ultra Financials.
96	V	Visa Inc.
10	WFC	Wells Fargo & Co.
133	WYNN	Wynn Resorts Ltd.
52	X	United States Steel Corp.
114	XHB	SPDR S&P Homebuilders ETF.
86	XLI	Industrial Select Sector SPDR Fund.
79	XLU	Utilities Select Sector SPDR Fund.
54	XRT	SPDR S&P Retail ETF.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes to be added to the Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i)[6] of the Act and Rule 19b–4(f)(1)[7] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

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.[8]

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–2009–79 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–2009–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 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 NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* 15 U.S.C. 78s(b)(3)(C).

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–79 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27091 Filed 11–10–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60932; File No. SR–CBOE–2009–082]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

November 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 30, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $11,900 per month. Both access fees are currently set at the indicative lease rate (as defined below) for October 2009. The Exchange proposes to adjust both access fees effective at the beginning of November 2009 to be equal to the indicative lease rate for November 2009 (which is $11,830). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $11,830 per month commencing on November 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for November 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of November 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of October 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of November 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee, or the applicable status (*i.e.,* the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–082 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27088 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60931; File No. SR–CBOE–2009–078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders

November 4, 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 October 20, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 3, 2009, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 proposed to revise a paragraph in the purpose section of the Form 19b–4 and in the Exhibit 1 thereto relating to the application of Section 11(a) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under CBOE rules, a ''public customer'' or ''customer'' is a person or entity that is neither a member nor a broker/dealer. Each term is used in specific CBOE rules that provide certain marketplace advantages to public customer orders over non-customer orders (*e.g.,* orders for the account of members or broker/dealers). In particular, under CBOE rules, subject to certain exceptions, (i) public customer orders are given priority over non-customer orders and Market-Maker quotes at the same price,[4] and (ii) members are generally not charged a transaction fee for the execution of public customer orders. The purpose of providing these marketplace advantages to public customer orders is to attract retail investor order flow to the Exchange by leveling the playing field for retail investors over market professionals [5] and providing competitive pricing.

With respect to these CBOE marketplace advantages, the Exchange does not believe the definition of public customer versus a non-customer properly distinguishes between non-professional retail investors and certain professionals. According to the Exchange, providing marketplace advantages based upon whether the order is for the account of a participant that is a registered broker-dealer is no longer appropriate in today's marketplace because some non-broker-dealer individuals and entities have access to information and technology that enables them to professionally trade listed options in the same manner as a broker or dealer in securities.[6] These individual traders and entities (collectively, ''Professionals'') have the same technological and informational advantages over retail investors as broker-dealers trading for their own account, which enables them to compete effectively with broker-dealer orders and market maker quotes for execution opportunities in the CBOE marketplace.[7]

The Exchange therefore does not believe that it is consistent with fair competition for these professional account holders to continue to receive the same marketplace advantages as retail investors over broker-dealers trading on the CBOE. Moreover, because public customer orders at the same price are executed in time priority, retail investors are prevented from fully benefiting from the priority advantage when Professionals are afforded public customer order priority.

Accordingly, the Exchange is seeking to adopt a new term that will be used to more appropriately provide CBOE marketplace advantages to retail investors on the CBOE. Under the proposal, a ''Professional'' will be defined in proposed Rule 1.1 as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Under the proposal, a Professional will be treated in the same manner as a broker or dealer in securities for purposes of CBOE Rules 6.2A (Rapid Opening System), 6.2B (Hybrid Opening System), 6.8C (Prohibition Against Members Functioning as Market-Makers), 6.9 (Solicited Transactions), 6.13A (Simple Auction Liaison), 6.45 (Priority of bids and Offers—Allocation of Trades), 6.13B (Penny Price Improvement), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.53C(c)(ii) and (d)(v) and 6.53C.06(b) and (c) (Complex Orders on the Hybrid System), 6.74 (Crossing Orders) (except that Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (Automated Improvement Mechanism) (except Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy .09), 6.74B (Solicitation Auction Mechanism), 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), 8.87 (Participation Entitlement of DPMs and e-DPMs), 24.19 (Multi-Class Broad-Based Index Option Spread Orders), 43.1 (Matching Algorithm/Priority), 44.4 (Obligations of SBT Market-Makers), and 44.14 (SBT DPM Obligations). In addition, the Professional designation is not available in Hybrid 3.0 classes.

The use of this new term for purposes of the above-referenced execution rules will result in Professional account holders participating in CBOE's allocation process on equal terms with broker-dealer orders. The proposal will not otherwise affect non-broker-dealer individuals or entities under CBOE rules, and in particular, all public customer orders will continue to be treated equally for purposes of the linkage-related rules. For example, CBOE will provide the same away-market protection for all public customer orders, including non-broker-dealer orders that are included in the definition of ''Professional'' orders.

In order to properly represent orders entered on the Exchange according to the new definitions, members will be required to indicate whether public customer orders are ''Professional'' orders.[8] To comply with this requirement, members will be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be

[4] *See, e.g.,* CBOE Rules 6.45, *Priority of Bids and Offers—Allocation of Trades,* 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.*

[5] Market professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously, and order and risk management tools.

[6] For example, some broker-dealers provide their professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order management tools, the ability to place orders in the underlying securities, and market data feeds. *See* Securities Exchange Act Releases 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR–ISE–2006–26)(order approving International Securities Exchange (''ISE'') proposal to introduce priority customer and professional orders) and 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (SR–ISE–2006–26)(notice of ISE proposal to introduce priority customer and professional orders) at note 8.

[7] Market-Makers enter quotes based upon the theoretical value of the option, which moves with various factors in their pricing models, such as the value of the underlying security. Professional customers place and cancel orders in relation to an option's theoretical value in much the same manner as a Market-Maker. This is evidenced by the entry of limit orders that join the best bid or offer and by a very high rate of orders that are cancelled. In contrast, retail customers who enter orders as part of an investment strategy (such as a covered write or directional trade) most frequently enter marketable orders or limit orders that they do not cancel and replace. *See, e.g.,* Securities Exchange Act Release 57254 at note 9.

[8] The Exchange intends to utilize a special order origin code for Professional orders.

represented as customer orders or Professional orders.[9]

Lastly, the Exchange intends to establish, via a separate rule filing, transaction fees applicable to Professionals and the Exchange would not commence the Professional program until such fees are in place.

* * * * *

Section 11(a) of the Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion unless an exception applies.[10] Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. One such exception, set forth in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T),[11] permits any transaction for a member's own account provided, among other things, that the transaction yields priority, parity, and precedence to orders for the account of persons who are not members or associated with members of the exchange. Exchange rules, therefore, may require members to yield priority to the orders of non-members, including public customers, to satisfy this exception to Section 11(a).[12] Another exception permits market makers to effect transactions on exchanges in which they are members.[13]

In addition to the exceptions noted above, Rule 11a2–2(T) under the Act[14] provides exchange members with an exception from the prohibitions in Section 11(a). Rule 11a2–2(T), known as the ''effect versus execute'' rule, permits an exchange member, subject to certain conditions, to effect transactions for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (collectively ''covered accounts'') by arranging for an unaffiliated member to execute the transaction on the exchange.

To comply with the ''effect versus execute'' rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[15] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[16]

The Exchange does not believe that its proposal relating to Professional orders would affect the availability of the exceptions to Section 11(a) of the Act, including the exceptions in subparagraph (G) of Section 11(a) and in Rules 11a1–1(T) and 11a2–2(T), as are currently available.[17]

* * * * *

The Exchange believes that identifying Professional account holders based upon the average number of orders entered for a beneficial account is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors. The Exchange proposes the threshold of 390 orders per day on average over a calendar month because it believes it far exceeds the number of orders that are entered by retail investors in a single day,[18] while being a sufficiently low number of orders to cover the Professional account holders that are competing with broker-dealers in the CBOE marketplace. In addition, basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[19] that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will assure that retail investors continue to receive the appropriate marketplace advantages in the CBOE marketplace, while furthering fair competition among marketplace professionals by treating them equally within the CBOE marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[9] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as public customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member and the member will be required to change the manner in which it is representing the customer's orders within five days.

[10] 15 U.S.C. 78k(a).

[11] 17 CFR 240.11a1–1(T).

[12] *See, e.g.,* CBOE Rule 6.45A(b)(i)(D), which pertains to the allocation of orders in open outcry and provides that members relying on the Section 11(a)(1)(G) and Rule 11a1–1(T) thereunder as an exemption must yield priority to any bid (offer) at the same price of public customer orders and broker-dealer orders resting in the electronic book, as well as any other bids and offers that have priority over such broker-dealer orders under that rule.

[13] Section 11(a)(1)(A).

[14] 17 CFR 240.11a2–2(T).

[15] The member, however, may participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[16] 17 CFR 240.11a2–2(T).

[17] *See* Securities Exchange Act Release No. 59546 (March 10, 2009), 74 FR 11144 (March 16, 2009) (SR–CBOE–2009–016) and related regulatory circular, RG09–35.

[18] Three hundred ninety orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to close. Many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as ''active traders.'' Publicly available information from the websites for Charles Schwab, Fidelity, TD Ameritrade and optionsXpress all define an ''active trader'' as someone who executes only a few options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter. *See* Securities Exchange Act Release 57254 at note 11 (which also notes that a study of one of the largest retail-oriented options brokerage firms indicated that on a typical trading day, options orders were entered with respect to 5922 different customer accounts. There was only one order entered with respect to 3765 of the 5922 different customer accounts on this day, and there were only 17 customer accounts with respect to which more than 10 orders were entered. The highest number of orders entered with respect to any one account over the course of an entire week was 27).

[19] 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–078 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 Number SR–CBOE–2009–078 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27087 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60934; File No. SR–BX–2009–071]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule of the Boston Options Exchange Facility

November 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 7 of the BOX Fee Schedule currently applies to all classes listed for trading on BOX that are not included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules (''Non-Penny Pilot Classes''). The Exchange proposes to amend Section 7 to make the following changes.[5]

Extend Section 7 Fees and Credits to Penny Pilot Classes

The Exchange proposes to extend the applicability of Section 7 of the Fee Schedule to also include Penny Pilot Classes.[6] The Exchange proposes that the applicability of this pricing will apply to Penny Pilot Classes and Non-Penny Pilot Classes alike, whereby transactions that remove liquidity from the BOX Book will receive a 'removal' credit and transactions that add liquidity will be charged an 'add' fee.

However, the Exchange proposes that the level of credits and fees differ for Penny Pilot Classes as compared to Non-Penny Pilot Classes. Specifically, the Exchange proposes that both the fees and credits for Penny Pilot Classes be $0.20, in addition to the 'standard' fees.[7] The proposed lower fees and credits for Penny Pilot Classes, as compared to Non-Penny Pilot Classes, is based on the

[5] Changes to other sections of the Fee Schedule other than Section 7 are required for conformity purposes.

[6] Except for transactions within the PIP, as discussed below, SPY, QQQQ and IWM will remain subject only to 'standard' fees.

[7] The next 300 most actively traded classes, as per Options Clearing Corporation volume data, will be added to the Penny Pilot Program. *See* Securities Exchange Act Release No. 60886 (October 27, 2009) (SR–BX–2009–067). The first tranche of 75 classes will be eligible for quoting and trading in $0.01 increments on November 2, 2009.

narrower spreads exhibited in Penny Pilot Classes.

For example, a Public Customer Order in a Penny Pilot Class is entered into the BOX Trading Host and executes against a Broker Dealer's order resting on the BOX Book. The Public Customer is the remover of liquidity and the Broker Dealer is the adder of liquidity. The Public Customer will receive a $0.20 'removal' credit and the Broker Dealer will be charged a $0.20 'add' fee. The Public Customer will receive a $0.20 total credit (free 'standard' charge plus the $0.20 'removal' credit) and the Broker Dealer will be charged $0.40 total (the $0.20 'add' fee for adding liquidity in addition to the 'standard' $0.20 transaction fee).

Change the Title of Section 7 of the Fee Schedule

The Exchange also proposes that the name of the pricing structure of Section 7 of the BOX Fee Schedule be changed to 'Liquidity Fees and Credits', as the name 'Non-Penny Pilot Class Pricing Structure' will no longer be appropriate once the inclusion of Penny Pilot Classes is implemented.[8]

Increase Credits and Fees for Non-Penny Pilot Classes

The Exchange also proposes to increase both the credits and fees for Non-Penny Pilot Classes from $0.30 to $0.75 within Section 7 of the Fee Schedule. These credits and fees apply equally to all account types, whether Public Customer, Firm or Market Maker and are in addition to any applicable 'standard' trading fees and/or volume discounts, as described in Sections 1 through 4 of the BOX Fee Schedule.

For example, a Public Customer Order in a Non-Penny Pilot Class is entered into the BOX Trading Host and executes against a Broker Dealer's order resting on the BOX Book. The Public Customer is the remover of liquidity and the Broker Dealer is the adder of liquidity. The Public Customer will receive a $0.75 'removal' credit and the Broker Dealer will be charged a $0.75 'add' fee. The Public Customer will receive a $0.75 total credit (free 'standard' charge plus the $0.75 'removal' credit) and the Broker Dealer will be charged $0.95 total (the $0.75 fee for adding liquidity in addition to the standard $0.20 transaction fee).

The Price Improvement Period (''PIP'')

Additionally, the Exchange proposes to make transactions within the PIP subject to Section 7, as described in new subsection 7(d) of the Fee Schedule.[9] Currently, transactions on both sides of a PIP are exempt from Section 7 and are charged 'standard' execution fees according to Sections 1 through 3 of the Fee Schedule. The Exchange proposes that the Section 7(d) fees and credits will be $0.20 for both Penny Pilot and Non-Penny Pilot Classes traded within the PIP.

For example, a BOX Participant submits a Public Customer Order (''Initiating Participant'') in a Non-Penny Pilot Class into the BOX PIP (''PIP Order'') with a matching contra order (''Primary Improvement Order'') for the full size with a price at least equal to the National Best Bid or Offer (''NBBO''). The PIP runs for the specified duration period, currently one (1) second, and the Public Customer's PIP Order, which must be filled, executes against the Initiating Participant's Primary Improvement Order. The Public Customer will be charged the 'standard' transaction fee for orders submitted into the PIP and receive the 'removal' credit ($0.20).[10] The Initiating Participant will be charged the 'add' fee ($0.20) in addition to its 'standard' transaction fee ($0.20) for orders submitted in the PIP, resulting in a total fee of $0.40.

Alternatively, a Public Customer's PIP Order in a Penny Pilot Class executes in the PIP against a competing improvement order (''Improvement Order'') in the PIP from a BOX Participant other than the Initiating Participant. The Public Customer will be charged the 'standard' transaction fee for orders submitted into the PIP and receive the 'removal' credit ($0.20) and the Participant whose Improvement Order executed against the Public Customer's PIP Order will be charged the 'standard' execution fee of $0.20 in addition to the fee for adding liquidity of $0.20, resulting in a total fee of $0.40.

The changes proposed herein are in response to various 'Payment for Order Flow' programs currently in operation on other options exchanges. The Exchange believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all BOX Participants.

The Exchange further proposes to implement a volume discount for the fees charged to Initiating Participants. The volume discount will only apply to executions in PIP auctions initiated by the particular Initiating Participant which occur at a price at least better than the NBBO.[11] A threshold average daily volume (''ADV'') of 50,000 contracts per month is proposed for all such executions. Any executions of the Initiating Participant above this threshold will receive a $0.05 discount.

For Example, suppose that at the end of a calendar month a BOX Participant's executions in PIP auctions which it initiated and which were filled at a price better than the NBBO totaled 2.5 million contracts. For a month with 20 trading days this would average 125,000 such contracts per trading day. For these daily executions the Initiating Participant will be billed $0.20 per contract ($25,000) in 'standard' execution fees in addition to $0.20 per contract ($25,000) in Section 7 'add' fees. The 75,000 contracts over the 50,000 ADV threshold will be discounted by $0.05 per contract ($3,750 volume discount). The net daily transaction cost for the Initiating Participant is the initial $25,000 'standard' transaction fee plus the $25,000 in Section 7 'add' fees less the $3,750 volume discount for a grand total of $46,250.

The Exchange believes that providing a volume discount to the Initiating Participant's fees is appropriate to incent BOX Participants to submit their Public Customer Orders into the PIP for the possibility of price improvement. Furthermore, such a discount is necessary to limit the exposure that Initiating Participants will have removal fees, because as Initiating Participants they will be adders of liquidity should the Primary Improvement Order execute against the PIP Order.

The Exchange believes that the proposed pricing changes are equitable in that they apply uniformly to all similarly situated Participants, specifically, Participants seeking price improvement for their customer order flow. The pricing changes are also consistent with industry precedent that allows for different prices to be charged for different orders types originated by dissimilarly classified market participants. The other options exchanges currently apply different rates to firms facilitating their own customer order flow as opposed to orders of other market participants.[12]

[8] The remainder of this proposal will refer to Section 7 of the Fee Schedule in generic terms rather than with the current Non-Penny Pilot Class Pricing Structure moniker.

[9] This will be applicable for all classes trading on BOX, including transactions in the PIP in SPY, QQQQ and IWM.

[10] The PIP Order will always be treated as the remover of liquidity.

[11] For purpose of this volume discount NBBO shall be determined at the time the PIP is initiated.

[12] *See* Securities Exchange Act Release No. 60379 (July 23, 2009), 74 FR 38244 (July 31, 2009) (SR–NYSEArca–2009–62). *See also* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex–2009–38). *See also*

Continued

The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants.

For example, under the current fee schedule of the NYSE Arca (''NYSE Arca'') a firm facilitation trade is charged $0.00[13] while manual broker dealer executions are charged $0.25 and market maker non-directed orders are charged $0.16. BOX believes that these differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow.[14]

The Exchange believes that making executions within the PIP auction subject to Section 7 fees and credits as well as instituting the proposed volume discount follows existing precedent for rate differentials and further encourages BOX Participants to provide their customers' orders with the opportunity for price improvement, thereby assisting customers in their attempt to transact in the options markets at the best price and lower cost.

Finally, the Exchange proposes to make additional changes to Section 4 and Section 7 of the BOX Fee Schedule in order to eliminate all references to outbound P and P/A Orders. Effective November 1, 2009 BOX will no longer be sending outbound P and P/A Orders so references to these orders is no longer necessary.

The proposed rule change shall be implemented on November 2, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is not designed to permit unfair discrimination, as well as Section 6(b) of the Act,[17] in general, and Section 6(b)(4) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges and treats similarly situated Participants uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[19] and Rule 19b–4(f)(2) thereunder,[20] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BX–2009–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–071 and should be submitted on or before December 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27090 Filed 11–10–09; 8:45 am]

BILLING CODE 8011–01–P

Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR–Phlx–2009–67).

[13] The NYSEArca firm facilitation fee applies to any transaction involving a firm proprietary trading account that has a customer of that same firm on the contra side of the transaction.

[14] *See also* supra note 12.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6804]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the U.S. Institutes for Student Leaders

Announcement Type: New Cooperative Agreements

Funding Opportunity Number: ECA/A/E/USS–10–11–25

Catalog of Federal Domestic Assistance Number: 19.009

Key Dates: April, 2010 to April, 2011

Application Deadline: January 14, 2010

Executive Summary: The Branch for the Study of the United States, Office of

Academic Exchange Programs, Bureau of Educational and Cultural Affairs, invites proposal submissions for the design and implementation of approximately fifteen (15) Study of the United States Institutes for Student Leaders under five different themes. Taking place over the course of five weeks, the Institutes will be scheduled throughout a one year period, starting in April 2010 and ending in March 2011. The scheduling of each Institute should coincide with the academic calendar of the participants' home country(ies) (see specific themes, dates, and country groups below in section I.4).

The Institutes should take place at U.S. academic institutions and provide groups of highly motivated undergraduate students from the countries and regions noted below with in-depth seminars on the topics detailed in the following section. Each Institute should include four weeks of academic residency followed by a one-week integrated educational travel tour that will expose participants to a different region of the United States. The one-week educational study tour should conclude with a two or three day session in Washington, DC.

Each Institute will host up to 20 participants, for a total of approximately 300 students. ECA plans to provide several awards for the administration of the 15 Study of the U.S. Institutes and welcomes applications from accredited post-secondary education institutions in the United States and public and private non-profit organizations or consortia of organizations (see Eligibility Information, section III). The awarding of Cooperative Agreements for this program is contingent upon the availability of FY 2010 funds.

I. Funding Opportunity Description

I.1. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is to ''enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

I.2. Purpose

The Study of the U.S. Institutes for Student Leaders are intensive academic programs whose purpose is to provide groups of undergraduate students with a deeper understanding of the United States while also exposing Americans to the diverse cultures and traditions of the exchange participants.

The principal objective of the Institutes is to provide a group of undergraduate leaders an introduction to a specific field of study, while also heightening their awareness of the history and evolution of U.S. society, culture, values, and institutions, broadly defined. In this context, the Institutes should incorporate a focus on contemporary American life, as it is shaped by historical and/or current political, social, and economic issues and debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, and diversity and tolerance should be addressed.

In addition to promoting a better understanding of the United States, an important objective of the Institutes is to develop the participants' leadership skills. In this context, the academic program should include group discussions, trainings, and exercises that focus on topics such as leadership, teambuilding, collective problem-solving skills, effective communication, and management skills for diverse organizational settings. Institutes should include a community service component in which the students experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society.

Local site visits and educational travel should provide opportunities to observe varied aspects of American life and to discuss lessons learned in the academic program. The program should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

I.3. Overview

Institutes will provide an in depth study of one of the themes outlined below. Participants should gain both theoretical knowledge and practical skills that will allow them to excel in their disciplines. In addition to thematic teaching, all institutes should explore American history, government, society, and culture through the lens of its particular theme. All Institutes should include opportunities for leadership development, specifically as it relates to each field. Institutes should also expose participants to community organizations that provide advocacy or other services relevant to the particular theme.

I.4. Institute Themes

(a.) The Study of the U.S. Institute on Global Environmental Issues should explore the role that environmental policy has played in the economic and political development of the United States. The Institute should use experiential learning techniques to expose participants to current themes in the field, including natural resource management, sustainable development/sustainable agricultural practices, food security, ecotourism, energy generation (new and traditional forms), and water management and treatment. The issues should be explored from numerous angles: local grassroots activism and civic initiatives, market-oriented approaches, and federal government policies and regulation. The Institute might also examine the relationship between environmental security and national security. Finally, the Institute should explore environmental issues in the context of a globalized society, and draw comparisons between the United States and the participants' home countries. Participants will be drawn from the following regions and countries:

(1) Southeast Asia (possible countries include Burma, Thailand, Philippines, Malaysia, Indonesia)—*May and June 2010*

(2) Southeast Asia (possible countries include Cambodia, Vietnam, Laos)—*July and August 2010*

(3) Middle East (possible countries include Jordan, Israel)—*July and August 2010*

(b.) The Study of the U.S. Institute on New Media should examine major topics in journalism, including the concept of a free press, First Amendment rights, the media's relationship to the public interest, and media business models. The Institute should cover all elements of journalism: Researching, writing, editing, and reporting with particular emphasis on new forms of media. The program should underscore the impact of new technologies on journalism, and give participants new skills such as working with on-line photos and videos; 'twittering;' publishing blogs; utilizing social networking and other internet sites; and other new technologies. Participants will be drawn from the following regions and countries:

(1) South Asia (possible countries include India, Nepal, Bangladesh, Sri Lanka)—*May and June 2010*

(2) Middle East (possible countries include Iraq, Lebanon, Syria, Israel)—*July and August 2010*

(3) Southeast Asia (possible countries include Indonesia, Malaysia, Philippines)—*May and June 2010*

(c.) The Study of the U.S. Institute on Religious Pluralism in the United States should explore U.S. history, society, and institutions within the context of religious pluralism and interfaith dialogue. Topics should include, but are not limited to, early religious traditions in the U.S.; the separation of church and state; immigration and the introduction of new religions in the U.S.; protection and representation of minority groups and religions; and interfaith dialogue and cooperation in a diverse and rapidly changing world. Participants should meet with U.S. community leaders of different faiths that advocate for collaboration and tolerance among religious groups. Participants should also examine the leadership role that religious officials play in their own societies and develop ideas for how they can work with leaders, of similar or different faiths, to bring about positive social change. Participants will be drawn from the following regions and countries:

(1) Afghanistan—*January and February 2011*

(2) Middle East (possible countries include Egypt, Lebanon, Iraq, Saudi Arabia)—*July and August 2010*

(3) Indonesia—*January and February 2011*

(d.) The Study of the U.S. Institute on Social Entrepreneurship should provide participants with an overview of how to employ entrepreneurial skills to address social issues. The Institute should review the development, history, challenges, and successes of social enterprises and community leaders, in the United States and globally. Topics may include, but are not limited to, microfinance; organizational development and management; grant writing; innovation; emerging markets and risk analysis; strategic business planning; corporate social responsibility; and, women and minorities in entrepreneurship.

Participants will be drawn from the following regions and countries:

(1) North Africa (possible countries include Algeria, Tunisia, Morocco, Egypt)—*July and August 2010*

(2) Turkey—*July and August 2010*

(3) Africa (possible countries include Sierra Leone, Cote D'Ivoire, Mali, Senegal, Nigeria)—*July and August 2010*

(e.) The Study of the U.S. Institute on Women's Leadership should examine the history and participation of women in public life in the United States. The Institute should focus on two major areas: (1) Developing participants' leadership skills in areas such as critical thinking, communication, decision-making, and managerial abilities; and, (2) Placing these abilities in the context of the history and participation of women in U.S. politics, economics, culture, and society. The Institute should examine the historical domestic progress towards women's equality in the United States, the current domestic successes and challenges to women in a variety of fields, and current challenges in global women's issues. Participants will be drawn from the following regions and countries:

(1) South Asia (possible countries include Afghanistan, Pakistan, India)—*July and August 2010*

(2) Middle East (possible countries include Egypt, Morocco, Saudi Arabia)—*July and August 2010*

(3) Middle East (possible countries include Oman, Bahrain, UAE, Yemen)—*January and February 2011*

I.5. Program Administration

The Bureau is seeking detailed proposals from accredited post-secondary U.S. institutions (community colleges, liberal arts colleges, public and private universities), consortia of organizations, and/or from public and private non-profit organizations meeting the eligibility requirements outlined under Section III below. Consortia applicants must designate a lead institution to receive the Cooperative Agreement. Organizations that opt to work in sub-grant arrangements should clearly outline all duties and responsibilities of the partner organization(s), ideally in the form of sub-grant agreements that include detailed line-item budgets.

Organizations that propose to administer multiple Institutes under sub-grantee agreements should designate a project director to oversee all of the Institutes, coordinate logistical and administrative arrangements, ensure an appropriate level of continuity between the various host institution programs, and serve as the principal liaison between ECA and all the host institutions and thus, be ECA's primary point of contact.

Each host institution should designate an administrative director to oversee all student support services, including supervision of the program participants and budgetary, logistical, and other administrative arrangements. Each organization also should designate an academic director who will be present throughout the program to ensure the continuity, coherence, and integration of all aspects of the academic program, including the related educational study tour. It is important that the applicant organization also retain qualified ''cultural ambassadors'' or ''graduate mentors'' (or another appropriate name) at each host institution who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program.

I.6. Participants

Participants will be identified and nominated by the U.S. Embassies and Consulates and/or Fulbright Commissions with final selection made by ECA. Each Institute will host up to 20 participants, for a total of approximately 300 students.

Participants will be drawn from among the priority country groupings listed after each of the thematic institutes described above. Applicants are welcome to indicate their preference for one of the country groups listed by theme and if so, should indicate any regional expertise. ECA will make the final decisions regarding participating countries and reserves the right to adjust the regions and countries participating in this activity based upon Department priorities.

Participants in the Study of the U.S. Institutes for Student Leaders will be highly motivated undergraduate students from colleges, universities, and other institutions of higher education in selected countries overseas who demonstrate leadership through academic work, community involvement, and extracurricular activities. Their major fields of study will be varied, and will include the sciences, social sciences, humanities, education, and business. All participants will have a good knowledge of English and will have demonstrated interest in the Institute's theme.

Every effort will be made to select a balanced mix of male and female participants, and to recruit participants who are from non-elite or underprivileged backgrounds, from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country.

I.7. Program Dates

The Institutes should be five weeks in length. The Institutes will be scheduled at various times throughout the year, with the first Institutes beginning in April 2010, and the last Institutes ending as late as March 2011. A

proposed time line is indicated next to each country group listed above.

I.8. Program Guidelines

While the conception and structure of the Institute agenda is the responsibility of the organizers, it is essential that proposals provide a detailed and comprehensive narrative describing the objectives of the Institute; the title, scope, and content of each session; planned site visits; and how each session relates to the overall Institute theme. Proposals must include a syllabus that indicates the subject matter for each lecture, panel discussion, group presentation, or other activity. The syllabus also should confirm or provisionally identify proposed speakers, trainers, and session leaders, and clearly show how assigned readings will advance the goals of each session. Overall, proposals will be reviewed on the basis of their responsiveness to RFGP criteria, coherence, clarity, and attention to detail. The accompanying Project Objectives, Goals, and Implementation (POGI) document provides program-specific guidelines that all proposals must address fully.

Please note: In a Cooperative Agreement, the Branch for the Study of the United States is substantially involved in program activities above and beyond routine grant monitoring. The Branch will assume the following responsibilities for the Institute: Participate in the final selection of participants; debrief participants in Washington, DC at the conclusion of the Institute; and engage in follow-on communication with the participants after they return to their home countries. The Branch may request that the recipient make modifications to the academic residency and/or educational travel components of the program. The recipient will be required to obtain approval of significant program changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2010.

Approximate Total Funding: $3,600,000.

Approximate Number of Awards: Up to five.

Floor of Award Range: $240,000.

Ceiling of Award Range: $1,680,000.

Anticipated Award Date: Pending availability of funds, April 1, 2010.

Anticipated Project Completion Date: April 2011.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1 Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

An applicant organization is defined by the DUNS number of the organization and by the signature of the authorized representative contained on the ''Application for Federal Assistance Form'' (SF–424) submitted under this competition.

III.2 Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the recipient institution must maintain written records to support all costs which are claimed as a contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the recipient institution does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

(a.) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates that the minimum award under this competition will be approximately $240,000. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Technical Eligibility: It is ECA's intent to fund a total of fifteen (15) thematic institutes, three under each theme, as a result of this solicitation.

Applicant organizations may submit no more than one application under this competition for Option A or Option B. as outlined below. See Section III.1 above, for a definition of an applicant organization.

If multiple proposals are received from the same applicant organization, all submissions will be declared technically ineligible and will be given no further consideration in the review process. All applicants are strongly encouraged to read this RFGP thoroughly, prior to developing and submitting a proposal, to ensure that proposed activities are appropriate and responsive to the goals, objectives and criteria outlined in the solicitations.

Applicants should indicate whether they are applying under Option A or Option B, as detailed below.

Option A: Total available funding up to $240,000 (one institute) or up to $480,000 (two institutes). Under Option A, applicant organizations (colleges, universities, or NGOs) are invited to submit one application to host no more than two Institutes under any of the themes listed in Section I.4. It is anticipated that between 1 and 5 awards will be made under Option A.

Option B: Total available funding up to $1,680,000. Under Option B, other public and private non-profit organizations or consortia of organizations must propose to administer seven (7) Institutes in one application. Organizations, using sub-grantee agreements, must propose to administer at least one Institute under each of the five (5) themes listed above, and two additional Institutes in the theme(s) of their choice. It is anticipated that up to two awards may be made under Option B.

All proposals should clearly indicate the desired theme, country group, and time line from Section I.4 above, and should demonstrate thematic expertise, as well as any regional expertise, if applicable. ECA reserves the right to assign the final country groupings.

ECA also reserves the right to adjust the total funding amount to the applicant organizations based upon the quality of the proposed activity and each organization's demonstrated expertise.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants

until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Branch for the Study of the United States, ECA/A/E/USS; SA–5, Fourth Floor; U.S. Department of State; Washington, DC 20522–0504, (202) 632–3337 to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–10–11–25 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals, and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Amy M. Rustan and refer to the Funding Opportunity Number ECA/A/E/USS–10–11–25 located at the top of this announcement on all other inquiries and correspondence.

IV.2 To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at: *http://www.grants.gov*.

Please read all information before downloading.

IV.3 Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under section IV.6 Application Deadline and Methods of Submission, indicated below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals, and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.4 Program Regulations

IV.4.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements.

Administering organizations will be asked to issue participants DS2019 forms and ship them to the Public Affairs Sections at posts.

ECA will issue participant DS 2019 forms for organizations with direct agreements with ECA.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.4.2 Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the

governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.4.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that proposals include a draft survey questionnaire or other technique plus a description of a methodology used to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. An evaluation plan should include a description of project's objectives, anticipated project outcomes, and how and when outcomes will be measured (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. Applicants should also show how project objectives link to the goals of the program described in this RFGP.

Monitoring and evaluation plans should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage applicants to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of a monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.5 Budget

IV.5.1 Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.5.2 Allowable costs for the program include the following:

(1) Institute staff salary and benefits

(2) Participant housing and meals

(3) Participant travel and per diem

(4) Textbooks, educational materials, and admissions fees

(5) Honoraria for guest speakers

(6) Follow-on programming for alumni of Study of the United States programs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.6 Application Deadline and Methods of Submission

Application Deadline Date: January 14, 2010

Reference Number: ECA/A/E/USS–10–11–25

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.* Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.6.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and

place it in an envelope addressed to ''ECA/EX/PM''.

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/USS–10–11–25, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0514.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a CD–ROM. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.6.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: Due to Recovery Act related opportunities, there has been a higher than usual volume of grant proposals submitted through Grants.gov. Potential applicants are advised that the increased volume may affect the grants.gov proposal submission process. As stated in this RFGP, ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support; Contact Center Phone: 800–518–4726; Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time; E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.6.3 Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

V.2. Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Plan and Ability to Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate clearly how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. Proposals also should discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including

responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

OMB Circular No. A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

OMB Circular No. A–133, ''Audits of States, Local Government, and Non-profit Organizations.''

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants
http://fa.statebuy.state.gov

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) An interim program report no more than 90 days after the completion of the Institute;

(2) A final program and financial report no more than 90 days after the expiration of the award;

(3) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(1.) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports. Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Amy M. Rustan, Study of the U.S. Branch, ECA/A/E/USS, U.S. Department of State, Fourth Floor, SA–5, 2200 C Street, NW., Washington, DC 20522–0504, phone: (202) 632–3337, e-mail: *RustanAM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS–10–11–25.

VIII. Other Information: Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. In addition, it reserves the right to accept proposals in whole or in part and to make an award or awards in the best interest of the program. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 3, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–26913 Filed 11–10–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2009–0115]

Agency Information Collection Activities: Request for Extension of a Previously Approved Information Collection

AGENCY: U.S. Department of Transportation, Office of the Secretary (OST).

ACTION: Notice and request for OMB review.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the Supplemental Discretionary Grants for a National Surface Transportation System. The information to be collected will be used to and/or is necessary in order to receive and evaluate applications for grant funds pursuant to Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA). Title XII established a new program for OST to provide Supplemental Discretionary Grants for a National Surface Transportation System. OST is referring to these grants as Grants for Transportation Investment Generating Economic Recovery, or ''TIGER'' Discretionary Grants. The purposes of the TIGER Discretionary Grants program include promoting economic recovery and supporting projects that have a significant impact on the Nation, a metropolitan area or a region. A 60-day **Federal Register** notice was published on August 21, 2009 (FR Vol. 74, No. 161). Since the release of the initial May 18, 2009, interim **Federal Register** notice, a total of 145 comments were received to the Docket (DOT–OST–2009–0115) and reviewed by the

Department. Many of the comments received were letters supporting applications submitted for TIGER Discretionary Grant funding. These letters of support were submitted by members of Congress and members of the public. In addition, comments were submitted by members of the public requesting changes to the program selection criteria. These comments were considered and changes were made to the selection criteria in a June 17, 2009, **Federal Register** notice (FR Vol. 74, No. 115). None of the comments submitted to the Docket since the initial May 18, 2009, **Federal Register** notice were related to the proposed approval to renew the information collection.

DATES: Comments should be submitted by December 14, 2009 and submitted to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 with the associated OMB Approval Number 2105–0560 and Dockets (DOT–OST–2009–0115).

FOR FURTHER INFORMATION CONTACT: The TIGER Discretionary Grants program manager via e-mail at *TIGERGrants@dot.gov*.

Comments: Comments should be sent to the attention of the DOT/OST Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or *oira_submissions@omb.eop.gov* and should identify the associated OMB control number 2105–0560 and Docket (DOT–OST–2009–0115).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0560.

Title: Supplemental Discretionary Grants for a National Surface Transportation System or TIGER Discretionary Grants.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: On February 17, 2009, the President of the United States signed the Recovery Act to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. The Recovery Act appropriated $1.5 billion of discretionary grant funds to be awarded by the Department for capital investments in surface transportation infrastructure. The funds provided by TIGER Discretionary Grants are awarded on a competitive basis to projects that have a significant impact on the Nation, a metropolitan area, or a region.

On May 18, 2009, the Department published an interim notice announcing the availability of funding for TIGER Discretionary Grants, project selection criteria, application requirements and the deadline for submitting applications, which was September 15, 2009. On June 17, 2009, the Department published an additional notice revising some elements of the interim notice (FR Vol. 74, No. 115). A 60-day **Federal Register** notice was published on August 21, 2009 (FR Vol. 74, No. 161). As the result of the notices, 145 comments were received to the Docket (DOT–OST–2009–0115). Many of the comments received were letters supporting applications submitted for TIGER Discretionary Grant funding. These letters of support were submitted by members of Congress and members of the public. In addition, comments were submitted by members of the public requesting changes to the program selection criteria. These comments were considered and changes were made to the selection criteria in the June 17, 2009, **Federal Register** notice. None of the comments received to the Docket were related to the proposed approval to renew the information collection. The Department's estimated burden for this information collection:

Expected Number of Respondents: 500.

Frequency: One time collection.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 50,000.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 148.

Issued in Washington, DC on November 6, 2009.

Patricia Lawton,

DOT PRA Clearance Officer.

[FR Doc. E9–27342 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), gives notice that the Board will seek from the Office of Management and Budget (OMB) an extension of approval for the two currently approved collections described below. The Board is seeking comments regarding one or both of these collections concerning (1) Whether the collection is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate. Submitted comments will be addressed in a subsequent notice and will also be submitted to OMB with the Board's request for OMB approval.

Deadline: Persons wishing to comment on one or both of these information collections should submit comments by January 11, 2010.

ADDRESSES: Direct all comments to Marilyn R. Levitt, Office of the General Counsel, Surface Transportation Board, 395 E Street, SW., Suite 1260, Washington, DC 20423, *levittm@stb.dot.gov*, or by fax at (202) 245–0460. Comments should be identified as ''Paperwork Reduction Act Comments,'' and should refer to the title and control number of the specific collection(s) commented upon.

FOR FURTHER INFORMATION CONTACT: Cynthia T. Brown, (202) 245–0350. For a copy of the regulations pertaining to the information collection(s), contact Cynthia T. Brown at (202) 245–0350 or *brownc@stb.dot.gov*.

Collection Number One

Title: Maps Required in Abandonment Exemption Proceedings.

OMB Control Number: 2140–0008.

Form Number: None.

Type of Review: Extension without change.

Respondents: Railroads initiating abandonment exemption proceedings.

Number of Respondents: 80.

Estimated Time per Response: 1 hour, based on average time reported in informal survey of respondents conducted in 2009.

Frequency of Response: 1.

Total Annual Burden Hours: 80.

Total Annual ''Non-Hour Burden'' Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.50(d)(2) and 1152.60(b), the Board

requires in each abandonment exemption proceeding a detailed map of the rail line, depicting the line's relation to other rail lines, roads, water routes, and population centers. The Board uses this information to determine the scope and the impact of the proposed abandonment. In addition, this information is posted on the Board's Web site and serves as a form of notice to current and/or potential shippers, and to persons who might want to make an offer of financial assistance under 49 U.S.C. 10904; acquire the line as a trail under the National Trails System Act, 16 U.S.C. 1247(d); or acquire the line for another public purpose under 49 U.S.C. 10905.

Collection Number Two

Title: System Diagram Maps (or, in the case of small carriers, the alternative narrative description of rail system).

OMB Control Number: 2140–0003.

Form Number: None.

Type of Review: Extension without change.

Respondents: Common carrier freight railroads that are either new or reporting changes in the status of one or more of their rail lines.

Number of Respondents: 3.

Estimated Time per Response: 7.1 hours, based on average time reported in informal survey of respondents conducted in 2009.

Frequency of Response: 1.

Total Annual Burden Hours: 21 hours.

Total Annual ''Non-Hour Burden'' Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.10–1152.13, all railroads subject to the Board's jurisdiction are required to keep current system diagram maps on file, or alternatively in the case of a Class III carrier (a carrier with assets of not more than $20 million in 1991 dollars), to submit the same information in narrative form. The information sought in this collection identifies all lines in a particular railroad's system, categorized to indicate the likelihood that service on a particular line will be abandoned and/or whether service on a line is currently provided under the financial assistance provisions of 49 U.S.C. 10904. Carriers are obligated to amend these maps as the need to change the category of any particular line arises. The Board uses this information to facilitate informed decision making, and this information, which is available to the public from the carrier by request, 49 CFR 1152.12(c)(3), may serve as notice to the shipping public of the carrier's intent to abandon or retain a line.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

Dated: November 4, 2009.

Cynthia T. Brown,

Chief, Section of Administration, Office of Proceedings.

[FR Doc. E9–27149 Filed 11–10–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment: Cameron County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Opportunity for public hearing for Environmental Assessment (EA).

SUMMARY: FHWA is issuing this notice to advise the public that an opportunity for public hearing will be afforded. If a request is made by interested citizens to have a Public Hearing to discuss the socio-economic and environmental effects of the second international bridge project at the Veterans International Bridge at Los Tomates in Brownsville, Texas. One will be scheduled and adequate notices will be publicized.

FOR FURTHER INFORMATION CONTACT: Gregory S. Punske P.E. District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 536–5960.

SUPPLEMENTARY INFORMATION: The Texas Department of Transportation (TxDOT) in cooperation with Cameron County and the City of Brownsville, plan to construct a second international bridge at the Veteran's International Bridge located at Los Tomates from the General Services Administration (GSA) Facilities in Brownsville, Cameron County, Texas, to the International Demarcation line on the Rio Grande, a distance of approximately 0.26 miles. The proposed improvement would be constructed 32 feet downstream of the existing bridge within the existing 300-feet wide right-of-way (ROW) and would not require additional ROW. No displacement of individuals, families, farms or non-profit organizations are anticipated. The new bridge span would provide service to and a connection between Brownsville, Texas and H. Matamoros, Tamaulipas, Mexico. Cameron County and the City of Brownsville plans to submit an international bridge application for the proposed bridge to the Texas Transportation Commission.

The proposed bridge typical section would have an overall width of 56 feet consisting of four 12 feet wide travel lanes and a 5 feet wide security chain link fenced sidewalk for pedestrians. The proposed bridge approach roadway would consist of four 12′ wide travel lanes, a sidewalk and shoulders with variable width. The bridge connection or the center bridge span would have an overall maximum width of 88 feet and would consist of two 12 feet wide travel lanes, a travel lane of variable width with a minimum from 12 feet to a maximum of 48 feet and a 5 feet wide security chain link fenced sidewalk for pedestrians. The proposed bridge on the U.S. side would be connected to a similar proposed bridge structure in the Mexico side. A mid-point connection of the two bridges would be constructed to provide flexibility in operation, maintenance, and security. Five bridge spans near the river would join the existing bridge to the proposed bridge. This transitional connection would allow for one bridge to be operational while maintenance is undertaken on the opposite bridge. This bridge connection section would allow traffic diversion from one bridge to another in case of an accident or emergency.

Approximately 0.406 acres of waters of the U.S. including wetlands would be impacted by the proposed improvements. The proposed project is located within the 100-year floodplain and would permit the conveyance of the 100-year flood without causing significant damage. Information about the tentative construction schedule can be obtained from the district office.

Location maps, design plans, schematic, environmental assessment and other available information concerning the proposed project are on file and available for viewing at the TxDOT District office (956) 702–6100 located at 600 W. U.S. Expressway 83 in Pharr. Copies can be obtained by submitting a written request to the Pharr District office. For your convenience, it

is advised to call beforehand to schedule an appointment to view the available information. Information about the tentative construction schedule can be obtained from the district office.

Interested citizens may request a Public Hearing to be held to discuss the socio-economic and environmental effects of the highway project by mailing a written request to the District Engineer's Office at the P.O. Box 1717 in Pharr, Texas 78577, faxing request to (956) 702–6110, or e-mailing request to *rgelsto@dot.state.tx.us* on or before Tuesday, December 15, 2009, 5 p.m.

In the event such a request is received, a Public Hearing will be scheduled and adequate notices will be publicized regarding the date and location of the hearing. If a public hearing is requested, persons who require special communication or accommodation needs are encouraged to contact Amy Rodriguez at (956) 702–6100 at least five days before the hearing.

Comments and suggestions from all interested parties are invited to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions concerning this proposed action and the EA should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 5, 2009.

Gregory S. Punske,

District Engineer, Austin, Texas.

[FR Doc. E9–27152 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–54]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 2, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0899 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Anna Bruse, (202) 267–9655, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 5, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2009–0899.

Petitioner: National Test Pilot School.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c).

Description of Relief Sought: National Test Pilot School (NTPS) seeks an exemption from 14 CFR 61.3(a) and (c) to allow flight test training of foreign military test pilot students enrolled in NTPS who have no civil licenses to be trained in aircraft requiring two licensed pilots.

[FR Doc. E9–27140 Filed 11–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Jefferson County Airpark Steubenville, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 1.8473 acres of airport property for non-aeronautical development. The land consists of a portion of a 3.728 acre parcel acquired under grant 3–390074–10. There are no impacts to the airport by allowing the Jefferson County to lease the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

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

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Alex Erskine, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Alex Erskine, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–614, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2927)/FAX Number (734–229–2950). Documents reflecting this FZAA action may be reviewed at this same location or at Jefferson County Airpark, Steubenville, Ohio.

SUPPLEMENTARY INFORMATION:

Parcel Legal Description

Property located in the northeast and northwest quarters of Section 23, Township 6, Range 2, Cross Creek Township, Jefferson County, Ohio, and being part of the Board of County Commissioners of Jefferson County, Ohio tract of 3.727650 acres, Official Record Volume 612, Page 400, Tax Map Parcel #1–F (hereinafter referred to as Board tract) of the Jefferson County Recorder's Office, and known to the Federal Aviation Administration as a combination of parts of Parcel No. 16 and Parcel No. 19 as shown on the Property Plan of FAA Site No. l8562.A, Jefferson County Airpark, Steubenville, Ohio, said parcel combination hereinafter to be known to the FAA as Parcel No. 19–B, and being more fully described as follows:

Beginning at a point on the curved northerly 100-foot right-of-way of Airpark Drive where the right of way crosses the centerline of a vacated portion of old County Road #33 and on a northwesterly line of the aforementioned Board tract;

Thence with lines of the Board tract the following three courses and distances: N61°40′14″ E, 232.32 feet to a point near the centerline of the old road;

Thence N 62°20′16″ E, 216.00 feet to a point in the east bound lane of the old road;

Thence leaving the road, S 0°54′16″ W, 451.07 feet to a point on the northerly right-of-way of Airpark Drive;

Thence along the right of way and through the Board tract the following two courses and distances;

N 52°16′55″ W, 292.77 feet to a point of curve;

Thence along a curve to the left, radius 299.11 feet and central angle 32°45′09″, an arc length of 170.98 feet, and chord of N 68°39′29″ W, 168.66 feet to the place of beginning containing 1.8473 acres, leaving 1.88035 acres remaining in the Board tract.

Also leaving 2.0235 acres in Airpark Parcel No. 16, and 0.0008 acre in Airpark Parcel No. 19.

Basis of bearings is the record direction of the northerly right-of-way line of Airpark Drive, being the next to last line above-described.

Issued in Romulus, Michigan on October 1, 2009.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. E9–26938 Filed 11–10–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–58–83]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (T.D. 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2, and 1.955A–3).

DATES: Written comments should be received on or before January 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755. *Regulation Project Number:* LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to the shareholder.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27205 Filed 11–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–100–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–100–78 (T.D. 7918), Creditability of Foreign Taxes (§§ 1.901–2 and 1.901–2A).

DATES: Written comments should be received on or before *January 11, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78.

Abstract: Section 1.901–2A of the regulation contains special rules that apply to taxpayers engaging in business transactions with a foreign government that is also taxing them. In general, such taxpayers must establish what portion of a payment made pursuant to a foreign levy is actually tax and not compensation for a economic benefit received from the foreign government. One way a taxpayer can do this is by electing to apply the safe harbor formula of section 1,901–2A by filing a statement with the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time per Respondent: 20 minutes,

Estimated Total Annual Burden Hours: 37.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27206 Filed 11–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

DATES: Written comments should be received on or before January 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

OMB Number: 1545–0159.

Form Number: Form 3520.

Abstract: U.S. persons who create a foreign trust or transfer property to a foreign trust must file Form 3520 to report the establishment of the trust or the transfer of property to the trust. Form 3520 must also be filed by U.S. persons who are treated as owners of any part of the assets of a trust under subpart E of Part I or subchapter J of Chapter 1; who received a distribution from a foreign trust; or who received large gifts during the tax year from a foreign person.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 54 hours 35 minutes.

Estimated Total Annual Burden Hours: 72,059.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27210 Filed 11–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of two entities and one individual from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.* The entities: BARAKAAT INTERNATIONAL and BARAKAAT INTERNATIONAL FOUNDATION, were designated pursuant to Executive Order 13224 on November 7, 2001 and the individual: PATRICIA VINCK, was designated pursuant to Executive Order 13224 on January 22, 2003.

DATES: The removal from the list of Specially Designated Nationals and Blocked Persons of the two entities and one individual whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional individuals or entities determined to meet certain criteria set forth in Executive Order 13224.

Two such additional entities were designated by the Secretary of the Treasury on November 7, 2001 and one additional individual was designated by the Secretary of the Treasury on January 22, 2003. The Department of the Treasury's Office of Foreign Assets Control has determined that the two entities and one individual should be removed from the list of Specially Designated Nationals and Blocked Persons.

The following entities and individual are removed from the list of Specially Designated Nationals and Blocked Persons:

1. BARAKAAT INTERNATIONAL, Hallbybacken 15, Spanga 70, Sweden [SDGT]
2. BARAKAAT INTERNATIONAL FOUNDATION, Rinkebytorget 1, Spanga 04, Sweden; P.O. Box 4036, Spanga, Sweden [SDGT]
3. VINCK, Patricia (a.k.a. VINCK, Souraya P.), 69 Rue des Bataves, 1040 Etterbeek, Brussels, Belgium; Vaatjesstraat, 29, Putte 2580, Belgium; DOB 04 Jan 1965; POB Antwerp, Belgium (individual) [SDGT]

The removal of the two entities' and individual's names from the list of Specially Designated Nationals and Blocked Persons is effective as of November 3, 2009. All property and interests in property of the two entities and one individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: November 3, 2009.

Adam J. Szubin,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–27137 Filed 11–10–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Proposed Information Collection (NCA Customer Satisfaction Surveys (Headstone/Marker) Activity): Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys involving the National Cemetery Administration (NCA).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Ronald Cheich, National Cemetery Administration (41B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ronald.cheich@va.gov*. Please refer to ''OMB Control No. 2900–0571'' in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Ronald Cheich at (202) 461–6686 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for NCA, and IG Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VA will use the data collected to maintain ongoing measures of performance and to determine how well customer service standards are met.

Affected Public: Individuals or households.

Estimated Annual Burden Hours, Burden per Respondents, and Number of Respondents:

I. National Cemetery Administration Focus Groups With:

a. *Next of Kin* (5 groups/10 participants per group/3 hours each session) = 150 hours.

b. *Funeral Directors* (5 groups/10 participants per group/3 hours each session) = 150 hours.

c. *Veterans Service Organizations* (5 groups/10 participants per group/3 hours each session) = 150 hours.

II. National Cemetery Administration Visitor Comments Cards (Local Use):

(2,500 respondents/5 minutes per card) = 208 hours.

III. National Cemetery Administration Mail Surveys With:

a. *Next of Kin National Customer Satisfaction Survey* (Mail to 15,000 respondents/30 minutes per survey) = 7,500 hours

b. *Funeral Directors National Customer Satisfaction Survey* (Mail to 4,000 respondents/30 minutes per survey) = 2,000 hours.

c. *Veterans-At-Large National Customer Satisfaction Survey* (Mail to 5,000 respondents/30 minutes per survey) = 2,500 hours.

IV. Program/Specialized Service Survey:

National Cemetery Administration Headstone and Marker/PMC Survey (Mail 6,000 surveys/15 minutes per each) = 1,000.

Frequency of Response: Annually.

Dated: November 9, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27278 Filed 11–10–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection (Transfer of Scholastic Credit (Schools)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether an eligible person who is enrolled in a program at one school is entitled to receive education benefits for enrollment at a secondary school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0118'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: Students receiving VA education benefits and are enrolled in two training institutions, must have the primary institution at which he or she is pursuing approved program of education verify that their courses pursued at a secondary school will be accepted as full credit towards their course objective. VA sends VA Form Letter 22–315 to the student requesting that they have the certifying official of his or her primary institution list the course or courses pursued at the secondary school for which the primary institution will give full credit. Educational payment for courses pursued at a secondary school is not payable until VA receives evidence from the primary institution verifying that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,436 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Occasion.

Estimated Number of Respondents: 8,616.

Dated: November 5, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27072 Filed 11–10–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Proposed Information Collection (Monthly Record of Training and Wages) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to monitor claimants' training progress towards their rehabilitation goals.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Extension of a currently approved collection.

Abstract: On-job trainers use VA Form 28–1905c to maintain accurate records on a trainee's progress toward their rehabilitation goals as well as recording the trainee's on-job training monthly wages. Trainers report these wages on the form at the beginning of the program and at any time the trainee's wage rate changes. Following a trainee's completion of a vocational rehabilitation program, the form is submitted to the trainee's case manager to monitor the trainee's training and to ensure that the trainee is progressing and learning the skills necessary to carry out the duties of his or her occupational goal.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,600 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,400.

Dated: November 5, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27073 Filed 11–10–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
November 12, 2009

Part II

Election Assistance Commission

Publication of State Plan Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by New Jersey and Wisconsin.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the second revision to New Jersey's State plan and the first revision to Wisconsin's State plan.

The revised State plan from New Jersey provides information on program accomplishments and changes in the respective budgets to account for the use of Fiscal Year 2008 and 2009 requirements payments in addition to any future HAVA funding. The revised State plan from Wisconsin provides a total revision to its previous State plan including information on program accomplishments and changes in the respective budgets to account for the use of Fiscal Year 2008 and 2009 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. New Jersey and Wisconsin confirm that these revisions to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from November 12, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

The Honorable Nina Mitchell Wells, Esq., Secretary of State, P.O. Box 304, Trenton, New Jersey 08625, Phone: (609) 292–3760, Fax: (609) 777–1280.

Mr. Kevin J. Kennedy, Director and General Counsel, Government Accountability Board, Post Office Box 2973, 212 East Washington Avenue, 3rd Floor, Madison, Wisconsin 53701, Phone: (608) 266–8005, Fax: (608) 267–0500.

Thank you for your interest in improving the voting process in America.

Dated: October 27, 2009.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

STATE OF NEW JERSEY
"HELP AMERICA VOTE ACT OF 2002"

SECOND ADDENDUM TO STATE PLAN
SECTION ONE AND SECTION SIX

On August 15, 2003, the State of New Jersey ("State") filed its Initial State Plan ("Plan"), pursuant to the "Help America Vote Act of 2002" ("HAVA") with the Federal Election Commission, the authorized depository for the HAVA State plans prior to the establishment of the United States Election Assistance Commission ("EAC"). The Plan detailed the manner in which the State intended to meet the requirements of HAVA and the projected corresponding costs for implementation.

The State certified to the EAC, by letter dated June 25, 2007 that it was in compliance with the current HAVA funds received by the State for the mandated Title III requirements.

In 2007, the State presented an Addendum to Section One and Section Six of the Initial Plan. The Section One Addendum dedicated $15 million of the HAVA funds to implement a voter-verified paper audit trail (commonly referred to as "VVPAT") for the voting systems and Section Six of the Plan set forth a corresponding, revised budget.

This second Addendum reflects updates and changes to Section One and Section Six of the previous Addendum to the Plan. This Addendum has been prepared in accordance with the procedural requirements of section 253 of HAVA. The HAVA State Plan Committee convened on January 22, 2009 to provide input.

On March 6, 2009, the State suspended the law that required a voter-verified paper audit trail on all voting machines due to the inability of the State to provide matching funds. As a result of this change, the State has determined that the appropriated HAVA funds for a voter-verified paper audit trail should be redirected to other HAVA activities, as set forth below.

I. Current and Anticipated 2008/2009 HAVA Funds

As noted above, the State intends to reallocate $15 million it currently has in its HAVA Election Fund. In addition, the State is currently eligible to receive $3,331,893 in 2008 requirement payments, and $2,897,298 in 2009 requirement payments.

Of the $15 million that the State intends to reallocate, $2 million will be used to purchase additional voting machines in counties that have added election districts due to population increases. The State will reallocate $13 million of the above-noted $15 million, and the expected 2008/2009 funding to four HAVA required mandates: Statewide Voter Registration System (SVRS), Voter Education/Outreach, Election Officials' Training, and State Management as follows:

- General maintenance, enhancements, and updates to the Statewide Voter Registration System (SVRS) ($8,000,000);
- Geographical Information System (GIS) enhancements to the SVRS that will, in part, assist counties in their Congressional redistricting responsibilities after the 2010 census. This enhancement will provide an interface to the 21 counties' Geographical Information Systems. This will enable the SVRS to identify geo-codes (longitude and latitude) of every voter address, making it easier to align the voter to a newly developed or changed election district. ($1,000,000);
- Enhancements to the Public Access website including improved ease of use for voters, voter education and information, and real time election night results reporting ($1,000,000);
- Continuation of voter education and outreach initiatives ($1,000,000);
- Development and implementation of a knowledge-based online help desk support system for county election officials as well as voters. The system will assist county election officials in administering their election responsibilities and allow voters to educate themselves on election procedures and deadlines. The system will also have the ability to resolve and track issues in each county. ($4,000,000);
- Development and implementation of online poll worker training which will assist in improving poll worker training and performance. The system will be used in conjunction with classroom teaching and will include additional learning tools as well as tests. ($1,000,000); and
- State Management costs ($3,128,191)

Please see attached spreadsheet.

II. Any Future HAVA Funding

In addition, New Jersey plans to utilize any additional funds from future requirement payments in the following manner:

50% will be applied towards State Management of HAVA.
30% will be applied towards the Statewide Voter Registration System.
10% will be applied towards voter education and outreach.
10% will be applied towards election officials training.

Preliminary HAVA Budget Summary

	Original State Plan	1st Addendum to State Plan	2nd Addendum to State Plan
1. Voting Machine Reimbursement (Includes Voting Machines and Audio Kit Purchases)	$ 38,675,000.00	$40,500,000.00	$42,500,000.00
VVPAT	$ -	$ 15,000,000.00	$ -
2. Statewide Voter Registration System	$ 20,000,000.00	$ 25,000,000.00	$34,000,000.00
3. Provisional Balloting	$ 1,000,000.00	$ 1,000,000.00	$ 1,000,000.00
4. Revised Forms and Notices	$ 500,000.00	$ 500,000.00	$ 500,000.00
5. Disability Access (Excluding Voting System) (this is not 261)	$ 750,000.00	$ 750,000.00	$ 750,000.00
6. Administrative Grievance Procedure	$ 250,000.00	$ 250,000.00	$ 250,000.00
7. Voter Education & Outreach	$ 3,000,000.00	$ 3,500,000.00	$ 5,500,000.00
8. Election Officials Training	$ 1,000,000.00	$ 500,000.00	$ 5,500,000.00
9. State Management-Includes Administrative and Salaries	$ 3,000,000.00	$ 5,500,000.00	$ 8,628,191.00
Total	$ 68,175,000.00	$ 92,500,000.00	$98,628,191.00

State of Wisconsin
Government Accountability Board

WISCONSIN'S 2009-2014 ELECTION ADMINISTRATION PLAN

October 1, 2009
September 30, 2014

A Strategic Direction for Election Administration in Wisconsin
Wisconsin Dynamic Plan for Achieving the Help America Vote Act of 2002

submitted to the

United States Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005

October 2009

Visioning The Future:
Election Administration in Wisconsin in 2014

CONTACT PERSONS

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Visioning The Future:
Election Administration in Wisconsin in 2014

GUIDING POLICIES, PRINCIPLES AND VALUES

The development of Wisconsin's 2009-2014 Election Administration Plan was guided by the following core policies, principles and values. The 2009-2014 Plan must:

- **Improve Election Administration**
  Examine initiatives to increase the efficiency and effectiveness of elections
- **Preserve, Protect and Advance Voting Integrity**
  Ensure open, fair and transparent elections
- **Improve Voter Participation and the Voting Experience**
  Explore alternatives and options for casting votes
- **Improve Administrative Efficiency**
  Reduce election-related burdens on local election officials
- **Improve Collaboration with Our Customers and Policy Makers**
  A continuing commitment to consult, collaborate with and seek advice from county and municipal election officials, members of the state legislature, voters, other concerned and interested parties, elected officials and advocacy groups.

WISCONSIN ELECTION ADMINISTRATION CHARACTERISTICS AT-A-GLANCE

(As of August 2009)

- 5.6 million residents
- 4.3 million voting age population
- 3.5 million registered voters
- 1,850 towns, villages and cities
- 1,922 local election officials
- 20,000 to 30,000 poll workers
- 2,822 polling places
- 3,600 wards/precincts reporting election data

Note: These numbers are subject to change from one election to another.

IMPORTANT PLAN CONSTRUCTS

1. The State of Wisconsin achieved compliance with the Help America Vote Act (HAVA) of 2002, on August 5, 2008. Wisconsin, through its Government Accountability Board, commits to using HAVA funds, first and foremost, to maintain compliance with HAVA requirements.

2. Many of the proposed initiatives and reforms contained in Wisconsin's 2009-2014 Election Administration Plan (the Plan) will require approval by the Wisconsin Legislature before implementation.

3. Over the five-year span of the Plan, the Wisconsin Government Accountability Board and staff, will lead efforts to examine, review, explore and study the proposed initiatives and reforms to determine their application to Wisconsin's decentralized election administration system and business practices.

4. The collaborative and interactive partnership model that the Wisconsin Government Accountability Board currently uses for the study of election administration public policy, will continue to be used for examining and deliberating the merits of the proposed initiatives and reforms, and how such reforms if implemented, may further improve and advance election administration in Wisconsin.

5. The Wisconsin Government Accountability Board will continue to work in close consultation with its customers, partners, constituents and stakeholders, including but not limited to:

   - 1,850 municipal clerks;
   - 72 county clerks;
   - Wisconsin's 3.5 million eligible registered voters;
   - Other local and statewide election officials;
   - Wisconsin Governor and Members of the Wisconsin Legislature;
   - Local and Statewide Law Enforcement;
   - City Mayors, Village Board Presidents and Town Chairpersons;
   - Other local and statewide elected representatives;
   - The Wisconsin Election Administration Council; and,
   - Other interested and concerned residents and groups.

6. The elements in this Plan focus on strategic initiatives that are designed not only to maintain compliance with HAVA, but also advance Wisconsin forward by significantly improving election administration. Wisconsin's Government Accountability Board routinely utilizes an array of protocols, tools and instruments, including Federal and State laws to accomplish its mission. Those existing practices are not described in detail in this Plan, but they provide a foundation for the new initiatives and reforms proposed in Wisconsin's 2009-2014 Election Administration Plan.

ABOUT WISCONSIN'S 2009-2014 ELECTION ADMINISTRATION PLAN

In January 2003, the Executive Director of the former State Elections Board, Wisconsin's Chief Election Official, appointed a State Plan Committee comprised of county and municipal election officials, representatives of advocacy groups and others to assist in the Help America Vote Act (HAVA) of 2002 planning process. The group met three times to discuss and develop the initial State Plan. This Plan was reviewed by legislators, advocacy groups and citizens. Public comment was also solicited at three feedback sessions held across the state. All public comments and feedback were considered in preparing the final version of the initial plan which was submitted to the United States Election Assistance Commission (US-EAC) in April 2004.

In 2004, Wisconsin was in a good position to implement the HAVA requirements. Many of the election reforms required by HAVA were already addressed in current state laws and procedures. The Wisconsin Election Administration Council (WI-EAC) was created by the Wisconsin Legislature to oversee the development, implementation, monitoring and evaluation of the 2004 Plan. The initial state election administration plan identified the priorities and specific steps that state and local election officials would take to meet the requirements of HAVA. It also discussed additional improvements that might be undertaken if there were remaining or additional federal funding after all of the requirements had been met. A summary of how Wisconsin met the priorities stated in the 2004 Plan is included in the Supplement section of this Plan.

In 2009, the Board's staff, in collaboration with the WI-EAC, commenced a process that included a review and analysis of Wisconsin's compliance with the 2004 Plan, and the development of a new five-year (2009-2014) strategic vision and direction for election administration in Wisconsin by 2014. The WI-EAC reconvened on April 16, June 17, and July 28 to continue to advise on development of the 2009-2014 Plan.

The Wisconsin Government Accountability Board, a nonpartisan group of six former judges, approved a synopsis of the draft 2009-2014 Wisconsin Election Administration Plan on June 22, 2009, for submission to the Wisconsin Legislature and the public for a 30-day review and comment period starting June 27, 2009. The Board will review the Plan again on August 10, 2009, as recommended by the WI-EAC. Following approval by the Wisconsin Legislative Joint Committee on Finance, the Plan will be submitted to the U.S. Election Assistance Commission for publication in the Federal Register. The 2009-2014 Wisconsin Election Administration Plan will take effect 30 days after publication in the Federal Register.

It is important to know what the 2009-2014 Wisconsin Election Administration Plan is and what it is not. The 2009-2014 Wisconsin Election Administration Plan is not a *get in HAVA compliance strategy*. Wisconsin became fully HAVA compliant on August 5, 2008. The 2009-2014 Wisconsin Election Administration Plan is a five-year visionary document and strategic direction for *remaining in compliance* with the Help America Vote Act of 2002. The 2009-2014 Wisconsin Election Administration Plan is also much more than that! The Plan is designed to advance HAVA initiatives and examine, review, explore and study protocols that will specifically and systemically improve the administration of elections and retain Wisconsin's leadership in election administration over the next five years.

The 2009-2014 Wisconsin Election Administration Plan was not developed for the sole or exclusive purpose of capturing Federal Fiscal Years 2008, 2009, 2010 Requirements Payments, or any other HAVA Federal Funding during the next five years. If all the proposed activities in the Plan are to become a reality, based on the best available information and analyzed assumptions, the total amount of expenditures will require between $17 and $20 million dollars over the next five years. Of this amount, Wisconsin will be required to provide a 5% match, as required by HAVA.

The 2009-2014 Wisconsin Election Administration Plan is a living document. The Government Accountability Board, through its Elections Division staff, will monitor the Plan's activities and implementation strategies on a quarterly basis. Updates and status reports will be provided to the Government Accountability Board. Additionally, in conjunction with the WI-EAC, the progress on the Plan's activities and implementation strategies will be reviewed annually. Whatever adjustments are needed, will be made annually and will be shared with the US-EAC as part of the on-going reporting requirements.

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WISCONSIN'S 2009-2014 ELECTION ADMINISTRATION PLAN

Visioning The Future:
Election Administration in Wisconsin in 2014

A Strategic Direction for Election Administration in Wisconsin
Wisconsin's Dynamic Plan for Achieving Compliance with the Help America Vote Act of 2002

INTRODUCTION

Located in the north-central United States, with Lake Michigan to the east, Lake Superior to the north, and the Mighty Mississippi to the west, Wisconsin's high quality of life assures a great place to live, work, go to school, play and do business! Wisconsin has a proud and long tradition of good, clean government.

Wisconsin is a state of medium-sized population (5.6 million) with a voting-age population of approximately 4.3 million, of which about 3.5 million are registered to vote. The State is made-up of 72 counties and 1,850 municipalities -- towns, villages and cities. Wisconsin has eight U.S. Representatives, two U. S. Senators, and ten Electoral votes.

Municipality Size	Number of Municipalities	Aggregate Population
<5,000	1,673	1,981,157
5,000-20,000	139	1,317,360
20,000-50,000	25	758,361
50,000-100,000	10	671,950
>100,000	3	919,341
Total	1,850	5,648,169

Wisconsin's population is sparsely scattered over 56,145 square miles. There are 114,141 miles of roads in Wisconsin. It takes about 7 hours to drive from the most southern part of the state to its northern peak and about 5 hours to go from across the state from the far west border to the far east border.

Wisconsin has a rich history of its residents participating in the electoral process. Our complex decentralized elections administration system in which elections are administered at the State level but conducted at the municipal (cities, villages and towns) level, rather than the county level, by 1,850 municipal clerks, with 72 county clerks coordinating certain administrative functions, is arguably the most decentralized in the nation. In terms of voter participation, Wisconsin traditionally has one of the highest voter turnout rates in the nation.

Wisconsin was a leader in developing a number of political innovations to enable residents to select their leaders as part of the democratic process. These innovations include the development of the open primary in 1903, the establishment of an independent state agency to administer elections in 1974, the implementation of Election Day registration in 1976 and the conversion from the partisan State Elections Board to the nonpartisan Government Accountability Board in 2008. This Board is comprised of six former nonpartisan judges and headed by its Director and General Counsel, who is also the State's Chief Election Official. The Board's statutory charge is to interpret Wisconsin statutes, administrative rules, Federal laws governing election administration and set policies and standards for administering elections in Wisconsin.

The mission of the Wisconsin Government Accountability Board is to enhance representative democracy by ensuring the integrity of the electoral process. The Board directs its energies toward providing for an informed electorate, especially in regard to understanding the election

system. Under the auspices of the Help America Vote Act (HAVA) of 2002, the Board works in collaboration with county and municipal election officials and the public to ensure that Wisconsin's vision is a continuing reality -- a shared vision by all participants in Wisconsin's electoral process -- that elections are open, fair, transparent, and conducted with the highest degree of integrity.

The Help America Vote Act (HAVA) of 2002 provided a unique opportunity to add to Wisconsin's electoral tradition of a strong collaborative partnership between state and local election officials. Wisconsin municipal election officials recruit and train poll workers, maintain voter records, issue absentee ballots, and establish and equip polling places with the required voting equipment. County election officials are responsible for a variety of support functions to assist municipal clerks. County election officials provide a significant contribution in coordinating the work of local election officials to increase efficiency of the delivery of election services. Wisconsin's Government Accountability Board and staff are responsible for providing leadership in election administration by establishing standards ensuring uniformity and safeguarding the vote of all electors.

Funding under the HAVA, and requirements payments for Federal Fiscal Years 2008, 2009, 2010, and future requirements payments will assist Wisconsin and its Government Accountability Board to improve election administration in Wisconsin during the next five years, through 2014.

It is important to note that the 2009-2014 Wisconsin Election Administration Plan is not meant simply to capture the $3,947,062 in combined FFY-2008 and FFY-2009 requirements payments. This Plan is developed from a broader and longer-range strategic perspective. It is forward-looking, dynamic and robust to the extent that it will be able to incorporate and absorb foreseeable emerging initiatives over the next five years. Yet, it is also specific enough to address and meet current needs.

The financial support needed for the five-year outlook for achieving the program activities far exceeds the $3,947,062 FFY-2008 and FFY-2009 requirements payments that Wisconsin is currently eligible to receive. Staff estimates the cost to support this five-year plan to be between $17 and $20 million dollars over five years, or about $3.5 million dollars annually. Of this amount, Wisconsin will be required to provide a 5% match, as required by HAVA. Wisconsin's 2009-2014 Election Administration Plan is developed and written broadly but specific enough to accommodate additional funds that may be appropriated by the U. S. Congress over the next five years.

Performance goals and measures have been developed in consultation with the Wisconsin Election Administration Council. The implementation strategies, including performance goals, provide measurement standards for each element of the 2009-2014 Election Administration Plan.

Each performance goal is a part of a single or composite project activity designed to implement all elements of the 2009-2014 Election Administration Plan. Each goal is attributable to individual staff members in collaboration with a team of stakeholders and interested parties.

Administration of Wisconsin's 2009-2014 Election Administration Plan will be under the general direction and executive sponsorship of the Government Accountability Board's Director and General Counsel, who is also Wisconsin's Chief Election Official. The Elections Division Administrator will oversee daily management, supervision and implementation of the 2009-2014 Election Administration Plan.

ENSURING ELECTION INTEGRITY IN WISCONSIN

As part of its mission to ensure the integrity of individual ballots as well as election results in Wisconsin, the Government Accountability Board (Board) continues its commitment to working with municipal and county election officials and local and statewide law enforcement agencies to prevent errors and opportunities for voter fraud and to detect and prosecute cases of illegal voting which may occur.

While empirical evidence made available to the Board has not documented any widespread, organized, or systemic cases of voting by ineligible individuals or of double voting in Wisconsin, the Board has consistently maintained that evidence of any case will be thoroughly investigated and, if the evidence merits it, prosecuted to the full extent of the law. Board staff conducted a survey of the counties' prosecuting attorney offices four months after the 2008 General and Presidential Election. The survey results revealed that a total of six criminal complaints had been filed alleging voter fraud.

The Board recognizes the importance of implementing a comprehensive system that discourages individuals from voting illegally and assists in the detection and prosecution of illegal voting cases. To that end, the Board will continue to pursue and research the following election administration business practices during the five-year term of the Plan:

1. Educate and train local election officials, local and statewide law enforcement, and the public regarding voter qualifications including age, residency, and citizenship.

2. Educate and train local election officials, local and statewide law enforcement, and the public regarding methods of detecting ineligible voters; and the process of referring and monitoring the prosecution of voter fraud and other illegal voting cases.

3. Encourage and ensure the ability of the public to act as election observers and administer an orderly process for challenging the registration or vote of any elector.

4. Notify the former state when a new resident registers to vote in Wisconsin, and research the feasibility and effectiveness of comprehensive comparisons of Wisconsin's Statewide Voter Registration System (SVRS) database with statewide voter lists of neighboring states in detecting duplicate registrations.

5. Regularly audit records related to convicted felons, adjudicated incompetents, deceased persons, and voters who attempt to register or vote in multiple locations and match those records against the SVRS, as well as provide to local election officials, lists of convicted felons whose voting rights have not been restored.

6. Mail postcards to verify addresses of voters who register by mail, through a special registration deputy, or on Election Day at the polling place; and forward information to local prosecuting attorneys when fraud, or an error leading to illegal voting, is suspected.

7. Continue to proactively work with the Wisconsin Department of Justice, District Attorneys, and federal and local law enforcement to share information identified by the agency staff or received by the agency that implicates a violation of Chapter 12, Wis. Stats.

8. Assist law enforcement and prosecutors in specific election fraud and illegal voting cases by providing and interpreting information contained in the SVRS related to an individual's voting history and method of registration, as well as data related to special registration deputies and voters registered through that process.

9. Maintain the Voter Public Access website (https://vpa.wi.gov) which allows law enforcement and the public to obtain information regarding any registered voter for which a date of birth is known.

Through the Board's public education and information strategies, the Board will improve these ongoing outreach efforts to prevent errors, deter potential voter fraud and assure the State's residents that all reasonable and practical steps are being taken to maintain the high level of voter confidence and election integrity for which Wisconsin is known.

Section 1
Title III Requirements and Other Activities

ELECTION ADMINISTRATION

How the State will use the requirements payments to meet the requirements of Title III, and, if applicable under Section 251(a)(2), to carry out other activities to improve the administration of elections.

"Election Administration" is a broad term that refers to the laws, policies, rules and procedures used to conduct elections. The Help America Vote Act of 2002 (HAVA) was enacted by Congress to make sweeping reforms in the conduct and administration of elections. Wisconsin's accomplishments in meeting the requirements of HAVA have provided a unique opportunity to not only augment the state's electoral tradition, but to strengthen partnerships between state, county and local officials. Wisconsin looks forward to implementing additional reforms that will continue to strengthen voter confidence and enhance the voting experience while streamlining procedures.

Complying with HAVA Requirements

Wisconsin has focused its energies on fulfilling the requirements of HAVA in order to improve the administration of Federal elections as well as elections for all levels of government. For the most part, the requirements of HAVA have been incorporated into State law so that all elections are conducted in the same uniform and nondiscriminatory manner. Listed below are the HAVA requirements with regard to election administration and the progress of the Wisconsin Government Accountability Board toward satisfying those requirements.

Voter Instructions

§ 301(a)(1)(B) – A jurisdiction that uses a paper ballot voting system may meet the requirements of subparagraph (a)(iii) by:

(i) Establishing a voter education program that notifies each voter of the effect of casting multiple votes for an office.
(ii) Providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

Wisconsin requires a formal notice called "Voting Instructions and Sample Ballot," also known as the "Type B Notice," to be published or posted in the week before the election. The Type B Notice is also required to be posted at the polling place on Election Day. The notice provides instructions on voting a ballot, defines spoiling a ballot and how to receive a replacement ballot. Wis. Stats. §§ 10.01(2)(b), 10.06.

The Type B Notice for a Partisan Primary instructs the voter to "select the party of his or her choice." The Type B notice will be modified to add a general warning of the effect of casting multiple votes for an office. The Type B Notice does not describe the effect of cross-over voting at a partisan primary. Wis. Stat. §10.02(3)(b)2. However, a separate notice solely for the purpose of advising voters of the effect of cross-over voting at a partisan primary is required. Wis. Stat. § 5.35(6)(b).

Standard Definition of a Vote

§ 301(a)(6) – Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

Wisconsin Statutes § 5.01(1), provides that "Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions." Wisconsin Statute § 7.50 provides direction with respect to ballot marking scenarios which may be encountered when counting ballots.

In an effort to consolidate and simplify these statutory directions, former State Elections Board staff developed a comprehensive manual entitled "Counting Votes." This manual describes ballot marking scenarios that may occur with both paper hand-count ballots and optical scan ballots, and provides statutory direction for counting the votes in each scenario. Although the manual was published prior to HAVA, it satisfies this requirement.

Provisional Voting

§ 302(a) – If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place state that the individual is:

(A) A registered voter in the jurisdiction in which the individual desire to vote; and
(B) Eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation to an appropriate State or local election official for prompt verification.

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(6) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

HAVA requires a state to provide an individual the opportunity to vote a provisional ballot if the individual asserts that he or she is registered, but the voter's name does not appear on the poll list, or an election official asserts that the individual is not eligible to vote. Upon written affirmation that the voter is registered and eligible to vote, the individual is permitted to vote a provisional ballot. The provisional ballot is not counted unless the municipal clerk can verify that the individual is registered and eligible to vote in that election.

In 1976, Wisconsin implemented Election Day Registration, and for this reason, the State previously claimed exemption from the provisional voting requirement. If a voter's name does not appear on the poll list, the voter may register at the polling place on Election Day, provided the voter is able to show proof of residence, or use a corroborating witness.

Since the publication of the 2004 Plan, provisional voting has been determined to be appropriate in two scenarios:

1. A first-time Wisconsin voter who has registered by mail, but did not provide the required proof of residence with the application. If the voter cannot provide proof of residence before voting, or register on Election Day using a corroborator, the voter may vote provisionally. Wis. Stat. § 6.97. (Note: This statute does not differentiate between mailed applications or in-person registration.)

2. An elector attempting to register on Election Day who has indicated that he or she has been issued a Wisconsin Driver's License, but cannot or will not provide the Driver's License number. Wisconsin Administrative Code GAB 3.04(2)

Upon casting a provisional ballot, the voter is provided with a "Provisional Voting Information Sheet" which informs the voter of the actions required to ensure that his or her ballot will be counted. The information sheet also advises the voter of methods to determine whether his or her provisional ballot was counted by providing the municipal clerk contact information and the web address of the Government Accountability Board.

Voting Information

§ 302(b)(2) – The appropriate state or local election official shall cause the following voting information to be publicly posted at each polling place on the day of each election for Federal office:

(A) A sample version of the ballot that will be used for that election.

(B) Information regarding the date of the election and the hours during which polling places will be open.

(C) Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot.

(D) Instructions for mail-in registrants and first-time voters under § 303(b).

(E) General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

HAVA requires specific information to be posted at each polling place on Election Day. The following information, required by Wisconsin statutes and administrative code, incorporates most of the HAVA posting requirements:

1. Sample ballot and instructions on how to cast a vote (Type B Notice). The ballot itself instructs the elector on the number of candidates the elector is allowed to vote for, per Wis. Stats. §§ 10.01(2)(b), 10.02

2. Notice of Location and Hours of Polling Place (Type D Notice), per Wis. Stat. § 10.01(2)(d)

3. Instructions for Wisconsin Mail-in Registrants and First-Time Voters (GAB-116), per Wis. Stat. § 6.34(2), (3)

4. General Information on Voting Rights under Federal Laws as Applied to Wisconsin Voters (GAB-117), per Wis. Stats. § 5.35(6)(a)2m, 4b

5. Notice of Election Fraud (GAB-111), per Wis. Stats. §§ 5.35(6)(a)2, 12.13(1) and (3)(intro), (d), (f), (g), (k), (L), (o), (q), (r), (u), (v) and (x), 12.60 (1)

6. Contact Information (GAB-118); provides information on contacting the appropriate officials if voting rights are alleged to have been violated, per Wis. Stats. § 5.35(6)(a)4b, 5

7. Voter Qualification Poster (GAB-115), per Wis. Stats. §§ 6.02(1), 6.03

Please see Polling Place Information for future plans to review and explain options for simplifying and consolidating the information required to be posted at the polling place to make it more useful to Wisconsin voters.

Treatment of Ballots Cast as a Result of a Court Order

§ 302(c) – Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Wisconsin treats a post-polling hours ballot in a manner similar to a challenged ballot under Wis. Stat. § 6.95. The ballot is marked with an indication that it is cast pursuant to a court order, but the voter's serial number is not included on the ballot. The ballot is counted, but if the court order is overturned, the ballot can be retrieved and the canvass results changed to reflect the court action. Wis. Stat. § 6.96.

Voter Registration Application

§ 303(a)(5)(A)(i) – An application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes:

(I) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) In the case of any other applicant, the last 4 digits of the applicant's social security number.

§ 303(b)(4)(A) – The mail voter registration form shall include the following:

(i) The question, "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question, "Will you be 18 years of age on or before Election Day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on Election Day.

(iii) The statement, "If you checked 'no' in response to either of these questions, do not complete this form."

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

§ 303(b)(4)(B) – If an applicant for voter registration fails to answer the citizenship question included on the mail voter registration form the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

The Wisconsin Voter Registration Application (GAB-131) has been developed to include the requirements set out above. The GAB-131 also includes the following elements:

1. The question, "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States. Wis. Stats. §§ 6.02, 6.03, 6.33. Wis. Admin. Code GAB 3.02

   If an elector fails to answer the citizenship question, the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for federal office (subject to state law). Wis. Admin. Code GAB 3.03

2. The question, "Will you be 18 years of age on or before Election Day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on or before Election Day. Wis. Stats. §§ 6.02, 6.03, 6.33. Wis. Admin. Code GAB 3.02

3. The statement, "If you filled in 'No' in response to EITHER of these questions, do not complete this form."

4. A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time. Wis. Stat. § 6.34(2)

HAVA Identification

§ 303(b)(1) & (2) – If an individual who has not previous voted in an election for Federal office in the State registers by mail that individual shall be required to:

(i) If voting in person, present to the appropriate State or local election official a current and valid photo identification or a copy of:

- A current utility bill
- Bank statement
- Government check
- Paycheck, or
- Other government document that shows the name and address of the voter.

(ii) If voting by mail, submits with the ballot a copy of a current and valid photo identification, or a copy of:

- A current utility bill
- Bank statement
- Government check
- Paycheck, or
- Other government document that shows the name and address of the voter.

§ 303(b)(3) – Paragraph (1) shall not apply in the case of a person:

(A) Who registers to vote by mail and submits as part of such registration either:

(i) A copy of a current and valid photo identification,
(ii) A copy of a current:

- Utility bill
- Bank statement
- Government check
- Paycheck, or
- Government document that shows the name and address of the voter.

(B)
(i) Registers to vote by mail and submits with such registration either:

- a driver's license number; or
- last 4 digits of the individual's social security number; and,

(ii) The information matches with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) Who is:

(i) Is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act; or

(ii) Is provided the right to vote otherwise than in person under the Voting Accessibility for the Elderly and Handicapped Act; or

(iii) Is entitled to vote otherwise than in person under any other Federal law.

Wisconsin Statute § 6.34 includes an identification requirement for:

- First-time voters registering by mail
- Any voter registering after the close of registration (20 days before the election at which the individual intends to vote)
- Any voter registering on Election Day

Each of the above voters must provide "Proof of Residence" before being able to vote. To alleviate the confusion of Wisconsin's "Proof of Residence" requirement and HAVA's "Identification" requirement, Wisconsin's HAVA implementation legislation created one list of "identifying documents that prove residency" that serves both purposes. The list of identifying documents include the HAVA options of a current and valid photo identification or a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. The above voters must either provide a copy of such identifying document with the registration form or present a copy of the identifying document to election officials on Election Day. Wis. Stat. § 6.34.

An absentee voter subject to this requirement may provide a copy of the identifying document as part of the absentee voting process. Local election officials track first-time voters and secure the required identifying document with the absentee ballot if not provided with the registration form. This is done in the time between when the voter registers and Election Day.

HAVA also grants an exemption from the identification requirement if state or local election officials can match the information submitted with an existing state identification record bearing the same number, name and date of birth as provided in the registration. Wisconsin does not recognize the HAVA identification exemption because of the aforementioned consolidation of Wisconsin and HAVA identification requirements.

Wisconsin Statutes do reflect the HAVA identification exemption extended to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) citizens. Wis. Stat. § 6.34. Furthermore, Wisconsin recognizes the exemption extended to persons voting under the Voting Accessibility for the Elderly and Handicapped Act, although the exemption is not incorporated in state statutes.

Uniformed and Overseas Voter Office

§ 702(1) – The State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

The Wisconsin Government Accountability Board is the single office responsible for providing information regarding voter registration and absentee ballot procedures to be used by UOCAVA voters. The Board staff is in regular contact with the Federal Voting Assistance Program (FVAP) in order to keep the FVAP Voting Assistance Guide current and accurate. Information with respect to registration and absentee voting requirements and procedures for UOCAVA voters is regularly provided to municipal clerks. Municipal clerks are encouraged to contact the Board or FVAP with concerns or if assistance in serving a UOCAVA voter is needed.

Notification of UOCAVA Application Rejection

§ 707 – With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

Municipal clerks are statutorily required to notify an elector when a registration form is insufficient or if the clerk has reliable information that the proposed elector is not qualified. The clerk shall notify the elector within 5 days, if possible, and request that the elector substantiate the information presented. Wis. Stat. § 6.32(2).

2009-2014 Election Administration Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

Having met the requirements of HAVA as delineated in the 2004 Plan, Wisconsin looks forward to enhancing the voting process to benefit both voters and election administrators while recommitting to the Government Accountability Board's mission: To enhance representative democracy by ensuring the integrity of the electoral process.

Working in cooperation with county and municipal clerks, their associated service agencies and in collaboration with the Wisconsin Legislature, the Board will examine, review, explore and study the following options for feasibility if the necessary legislative changes can be made. Each initiative to increase voter access would also be examined for implications for ballot security.

1. Cross-over Voting Instructions

The Type B Notice does not describe the effect of cross-over voting at a partisan primary. Wis. Stat. §10.02(3)(b)2. However, a separate notice solely for the purpose of advising voters of the effect of cross-over voting at a partisan primary is required. Wis. Stat. § 5.35(6)(b). The Type B notice will be modified to consolidate this general warning of the effect of casting multiple votes for an office into the official voter instructions notice.

2. Over-voting Instructions

Information on the right of an elector to cast a provisional ballot, instructions on how to cast a provisional ballot and the consequences of over-voting a ballot will be incorporated into the General Information on Voting Rights Under Federal Laws (GAB-117).

3. Voting Accessibility for the Elderly and Handicapped Act Exemption

Wisconsin election officials currently recognize an exemption from proof of residence requirements for indefinitely-confined voters as required by the Voting Accessibility for the Elderly and Handicapped Act. A legislative change to Wis. Stat. § 6.34 to reflect this federal exemption in state statute is suggested.

4. Early Voting

The Government Accountability Board is examining the feasibility of implementing true early voting in Wisconsin. The objectives of implementing early voting procedures would be to reduce voter waiting time, maintain integrity of the vote-counting process, relieve workload of local elections officials and control costs. Early voting would significantly reduce the need for absentee applications and envelopes. Traditional methods of absentee voting would continue (by mail, hospitalized, military and permanent absentee voting for indefinitely confined electors). Remote early voting for overseas and military electors will also be explored.

Implementation of early voting is not without challenges. Wisconsin would look to extend early voting opportunities uniformly across the state, while preserving the state's long history of municipality-controlled elections. The acquisition of voting machines that can accommodate multiple ballot styles from an entire jurisdiction and electronic poll books, or a workable substitute will be necessary. Additional staff may also be required at the state, county and local levels to implement early voting successfully.

An early voting pilot program is recommended. A pilot program would provide valuable information on strategies that work well in Wisconsin's highly decentralized electoral process and which approaches do not. Pre-testing the early vote concept in select municipalities would also invite voluntary participation by local elections officials and would facilitate cooperation if the program was deployed statewide.

5. Absentee Voting

Since 2000, absentee voting has increased substantially. The expanded utilization of absentee voting is largely due to the extensive outreach by political groups and voter advocates that encourage voters to utilize absentee voting. Wisconsin's "no excuse" absentee voting has also contributed to the popularity of voting by absentee ballot. In the days before the 2008 Presidential Election, Wisconsin municipal clerks experienced unprecedented lines of voters waiting to vote absentee in the clerk's office rather than vote at the polling place. Municipal clerks were forced to delegate other tasks, including other election preparations, to a lower priority in order to timely process mailed absentee ballots and accommodate in-person absentee voters.

The following options will be studied for the purpose of streamlining the absentee voting process and allowing sufficient time for processing absentee ballots, taking into consideration their impact on other voter policies and procedures:

A. Reduce the absentee voting burden experienced by municipal clerks by providing additional time for receiving and processing absentee ballots

Wisconsin law currently provides that a mailed application for absentee ballot must be received by the municipal clerk no later than the fifth calendar day preceding the election at which the voter intends to vote. The deadline for receipt by mail of an application for absentee ballot from military and indefinitely confined electors is the fourth calendar day preceding the election. The deadline for an elector to request and vote an absentee ballot in person is the day before the election. The changes described below would not affect electors for whom extended deadlines apply (military electors away from their residence due to active duty, hospitalized electors and sequestered jurors).

Moving the absentee ballot request deadline up one week or eliminating in-person absentee voting after the fourth calendar day preceding the election would better allow municipal clerks to meet any last minute ballot requests and focus on processing incoming ballots. Changing absentee voting deadlines would also allow municipal clerks time to attend to the last minute details of election preparation, rather than focusing entirely on the absentee voting process in the final, critical days before the election.

B. Examine the implications of eliminating the written application, certificate envelope and/or witness requirements for in-person absentee voting

Currently, before a voter may receive an absentee ballot, he/she must make a written application for a ballot. Wis. Stat. § 6.86(1)(a). The voted absentee ballot must be sealed in a certificate envelope signed by the voter and a witness who is an adult U.S. Citizen. Wis. Stat. § 6.87(2), (4). Because in-person absentee voting occurs in the clerk's office rather than in some remote unobserved location, some of these requirements may be unnecessary. A closer look at how the elimination of these requirements could impact the right to challenge a voter's eligibility would be required before implementation.

C. Allow a facsimile signature on an absentee ballot request and eliminate the requirement to receive an original application with an original signature in order for the ballot to be counted

Current State statute provides that an absentee ballot may be mailed, faxed or emailed to a voter, if an absentee ballot application has been received and if the application contains the voter's actual signature or facsimile thereof. However, the application with an original signature must be received in order for the ballot to be counted. Wis. Stat. § 6.86(1)(ac). Again, a closer look at how the elimination of

this current requirement could impact the opportunity for voter fraud and ballot security would be required before implementation.

D. Allow the return of the voted ballot by fax or email

Under current Wisconsin law, absentee ballots may be faxed or emailed to voters upon request. However, state statute does not provide for the return of the voted ballot via fax or email; the voted ballot must be returned by mail or personally delivered. Wis. Stat. § 6.87(3)(d). Allowing return of the voted ballot by fax or email would simplify the procedures for voters as well as election officials. It would also reduce turn-around time for the return of ballots, especially for military and overseas voters. Again, a closer look at the deadlines for return of ballots and how the elimination of these requirements could impact the opportunity for voter fraud and ballot security would be required before implementation.

E. Expand the opportunity for all electors, with one request, to receive ballots automatically for all elections for which the elector is eligible to vote

At present, this privilege is only extended to military electors and indefinitely confined electors. Wis. Stats. §§ 6.86(2)(a), 6.865(3), (3m). If the absentee voter fails to return a ballot, the voter would be required to confirm their permanent absentee request via the same procedures that currently apply to an indefinitely confined elector who fails to return a ballot. *See* Wis. Stat. § 6.86(2)(b).

F. Allow solely "vote by mail" instead of utilizing traditional polling places. The use of this option would be limited to small elections the municipal governing body.

G. Explore options for reduced postal rates for ballots sent to "regular" and overseas electors. (Postage pre-paid envelopes are currently available to mail ballots to military electors. Postage pre-paid return envelopes are also provided for military electors.) Wis. Stat. § 6.87(3)(a)

H. Create system to allow all voters to track their absentee ballot status

The Military and Overseas Voter Empowerment (MOVE) Act requires that military and overseas voters be able to track their absentee ballot request and see when their ballot has been received by the appropriate official. (See initiative 6C below.) Further federal legislation is currently pending to provide federal funding to states who choose to expand this tracking requirement to all absentee voters.

Wisconsin's Statewide Voter Registration System (SVRS) currently has the capability to track absentee ballots, but this function is not used by all clerks. The Board would implement an administrative rule requiring tracking of all absentee ballot in the SVRS. The Board would also create a simplified interface to allow clerks, who currently rely on another party to provide SVRS service, to enter absentee ballot information themselves. The Board's staff would modify the Voter Public Access system to allow voters to view the status of their absentee ballot.

6. Polling Place Information

Despite the recent trend towards absentee voting, the majority of Wisconsin voters appear in-person at the polling place to cast their vote. The following options will be studied for the purpose of improving the voter's experience at the polling place on Election Day:

A. Consolidate the many notices required to be posted at the polling place into a single brochure or other document

HAVA requires that specific information be posted at each polling place on Election Day. Wisconsin statutes require the same postings as HAVA, as well as additional information. The number of postings required has become difficult to manage and the Government Accountability Board's staff will study viable options for a solution in response to concerns expressed by municipal clerks.

Consolidating the notices into a brochure which would be available at the polling place or integrating all notices into one large notice are possibilities. Any change to current law concerning posting of information at polling places would require a revision of Wisconsin Statutes, Chapter 10. An advisory committee of county and municipal clerks would be utilized to develop and prepare alternate methods of disseminating this information to electors.

B. Expand the geographic area in which an election inspector may serve

Currently, an election inspector must be a qualified elector of the municipality they serve. Wis. Stat. § 7.30(2)(a). In smaller municipalities, this requirement can hinder the recruitment of qualified individuals to serve as election inspectors. If the residency requirement could be expanded to a certain district or county-wide, election inspectors could be drawn from a larger pool and assigned to work at any polling place in the municipality group or county. This would allow clerks a broader selection of inspectors to utilize and would benefit smaller municipalities who have difficulty finding enough inspectors in their own municipalities.

C. Allow the use of Electronic Poll Books in Wisconsin

Electronic Poll Books have been used at polling places in other states with great success. Using Electronic Poll Books would speed up the check-in process and increase accuracy when recording voters. It would also reduce the amount of extra staff and time needed to input voter participation after an election. Finally, Electronic Poll Books have the potential to be an excellent Election Day barrier to possible double voting. However, there are significant technical challenges to implementing Electronic Poll Books including providing internet connectivity to the rural areas of Wisconsin; integrating the Electronic Poll Books with existing networks; integrating the Electronic Poll Book software with the SVRS; and, upgrading the SVRS to handle the increased user load on Election Day.

D. Develop a better support system for election inspectors with Election Day questions

The chief election inspector of a polling place is limited to looking in paper manuals or calling another election official if they have questions. The Government Accountability Board is exploring the possibility of deploying electronic devices to each polling place that would make it easier for an election inspector to quickly find an answer or solution to any given problem. This device would allow the inspector to quickly handle situations which may arise at the polling place and lessen the need to contact the Board or the clerk for assistance.

E. Reduce the number of election inspectors required to administer "curbside voting" to one, if another witness is present

Upon notification that a voter has arrived at the entrance to a building containing a polling place, but is unable to enter the polling place due to a disability, the inspectors may bring a ballot to the voter's location outside of the polling place. When the voter has completed the voting process, the inspectors return the ballot to the polling place for deposit into the voting machine or ballot box. Wis. Stat. § 6.82(1)(a).

The statute implies, by use of the plural "inspectors," that more than one inspector must deliver the ballot to the disabled voter. At no time may the polling place be staffed by less than three inspectors. Wis. Stat. § 7.32. If the polling place is staffed by the minimum number of inspectors, and two inspectors are administering "curbside voting," voting activity in the polling place must cease until the inspectors have returned.

Generally, a friend or relative of the disabled voter has brought the voter to the polling place. Allowing one inspector to administer "curbside voting" as long as another witness is present would accommodate the disabled voter and may allow the voting process inside the polling place to continue without interruption.

7. Voter Registration

While the adoption of Election Day Registration in 1976 made Wisconsin a leader in the area of voter registration, the Internet has made it possible to further expand the availability of voter registration. Further refinement is possible to Wisconsin's existing voter registration processes. The following options (Provisions A-C) will be studied to refine the voter registration process:

A. Allow an individual to register to vote and submit the registration form online during open registration

- If the driver's license number and other information can be validated against the Department of Transportation, the registration form may be completed and submitted electronically.

- A first-time voter in Wisconsin may not use the online method, but must print and complete the registration form, and mail the form and a copy of acceptable proof of residence to the municipal clerk.

B. Move the open registration deadline to more than 20 days before the election

Wisconsin voters can register to vote 365 days a year; however, the election cycle does have different periods with deadlines. The open registration deadline is particularly problematic due to the fact that it is a postmark deadline, so valid voter registrations continue to come in several days after the deadline. Moving the open registration deadline earlier in the election cycle will allow more time for clerks to enter these last minute registrations into the Statewide Voter Registration System before Election Day, while still providing the voter an opportunity to register in-person at the clerk's office or at the polls on Election Day. Another potential solution would be to change the postmark deadline to an actual receipt deadline.

Moving the open registration deadline; however, does affect other deadlines such as absentee voting deadlines. Further examination will be required to ensure that changing this deadline does not create problems complying with other deadlines.

C. Standardize voter verification procedures

Voter registration forms submitted by mail, Special Registration Deputies or those registrations occurring on Election Day are required to be verified by postcard. Persons registering in person in the clerk's office after the close of registration are required to show proof of residence, so verification is not required for those voters. The statutes do not address persons registering in-person in the clerk's office before the close of registration. The Government Accountability Board is also examining electronic means to verify voter addresses to reduce printing and postage costs.

8. Military and Overseas Absentee Voting

Although Wisconsin has already implemented a number of procedures to ensure military and overseas voters have their votes counted, the impending Federal Military and Overseas Voter Empowerment Act (MOVE) necessitates the following changes to Wisconsin's procedures for processing military and overseas absentee voting requests:

A. Develop procedures to send and receive absentee ballot requests and voter registration forms via email and to send blank ballots via email

Wisconsin already sends absentee ballot requests, voter registration forms and blank absentee ballots via email, and receives absentee ballot requests and voter registration forms via email. MOVE requires states to implement standardized procedures for sending and receiving these requests. The Government Accountability Board's (the Board) staff would develop administrative rules standardizing procedures that staff and municipal clerks would follow to send and receive materials via email.

B. Redesign informational materials for overseas and military voters

MOVE requires that the State designate a means of electronically communicating with military and overseas voters. Wisconsin would implement this requirement by designating an email address that all military and overseas voters could use to request forms and information from the Board. MOVE also requires that the designated means of electronic communication be printed on all information sent to military and overseas voters except the ballots. The Board's staff would redesign forms used by military and overseas voters to include the State's designated email address.

C. Create a system to allow military and overseas voters to track their absentee ballot requests

MOVE requires that military and overseas voters to be able to track their absentee ballot request and see when their ballot has been received by the appropriate official. The Statewide Voter Registration System (SVRS) currently has the capability to track absentee ballot requests, but this function is not used by all clerks. The Board would implement an administrative rule requiring tracking of absentee ballot requests. The Board would also create a simplified interface to allow clerks, who currently rely on another party to provide SVRS service, to enter absentee ballot information themselves. The Board's staff would modify the Voter Public Access system to allow voters to view the status of their absentee ballot.

D. Provide Special Registration Deputy training to Department of Defense personnel

MOVE allows the Secretary of Defense to designate any pay, personnel, or identification office of the Department of Defense as a voter registration agency. If offices on military installations in Wisconsin are designated as voter registration agencies, the Board will work with the Wisconsin Departments of Military and Veterans Affairs to provide the necessary training and information to the Department of Defense staff.

9. Additional Initiatives to be Explored Over the Next Five Years

A. Clarify the definitions of "residency" in Wisconsin Statute

Wisconsin Statutes lack firm definitions of what constitutes "residency." Clarifying residency requirements would make it easier for clerks and voters to determine voter eligibility and which polling location a voter should be assigned.

B. Move up the date of the Partisan Primary to allow more time between the primary and the general election

Wisconsin clerks have very little time between the certification of the Partisan Primary results and ballot printing deadlines for the General Election. Moving the Partisan Primary earlier in the year would allow more time for county clerks to complete the canvass and allow for better quality control and auditing of the Partisan

Primary results. However, moving the Partisan Primary election has far-reaching political and practical implications. Further examination will be required to determine the feasibility of such a large-scale change to the election calendar.

C. Migrate the electronic collection of canvass data from the current canvass application to SVRS

The platform currently used for the canvass process is a legacy application that is past its expected life cycle. It houses candidate and other information used to construct a statewide canvass using data provided by the county canvasses. Using the SVRS for canvassing will ensure that each county clerk is using a uniform method of providing election data quickly and in one step. Uniformity in format will reduce Board's staff time by eliminating the need to manually adapt each county canvass to the correct electronic format, reporting units, office titles, candidate names, etc. Once all the data are collected, Board staff would print reports for each office and party, if required, and audit the reports against the official signed canvass mailed by each county. This process would speed canvass completion by days and also, eventually lead to unofficial election-night results reporting in a more timely manner, which would be made available on the Board's website.

D. Adjust the certification terms of municipal clerks and special registration deputies to match the terms of election inspectors

Election inspectors are appointed for two-year terms beginning January 1 of an even-numbered year and ending December 31 of the following odd-numbered year. Municipal clerk and special registration deputy certification terms run from January 1 of odd-numbered years and end December 31 of the following even-numbered years. For the sake of uniformity, municipal clerk and special registration deputy certification terms should match inspector terms.

E. Improve ballot design support for local election administrators

The Government Accountability Board will develop a ballot assistance program to assist local elections administrators in ballot design. This program will help election administrators minimize voter uncertainty, confusion and errors resulting from ballot design. The Board will examine best practices in ballot design using guidance from the US EAC and other sources.

ACCESSIBILITY
Ensuring Voter Accessibility in the Polling Place

HAVA created an opportunity to take a fresh look at polling place accessibility in the State of Wisconsin. Beginning in 2005, the former Elections Board staff began meeting regularly with representatives from the local disability community in order to promote participation in the voting process. This advisory group is still in place with the present Government Accountability Board. In addition to continuing to meet regularly with the Board's staff, the Accessibility Advisors attend meetings with municipal and county clerks, and join the Board's staff at state conferences to discuss voting issues affecting the disability community.

The Board annually applies for and receives HAVA § 261 funds to ensure access to the election process for persons with disabilities. The HAVA § 261 funds are used to support activities in four areas:

- Accessibility
- Privacy and Independence
- Training
- Information

The Board's staff continues to work with representatives of disability advocacy groups to refine our program of activities to carry out the objectives of HAVA.

Complying with HAVA Requirements

Accessibility of Polling Places

§ 101(b)(1)(G) – Improve the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
§ 261(b)(1) – Make polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

Wisconsin is home to eleven Federally-recognized Native American tribes. The Government Accountability Board does not specifically target Native Americans as a voting group, but does support Tribes with voting-related issues as requested or needed. For example, in 2008, a representative from the Ho-Chunk Nation contacted the Board about promoting voter registration among all Native American tribes in Wisconsin. In response to that request, a special registration deputy training class was coordinated with tribal government.

While Wisconsin has not reached the threshold where the Voting Rights Act § 203 would require election officials to provide alternate language materials, the Board has translated its Voter Registration Application (GAB-131) and its Application for Absentee Ballot (GAB-121) into both the Spanish and Hmong languages. Some municipalities also offer Braille ballots upon request.

Polling Place Accessibility Surveys

The Government Accountability Board continually works with municipalities to improve physical access for voters with disabilities, including those with visual impairments. As elections in Wisconsin are administered at the municipal level; however, the quantity and selection of polling places are determined by the municipality, within general statutory guidelines. Wis. Stat. § 5.25. The Board also requires that each polling place, when initially selected, have an accessibility survey conducted to confirm compliance with accessibility requirements.

In 2006, the Wisconsin Legislative Audit Bureau (LAB) conducted an audit of the former Elections Board's oversight of polling place accessibility. The LAB determined that many polling places were still not accessible and that the new Wisconsin Government Accountability Board should take affirmative steps to confirm the self-reported accessibility surveys.

Throughout 2008, and including Wisconsin's 2009 Nonpartisan primary and Spring elections, the Board's Accessibility Advisory Group met and refined a new accessibility survey. Board staff field-tested the draft surveys by conducting accessibility evaluations at each scheduled statewide election and evaluated 500 polling places. Staff reached at least one polling place in all 72 Wisconsin counties. Field tests allowed the questions to be refined through actual use and provided insight into why previous surveys had not yielded accurate information about accessibility.

Municipal clerks (or their designees) completed the survey at the 2009 Spring Election. Board staff also conducted surveys at randomly selected polling places. Staff-collected information will be compared with the self-reported surveys and distributed to the surveyed municipalities. A detailed quantitative analysis of all responses is planned for later in 2009. Because municipalities change polling locations periodically or new facilities may be available for use as polling places, ongoing self-report accessibility surveys and Board audits will be necessary in the future.

2006 Polling Place Accessibility Grants

In 2006, the former State Elections Board created a polling place improvement program with HAVA § 261 funds. All municipalities that had initially responded to the polling place accessibility survey and self-identified as non-accessible were sent an application for funding to assist with polling place accessibility improvement projects. The funding was provided via a reimbursement mechanism, with a maximum grant of $1,500 per polling place. Grants were approved for 128 municipalities. As part of the reimbursement process, municipalities needed to provide receipts and verification of project completion.

2009-2014 Accessibility Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

Wisconsin is not content with the success of the 2008 accessibility survey revision process. The Government Accountability Board is committed to furthering efforts to achieve full accessibility in all of the State's polling places for all voters. The following are options to be explored during the next five years in order to more effectively serve and support both election officials and members of the disability community:

1. Polling Place Accessibility Survey Audits

   As the features of polling places undergo changes due to weather and age, and locations are discontinued as polling places are consolidated or new facilities become available, further self-reporting accessibility surveys will be required. The Board will continue to administer audits of those self-reported surveys by sending staff to conduct independent compliance assessments of randomly selected polling places.

2. Migrate the Accessibility Survey to an Electronic Format

   The Board will explore the option of migrating the accessibility survey into an electronic format so that it can be completed and submitted electronically. Election officials have responded favorably to other electronic submission methods in the past, and this would eliminate significant printing and postage costs as well as reduce the staff resources required to enter the information from the paper survey into a database for analysis.

3. Quantitative Analysis of Polling Place Accessibility Surveys

   The Board will conduct a quantitative analysis of the data collected from the polling place accessibility surveys conducted during the 2008 pre-tests, and during the Spring 2009 Election. This analysis will allow the Board to better target its resources to the common impediments that individuals with disabilities face at the polling place and provide information to the disability community on the accessibility of Wisconsin polling places.

4. 2009-2014 Polling Place Accessibility Grants

   The Board will offer polling place accessibility improvement grants, similar to the 2006 grant program. These grants would be cost-sharing partnerships with municipalities looking to make further polling place improvements to meet accessibility requirements. This grant program will continue if the need persists and as the availability of funds allows.

5. Increase the Diversity of the Accessibility Advisory Group

   The Accessibility Advisory Group formerly had more representatives from the disability community. The Board is interested in adding representatives from other interested community groups to continue to provide different points of view on the accessibility of elections in Wisconsin.

VOTING SYSTEMS

Ensuring Voting Systems' Integrity and Security

Voting systems need to do exactly what they are intended to do – accurately and completely count all votes that are cast in accordance with electors' preferences. Voting systems must provide disabled electors the opportunity to vote without the need for assistance, in a private and independent manner. Additionally, voting systems must provide the voter the opportunity to correct any error before the ballot is cast and counted.

Under current law, Wisconsin has established a set of standards for the approval of electronic voting systems. Currently, seven accessible voting systems are approved for use throughout the State, for assuring the same access and participation, including privacy and independence, for all voters.

Voting systems play a critical and necessary role in ensuring Wisconsin's open, fair and transparent elections. The various voting systems in Wisconsin are an integral part in maintaining accuracy and confidence in the electoral process in Wisconsin. Uniform and consistently applied standards and strict security protocols ensure the integrity of all voting machines throughout Wisconsin's 1,850 municipalities and 2,822 polling places, and are of the highest priority.

Complying with HAVA Requirements

HAVA established many requirements for voting systems. The deadline for meeting these requirements was January 1, 2006. All voting systems used in Federal elections in Wisconsin since January 1, 2006, complied with the HAVA standards set forth below:

Voting System Standards

§ 301(a)(1)(A) – Each voting system used in an election for Federal office shall:

(i) Permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.
(ii) Provide the voter with the opportunity (in a private an independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).
(iii) If the voter selects votes for more than one candidate for a single office, the system must:
   (I) Notify the voter that the voter has selected more than one candidate for a single office on the ballot;
   (II) Notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
   (III) Provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

§ 301(a)(1)(C) – The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

§ 301(a)(2)(B) – The voting system shall:

1. Produce a permanent paper record with a manual audit capacity for such system.
2. Provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.
3. The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

§ 301(a)(4) – The voting system shall provide alternative language accessibility pursuant to the requirements of § 203 of the Voting Rights Act of 1965.

All voting systems (including optical scan voting systems, direct recording electronic voting systems and electronic ballot marking devices) approved for use in Wisconsin meet the above requirements. The specific statutory requirements are set forth below:

1. Permit the voter to verify in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted. Wis. Stats. §§ 5.25(4)(a), 5.91(15).

2. Provide the voter with the opportunity in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error. Wis. Stats. §§ 5.91(16), 6.80(2)(c).

3. Unless the ballot is counted at a central counting location, it includes a mechanism for notifying a voter who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the voter with an opportunity to correct his or her ballot or to receive and cast a replacement ballot. Wis. Stat. § 5.91(17).

4. The voting system has the capabilities to provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965. Wis. Stat. § 5.25(4)(b). Wisconsin is not presently subject to the alternative language requirements of the Voting Rights Act of 1965. However, all voting systems currently approved are able to meet such requirements.

Accessible Voting Systems

§ 301(a)(3)(A) – The voting system shall be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

§ 301(a)(3)(B) – The voting system shall satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

The former Wisconsin State Elections Board approved seven accessible voting systems ensuring the same access and participation, including privacy and independence, for all voters:

- Premier AccuVote TSX
- ES&S AutoMARK
- ES&S iVotronic
- Populex Digital Ballot System
- Sequoia AVC Edge
- Vote-Pad
- VTI DRE Voting System[1]

The former State Elections Board distributed information to all municipal and county clerks describing the approved vendors, the process for acquiring approved voting equipment and the process for receiving reimbursement with HAVA funding for the accessible component for their voting system. Every polling place in the State of Wisconsin had accessible systems in place by the September 12, 2006, Partisan Primary.

The majority of the accessible voting equipment funds have been disbursed. There are municipalities awaiting Federal certification by the U.S. Election Assistance Commission (US-EAC) for firmware and software upgrades which will be reimbursed using the HAVA § 251 funds. No voting systems or upgrades to voting systems may be approved for use in Wisconsin until federal certification is issued by the US-EAC, unless the Government Accountability Board exempts the system from strict compliance pursuant to Wis. Admin. Code GAB 7.03(5).

Replacement of Punch Card Voting Systems and Lever Voting Systems

§ 102(a)(2) – Replace punch card voting systems or lever voting systems in qualifying precincts within that State with a voting system that meets the requirements of § 301.

Counties and municipalities that utilized punch card or lever voting systems were required to replace their existing punch card or lever systems with either an accessible touchscreen system (see above) or an approved optical scan voting system from the following list:

- Premier Accuvote OS (precinct count)
- ES&S M100 (precinct count)
- ES&S 150 (central count)
- ES&S 550 (central count)
- Sequoia Insight (precinct count)
- Sequoia/ ES&S Eagle (precinct count)

HAVA § 102 funds were allocated to all eligible municipalities and counties for replacement of punch card and lever voting systems. Local government units were required to purchase the replacement voting equipment with their funds. The eligible municipalities and counties were then reimbursed with HAVA § 102 funds up to the amount allocated for replacement equipment that complied with the Voting System Standards. All replacement systems were in place prior to the first Federal Election in 2006.

[1] Voting Technologies International (VTI) has since gone out of business and its equipment is no longer used in Wisconsin, although it is still certified for use.

Post-Election Voting Systems Audit

§ 301(a)(2)(A) – The voting system shall produce a record with an audit capacity.
§ 301(a)(5) – The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under § 3.2.1 of the voting system standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

Each voting system approved for use in Wisconsin is required to produce a permanent paper record which the voter has verified and has the opportunity to correct before the paper record is produced. Wis. Stat. § 5.91(18). The paper record is the official ballot in the case of a recount or manual voting equipment audit. Wis. Stat. § 5.91(18). Wisconsin utilized a set of standards to determine eligibility for in-State use that incorporated the requirements of HAVA § 301. Wis. Stat. § 5.91, Wis. Admin. Code GAB 7.

Pursuant to Wis. Stat. § 7.08(6), the Government Accountability Board audits the performance of each tabulating voting system used in Wisconsin following each general election to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the Federal Election Commission, the Board will take remedial action to ensure compliance with the standards. The results of these post-election voting systems audits will be reported to the Board in a timely manner.

Ballot and Electronic Voting System Security

The Government Accountability Board adopted rules relating to the security of ballots and electronic voting system security for election officials to follow during pre-election, Election Day and post-election procedures. Wis. Admin. Code GAB 5. The rules provide verification methods to ensure that ballots and electronic voting systems remain secure and tamper-free. The Board approved the rules at its May 5, 2008, meeting.

In order to monitor voting system security compliance, the Board incorporated equipment security audits with the polling place accessibility inspections on Election Day. Staff, in addition to completing the polling place accessibility survey, now must also verify and document voting system security while at the polling place.

2009-2014 Voting Systems' Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

During the course of this five-year Plan, the Government Accountability Board will examine, review, explore, study and pursue the following options:

1. Voting Equipment Certification

   Current Wisconsin law requires new voting systems and updates to current voting equipment to achieve US-EAC certification prior to State approval. The US-EAC began

testing voter equipment in December 2006, but has not yet accredited any voting equipment.

Many voting systems are outdated and municipalities would like to update their equipment with currently available performance and component upgrades. Voting equipment manufacturers have already completed the necessary upgrades to the firmware and software for these voting systems. Manufacturers however, cannot offer these enhancements to municipalities in Wisconsin until the upgrades receive approval by the Government Accountability Board. Under current rules the Board may not approve the upgrades until the US-EAC grants accreditation.

Wisconsin Administrative Code GAB 7.03(5) allows the Board to exempt any electronic voting system from the US-EAC accreditation requirement. The Board will create a standing advisory committee to review modifications of currently-approved voting systems.

A charge statement and scope of duties will be developed for the Committee. Duties will include some or all of the following:

1. Advise on the content of the administrative rule for approval of voting machines.
2. Help develop thorough methods of pre-election testing of tabulators.
3. Advise on the security rules of voting equipment.
4. Advise on methods and results of audits of machine transactions, logs and vote counts.
5. Develop means of authentication of software versions, such as hash code checks.
6. Develop a protocol for voting system purchasing to be considered by municipalities.
7. Participate directly in evaluation of equipment being considered for approval by:
   - Conduct a review of Federal certification testing and results.
   - Participate in the State's functional evaluation and testing.
   - Submit written advice on acceptance or rejection.
   - Investigate possible waivers to US-EAC certification for minor upgrades.

Based upon the findings of the committee, the Board may choose the option to waive the US-EAC accreditation. The committee will also assist in the approval process for new voting equipment, determine test methods and review applications.

2. Clarify Definition of Maintenance of Electronic Data

Currently, Wis. Stat. § 7.23(1)(g) requires the transfer of the election data from detachable recording units to an electronic medium. These data may not be destroyed for 22 months after an election regardless of whether the election was federal, state or local. While there

is a Federal requirement to retain all election data from federal elections for 22 months, there is no similar Federal requirement to do the same for state and local elections.

The cost of retaining electronic election data is a major consideration. Municipal and county clerks have expressed concern regarding the cost of transferring election data from memory devices to an electronic medium, such as a CD or hard drive. Most clerks do not have the resources to purchase enough recording devices to maintain each election for 22 months on the original recording device or additional recording devices in the event of a recount or special election. Most clerks have decided to transfer the electronic election data from the original recording device and store that election data on another electronic media (CD or hard drive). However, the cost of transferring the data to an electronic medium that is then stored for 22 months is still prohibitively expensive.

Other than the purpose of preserving election materials for potential legal investigation or academic research, there is no additional state or local purpose for preserving election materials beyond the time required for a recount or election contest. Weighing the costs, there is certainly no compelling reason that has been brought to the Board's attention to preserve election materials for state and local elections for 22 months as required for federal elections.

During the five-year course of this Plan, the Board's staff will work with the Legislature to revise Wis. Stat. § 7.23 to allow clearing and reactivation of voting machine recorders 14 days after any primary and 21 days after any other state or local elections, subject to retention for purposes of a recount or election contest.

3. Re-evaluate Certification of Accessible Equipment

While the accessible systems that are currently approved in Wisconsin allow some individuals with disabilities to vote, they may not all provide full privacy and independence in all aspects of the voting process to individuals with a broad range of disabilities, including individuals with dexterity challenges. Since the former State Elections Board's approval of these systems, there are still many outstanding questions regarding the accessibility of some voting equipment and whether all individuals with disabilities have the same opportunity for participation as other voters. The Government Accountability Board's staff may re-evaluate the devices to determine if they provide "full accessibility." A report of findings and recommendation(s) will be provided to the Board.

4. Uniform Statewide Voting System

Currently, each municipality may determine the voting systems that voters within their jurisdiction will use on Election Day, as long as that system is approved for use. Before any voting system can be approved for use in Wisconsin, the voting equipment manufacturer has to be certified at both the federal and state level. There are three main voting equipment manufacturers predominantly in use in Wisconsin: Elections System & Software, Premier Election Solutions and Sequoia Voting Systems. Many of the voting systems have many similar components and have related functionalities. However, there are unique aspects for each voting system which makes administering elections complex.

In addition, the cost to program and maintain these voting systems is significant and varies depending on the contractual agreements between the municipality and manufacturer.

Mandating a uniform statewide voting system would provide the uniformity and consistency. The Government Accountability Board could potentially purchase the election management software to assist in the programming of the memory devices associated with such voting equipment, minimizing potential programming costs to the municipality. During the next five years, the Board will research other states that assist in the maintenance and programming of voting systems at the state level. In addition, the Board will research the role of universities that assist with the voting systems.

The primary obstacle to adopting a uniform statewide voting system in Wisconsin is the purchasing cost. Depending on the voting system the Board may decide, initial estimates project the cost to purchase uniform voting systems may range from $30,000,000 to $40,000,000. Although the initial costs are daunting, operating and administrative costs would decrease as a result of a uniform statewide voting system.

Secondly, the Board currently does not have the statutory authority to mandate a uniform voting system. Wis. Stat. § 5.40, provides that a governing body or board of election commissioners may adopt and purchase voting machines or electronic voting systems for use in any ward in the municipality at any election. All voting systems in use in Wisconsin are required to be approved by the Board. However the ultimate purchasing determination is made by the municipal governing body. To issue such order would require a legislative change, granting authority to the Board to determine what voting systems would be used in Wisconsin. The Board, however, will explore, study, review and examine the feasibility of developing a uniform protocol for voting systems purchase, to be considered by municipalities.

An alternative option would be to mandate a particular type of voting system: direct record electronic or optical scan with ballot-marking devices, but not mandate a particular vendor. While this option does not produce the cost-savings of a vendor-specific uniform system, it may simplify election procedures.

STATEWIDE VOTER REGISTRATION DATABASE

Maintaining Wisconsin's Statewide Voter Registration System

Wisconsin's Statewide Voter Registration System (SVRS) is more than just a list of voters; it is the heart of election management, administration and election business practices in the State of Wisconsin. The SVRS helps to ensure accurate, complete and high quality voter data, and is used as a tool by county and municipal election officials to manage elections, voter records, address ranges and office holders. Additionally, the SVRS provides the public with access to voter information, voting history, polling locations, sample ballots for upcoming elections and information on provisional ballots.

Efficient election management relies upon a strong, well-maintained infrastructure. Continuous updates and upgrades are essential to maintaining clean and accurate data in Wisconsin's SVRS. Wisconsin's 2009-2014 Election Administration Plan assumes continuation of the current SVRS software package and infrastructure arrangements. An influx of new Federal funds to keep this system operational is critical to its continued use and utility. Over the course of this five-year Plan, the Government Accountability Board will look into other voter database systems and options that could better suit election officials and electors of Wisconsin. Any new voter database will perform the same kinds of functions that the current system does, presumably, in a more efficient and effective manner. If, during the course of the five years of the Plan, a new voter database is purchased, it should not be viewed as a material change to this five-year Plan.

As technology continues to improve, new initiatives and upgrades to the current system are required to provide election officials the tools they need in order to ensure Wisconsin residents that elections throughout the state remain open, fair and transparent, and performed with the highest degree of professional integrity.

Complying with HAVA Requirements

Computerized Statewide Voter Registration List

§ 303(a)(1)(A) – The State shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the state, and includes the following:

i. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

ii. The computerized list contains the name and registration information of every legally registered voter in the State.

iii. Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

iv. The computerized list shall be coordinated with other agency databases in the State.

v. Any election official in the State, including any local election official, may obtain immediately electronic access to the information contained in the computerized list.

vi. All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

vii. The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause vi.

viii. The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

The Government Accountability Board has addressed each of the above HAVA requirements. Wisconsin's Statewide Voter Registration System (SVRS) has been used for recording voter registration information and printing voter poll lists as of the Spring 2006 election cycle for 21 counties and statewide since the 2006 Partisan Primary. Continued implementation of upgrades and required maintenance is necessary in order to remain in compliance with HAVA and provide local election officials and Wisconsin voters with an accurate and reliable voter registration and election management system.

List Maintenance

§ 303(a)(2)(A) – The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993.

(ii) For the purposes of removing names of ineligible voters from the official list of eligible voters:

(I) The State shall coordinate the computerized list with State agency records on felony status; and

(II) The State shall coordinate the computerized list with State agency records on death.

§ 303(a)(2)(B) – The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that:

(i) The name of each registered voter appears in the computerized list;

(ii) Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) Duplicate names are eliminated from the computerized list.

§ 303(a)(4) – The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, registrants who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.
§ 303(a)(5)(B)(i) – The chief State election official and the official responsible for the State motor vehicle authority shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

The Government Accountability Board and the Wisconsin Department of Transportation (DOT), Division of Motor Vehicles have an agreement to compare data to verify the accuracy of voter records. Wisconsin's HAVA Check Interface functionality allows for cross-checking voter data with the DOT, Social Security Administration database, Department of Corrections convicted felon lists and Department of Health Services deceased persons records. The HAVA Check Interface became operational on August 6, 2008. Retroactive cross-checking of voter data with the Department of Transportation or Social Security Administration for voters registered from January 1, 2006, through August 5, 2008, will be completed by December 31, 2009.

Duplicate voter matching is also functional in SVRS, and is used daily by local election officials to eliminate duplicate records from the official registration list. The Board completed the State and HAVA required list maintenance for voters not voting in two consecutive general elections in May 2009, in accordance with strict guidelines and safeguards approved by the Board on January 4, 2009.

Security Measures

§303(a)(3) – The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list.

Detailed security protocols and procedures, which include secure access servers, security certificate requirements and personal workstation minimum specifications have been in place since the inception of SVRS, and will continue.

2009-2014 Statewide Voter Registration System's Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

1. Required Regular Maintenance of SVRS Software and Infrastructure

The Statewide Voter Registration System's (SVRS) source code is extremely complex and requires a tremendous amount of regular maintenance to keep it up and running for the over 2,000 total SVRS users (election officials at the state, county and municipal levels and their staff) across the state. Like any piece of software, glitches and bugs that cause outages, temporary service delays and slow performance must be dealt with as they arise; SVRS is no exception. During peak election cycle periods, the need for continuity of service from both the software and infrastructure is absolutely critical to the printing of voter poll lists, the processing of absentee ballot applications, address range listing reports, registration lists, death/felon/duplicate/DOT matching, post-election participation audits and double-voting checks.

Retaining advanced, experienced software developers and database administrators who possess the required technical skill-sets that are necessary to keep the SVRS functional is costly. The renewal of the software licenses required for 1,000 concurrent SVRS users is an additional infrastructure cost. During the course of this five-year plan, the Government Accountability Board, in consultation with the Wisconsin Legislature, intends to explore alternatives for hosting the SVRS infrastructure.

2. Further Implementation and Expansion of Current SVRS Functionality

The current Statewide Voter Registration System (SVRS) contains modules that are functional, but have not been implemented to the fullest potential. As more SVRS functionalities are "turned on" and implemented, the cost for maintenance and monitoring increases. Newly implemented functionality of the SVRS will also require in-person and online training for election officials.

A. Modify Voter Public Access (VPA) to Provide Expanded Voter Information

To provide the highest quality data to voters and the general public, implementing expanded functionality to the VPA portion of SVRS is needed. With planned modifications to the current VPA interface, voters will be able to:

- View the results of polling place accessibility surveys for all locations, plus any details, special instructions for voting at a particular location and directions to the polling place.
- Review the status of an absentee ballot request including when a request was received, when the ballot was sent to the voter, when it was received at the local election official's office and whether the absentee ballot was counted.
- Have a more accurate picture of voter history and the type of ballot cast in a particular election.
- View more complete information regarding the status of a provisional ballot.

B. Migrate Electronic Collection of Canvass Data from the Current Application to SVRS

The Government Accountability Board's staff has begun negotiations and planning for converting the current manual canvassing process to a streamlined electronic process through the SVRS. Moving to an electronic and automated process will make it easier for election officials to compile canvass results. This migration will also reduce the Board staff resources required to complete the statewide canvass in the weeks following the election. Swift and accurate reporting of results furthers the primary goal of making elections open, fair and impartial. This feature will eventually also lead to the Board providing unofficial, election-night results on its website.

C. Testing of Redistricting Functionality in SVRS

The Government Accountability Board's staff has begun preparations for mandatory statewide redistricting due to the decennial census. SVRS contains some functionality to assist with defining district boundaries, manage the transfer of voters from one district to another, verify district boundaries against voter addresses and automate the notification to voters of new districts. The current functionality may or may not be sufficient to accomplish this monumental task. Once further planning and preparation begins, upgrading and testing of the SVRS will be necessary to accomplish the redistricting within the tight statutory timeframe. Board staff has initiated consultation with the Legislature's Technology Service Bureau to discuss opportunities and possibilities for collaborating on the redistricting and related initiatives, and this collaboration will continue.

3. Upgrades, Improvements and Additions to Current SVRS Software Package

To facilitate newly planned initiatives, and enhance current business practices over the next five years, significant improvements and additions to the current SVRS are necessary. New functionality of the SVRS will also require in-person and online training for election officials. Listed below are the known planned upgrades, improvements and additions to the SVRS:

A. Upgrade Database Indexing and Improve Source Code

While functional, and used for elections since 2006, the Government Accountability Board continues to receive complaints about the overall performance of SVRS, the single most reported complaint is that SVRS runs extremely slow at times, especially during peak election cycle times when speed and efficiency are the most important to effective election administration. Basic searches of voter records and opening specific sections of the application, such as district information, can be very sluggish and frustrating when trying to complete the many election administration tasks required in the SVRS. Upgrading and improving database indexing and modifying the source code in areas that run slowly are needed to assist election officials in completing routine business practices.

B. Automate the HAVA Check Interface

Currently, conducting HAVA interface checks takes an unnecessary number of steps. Moving to a more automated, background stored procedure will save election officials time and effort while working in the SVRS.

C. Streamline Absentee Business Processes

The absentee functionality in the SVRS, while improved over the years, still produces a large number of complaints due to its complexity and potential for user error. One of the main reasons many of municipal and county users choose not to use the absentee functionality in SVRS for tracking purposes is that it is

unnecessarily complex. Streamlining the absentee process in the SVRS would promote more usage and improve absentee reporting (more complete and accurate absentee data) on a statewide basis. Improving the absentee functionality will also help election officials more effectively track and report on UOCAVA voters.

D. Streamline Other Business Practices

Further refinement and automation of current routine tasks such as generating and exporting voter poll lists, identifying voter record matches and recording voter participation would alleviate some of the most common "system usage" complaints associated with the SVRS.

E. Upgrade Reporting Functionality

The reporting functionality in the SVRS must be upgraded to make it more user-friendly, including much needed flexibility in creating customized reports for individual jurisdictions. The Government Accountability Board intends to explore the feasibility of upgrading to an entirely different report writing software for voter and election data to help simplify the report running process. The current reporting model is inconsistent and has been difficult to use at times.

If the Board chooses to keep the current report functionality, it will need to standardize data elements, naming conventions of fields and report views to make the reports more useful and easier to use. The capability for users to create a customized report is needed as it is difficult to provide a "one-size-fits-all" report for over 2,000 SVRS users.

F. Modify SVRS to Accommodate Early Voting

If early voting proposals are adopted in Wisconsin, it will directly affect the SVRS. Changes and new functionalities would have to be developed and implemented to track a voter's registration, provide a watermark on the poll list to indicate ballots cast and track voter participation in the election. Other tracking and management of the early voting process would also be integrated into the SVRS.

G. Modify SVRS to Accommodate Electronic Poll Books

The use of electronic poll books will also require upgrades to both the software and infrastructure of the SVRS. Real-time, online voter registration at the polls would streamline the current Election Day registration practices in Wisconsin, as well as reduce the potential for voter fraud. Electronic poll books would also reduce the post-election workload of election officials recording voter participation, updating voter records for name and address changes and entering new applications. Computers and connectivity at every polling location in Wisconsin would be required, as well as additional training for election officials on how to use these new tools.

H. Incorporate Existing Election Day Reports in the SVRS

The Government Accountability Board will explore the feasibility of electronic databases to track the current GAB-104 form (Inspectors' Statement) to compile and analyze incidents on Election Day and to track ballot and electronic voting equipment security.

I. Continue Integration of the Wisconsin Election Data Collection System (WEDCS) with the SVRS

The Government Accountability Board will seek to continue integrating the election and registration data provided through the WEDCS with the SVRS to streamline reporting and reduce the amount of information requested from county and local election officials.

J. Modify SVRS to Accommodate Internet-Based Voter Registration

The Government Accountability Board is currently exploring internet-based voter registration. The SVRS would need to be modified to accommodate data entry into a web-based form that interfaces with the current database. Internet-based voter registration would reduce the data entry workload of election officials. Statutory changes would be needed to allow for this new method of registration.

Section 2
Distribution of Requirements Payments

How the State will distribute and monitor the distribution of the Requirements Payments to units of local government or other entities in the State for carrying out the activities described in Section 1 of the State plan, including a description of the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under Section 8 of the State Plan.

The State of Wisconsin did not distribute any Requirements Payments to local government. Instead, through staff capacity building, Wisconsin provides infrastructure and business operations' support to local government to implement the requirements of HAVA. The cost for development and implementation of the Statewide Voter Registration System along with the acquisition of voting systems that comply with HAVA requirements, in addition to personnel costs, exceeded the amount of Federal funds available for Requirements Payments.

Wisconsin uses the Requirements Payments for election administration infrastructure rather than passing through funds to local government. Wisconsin will continue this practice with receipt of FFY-2008, FFY-2009, FFY-2010, and any further Requirements Payments.

Section 3
Voter Education, Election Official Education and Training, and Poll Worker Training

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

A. Voter Education, Information and Outreach

A well informed electorate is an electorate that actively participates in the electoral process to ensure, maintain and advance democracy. Public education, information and outreach efforts benefit all – the general population, the voting age population and electors who exercise their right to vote. In Wisconsin, public education, information and outreach efforts at all levels of government promotes understanding and confidence in the democratic process; encourages participation; makes registration, voting and other processes more efficient; and helps ensure adherence to the law.

Between 2009 and 2014, Wisconsin, through its Wisconsin Government Accountability Board, will develop a comprehensive public education, information and outreach program initiative for the purpose of increasing awareness. The intent is to expand the breadth, level, depth and scope of outreach to the public and specific to voter populations that are typically under-served. A variety of methods, approaches and strategies will be pursued.

Complying with HAVA Requirements

General Voter Education

§ 101(b)(1)(C) – Educate voters concerning voting procedures, voting rights, and voting technology.

Wisconsin has provided information to the public about how to vote (registration, absentee ballots, polling place rules, etc.) in paper and electronic formats. The former State Elections Board website was redesigned in 2005 and contains almost all the information the Government Accountability Board and the former State Elections Board has ever published. "Voter Information" is a distinct section of the website which contains relevant information to electors including instructions on how to register to vote, how to request an absentee ballot and what to expect on Election Day. The Board's website is currently the only place where the state provides information to the public about voting technology.

Toll-Free Hotline

§ 101(b)(1)(H) – Establish toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

The Government Accountability Board established a toll-free hotline in 2004 and promotes the number with its general contact information. The hotline may be used to obtain election information, but not via an automated process. The Board also developed the Voter Public Access (VPA) website in early 2008, which pulls data from the SVRS application to provide automated information like registration status, location of polling places, a sample ballot and other relevant election information.

Information to Individuals with Disabilities

§ 261(b)(2) – Provide individuals with disabilities and other individuals described in paragraph (1) with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.

The current Government Accountability Board website was reorganized in 2008 to make navigation easier, and will undergo further updates over the course of this five-year Plan to make it more accessible. Currently the Board has a variety of means by which voters with disabilities may make contact: 711, TTY, Voice, ASCII, fast ASCII, Speech to Speech, and Spanish to Spanish.

The VPA website is also a key resource for individuals with disabilities to find information about the accessibility of their polling place. SVRS does not contain current polling place accessibility information, but once the 2009 accessibility surveys are processed, the Board will make the information available through VPA and other channels.

Information to Voters About Paper Ballot Voting Systems

§ 301(a)(1)(B) – A jurisdiction that uses a paper ballot voting system may meet the requirements of subparagraph (a)(iii) by:

(i) Establishing a voter education program that notifies each voter of the effect of casting multiple votes for an office.

(ii) Providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

While Wisconsin does provide some instructions for the public in this area through local election officials, the Board will improve on this effort over the next five-year period by expanding public education materials which instruct Wisconsin voters about voting procedures.

Free Access System for Provisional Ballot Status Information

§ 302(a)(5)(B) – The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

Wisconsin fulfilled this requirement with the creation of the Elections Division's Voter Public Access (VPA) website in early 2008, which is linked to live data in Wisconsin's Statewide Voter Registration System (SVRS).

2009-2014 Voter Education, Information and Outreach Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

The Government Accountability Board will produce and disseminate public education materials through a variety of media and mediums in order to reach state residents before and during elections. Those media may vary depending on the length or extent of a public education campaign but will include brochures, videos, newspapers, the internet and social networking sites. Any information that can be made available in an electronic format will be posted to our website. The Board will improve and expand its accessibility, through the creation of all media, by translating its materials into multi-lingual languages as required, and large-print font where possible. In order to get voting information in the hands of all electors, the Board will disseminate voter education materials through partnerships with non-profit agencies, social networks and media.

Working with the Wisconsin Election Administration Council (WI-EAC), Board staff has solicited comments from interested parties and local election officials, and through other stakeholder groups, and developed a list of voter education topics which will be addressed through expanded outreach strategies:

1. Absentee Voting in Wisconsin

   The Government Accountability Board will create a section of its website to house all absentee voting materials. The section will likely be divided into subsections for regular absentee voters, military voters away/not away, overseas voters and indefinitely confined voters. Clerks and voters would find the appropriate instructions, envelopes, applications and sample ballots, applicable to the individual voter, all in one location.

2. Accessibility

   The Board will create public education materials about accessibility in Wisconsin elections which include accessible polling places, curbside voting, accessible voting equipment and explicit rights under HAVA. While Wisconsin has fulfilled its HAVA-related requirements regarding polling place accessibility, a comprehensive public education product about voters with disabilities can serve to reinforce the State's commitment to allowing all voters to vote privately and independently in the polling place.

3. Election Day

   The Board will create public education materials about Election Day in Wisconsin which include how to file a complaint, prohibitions on electioneering, a synopsis of Election Day, the process to challenge a voter's eligibility, emergencies and contingencies, required notices and signage, polling hours, the presence of observers

and news media and permissible uses of the polling place on Election Day. While information about Election Day is available in many places for Wisconsin voters, the Board will develop public education materials that address several Election Day topics in a single comprehensive unit.

4. High School Students and Voting

   The Board will create public education materials about high school students and voting in Wisconsin, which will include the requirement for voter registration to be available in high schools, the benefits of high school poll workers and other topics pertaining to young voters/poll workers. Local election officials have specifically requested information targeted at high school students in the above-listed areas. The State will cover these combined topics in one brochure, web page or other media to address the needs of young voters.

5. How to be a Poll Worker (Election Inspector)

   The Board will create public education materials about how to be a poll worker in Wisconsin, which include duties, eligibility, training, compensation, hours, polling places, benefits, Chief Election Inspectors and statutory provisions for service as a poll worker. While the Election Official Education & Poll Worker Training portion of this plan covers training for poll workers (election inspectors), there is a need for comprehensive, explanatory materials for state residents potentially interested in serving as poll workers.

6. How to Use Voting Equipment

   The Board will create public education materials about how to use voting equipment in Wisconsin, which include paper ballots counted by hand, touch-screen equipment and other accessible equipment, paper ballots counted by optical scan equipment, and requirements for security and accessibility of voting equipment. While voting equipment varies across Wisconsin, a general purpose review of various types of voting equipment may be produced to assist voters in all areas.

7. Partisan and Non-Partisan Elections

   The Board will create public education materials about the differences between Partisan and Non-Partisan elections in Wisconsin which include Partisan versus Non-Partisan offices, ballot-status parties and independent candidates, Wisconsin's open partisan primary system, straight-party voting and Non-Partisan voter registration. Voters may be confused by Wisconsin's system of spring and fall elections which separate Non-Partisan elections from open partisan primaries, where voters may participate in any party's primary.

8. Voter Confidence and Election Security

   The Board will create public education materials about voter confidence and election security in Wisconsin which include ballot security, canvass procedure, confidential

voter listings, prohibitions on electioneering, election observers, the procedure for challenging a voter, election official training requirements, electronic voting equipment security, the confidentiality of voter data and the transparency of the election process. Board staff fields a variety of questions regarding election security issues during every election cycle. A web page, brochure or other materials may be produced to address these issues comprehensively.

9. Voter Preparedness

The Board will create public education materials that will prepare voters on what they should know and can expect when voting on Election Day. Topics will include voter rights, how to register to vote, how to vote early by absentee, how to use voting equipment, and how to locate a polling place location. While information about pre-election day preparedness is available in many places for Wisconsin electors, the Board will develop further public education materials that address many potential voter questions in a single comprehensive publication.

10. Voter Registration

The Board will create public education materials about voter registration in Wisconsin which include how to register to vote, voter eligibility, the additional requirements for Late/Election Day Registration, Special Registration Deputies, student registration, the Statewide Voter Registration System, transferring a registration to a new name or new address, verification of voter registrations and periodic voter record maintenance. A voter registration brochure may be developed to group all such information in one, easily accessed medium.

11. Voter Rights and Responsibilities

The Board will create public education materials about voter rights and responsibilities in Wisconsin which include absentee voting, early voting, provisional voting, voter registration, when voters are ineligible and how those rights may be restored, options for voters with disabilities, curbside voting, accessible voting equipment and updating current voter data. Wisconsin currently does not have a comprehensive listing of the rights and responsibilities of voters.

B. Election Official Education and Poll Worker Training

Wisconsin's election partners – county, municipal and school district clerks, chief and regular election inspectors, special registration deputies, special voting deputies, tabulators, greeters and canvass board members – are entrusted with the responsibility of conducting open, fair and transparent elections. The Government Accountability Board is responsible for providing the education, training and other resources needed to support these partners in managing and implementing their election duties.

The Board recognizes that qualified and properly trained election officials enhance the high quality and integrity of Wisconsin's elections by improving voter data, providing current and accurate information and carrying out elections in an efficient manner. The result of

thorough election official training is that voters are confident and supportive of Wisconsin's election process, and are encouraged to participate and become more actively involved.

Complying with HAVA Requirements

General Election Official Training

§ 101(b)(1)(D) How the State will provide for programs for election official education and training, and poll worker training.

The Government Accountability Board regularly conducts information and training meetings at various locations in the state for county and municipal clerks and other election officials. The Board has implemented the following statutory requirements for initial election official training and subsequent recertification:

1. Chief Inspectors

Wisconsin Statute § 7.30(6)(b) requires that a chief inspector be certified by the Board. Wis. Stat. § 7.31(4), provides for a basic training class (baseline) in order to be initially certified for the term. Training topics covered include pre-election preparations, voter qualifications, Election Day registration, confidential electors, counting ballots and the absentee ballot procedure.

2. Municipal Clerks

Wisconsin Statute § 7.15(1m) requires that all municipal clerks attend a Board sponsored training class at least once every two years. This class is the 3-hour Municipal Clerks Core Curriculum Training class (MCT Core) and certifies the clerk to conduct an election.

Board staff, partnered with a team of municipal and county clerk "trained-trainers," held over 125 MCT Core classes, moving toward a goal of certifying 100% of the 1,850 municipal clerks mandated to take training. Wisconsin currently experiences between 15%-25% municipal clerk turnover rate annually; consequently, MCT Core training classes are offered before the spring and fall elections for any new clerks.

The Board requires clerks to submit documentation reporting the type, date and number of hours of approved election training they have received. Board's staff tracks training hours using the Statewide Voter Registration System (SVRS) and notifies clerks and the heads of their governing bodies when they are considered noncompliant with state training requirements.

3. Election Inspectors

Wisconsin Statute § 7.315(1)(b) requires that all election inspectors receive training at least once every two years from the municipal clerk. Currently, there is no specific prescribed curriculum or length of training required by the state.

4. Special Registration Deputies

Wisconsin Statute § 6.26(2)(am) allows a qualified elector of Wisconsin to apply to the Board to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open registration.

In 2008, Board staff trained approximately 1,500 statewide SRDs and partnered with a number of interested community and political organizations. These election officials registered over 140,000 voters, which accounted for approximately 14% of all registrations during the 2008 election year.

5. Continuing Education Requirements for Recertification

Under Wisconsin Administrative Code GAB 11.03(1), chief election inspectors are required to accumulate a total of six hours of election education training per term for recertification. Current methods of achieving recertification include: Board-approved training with the municipal or county clerk and selected WisLine teleconference sessions given by Board staff.

Wisconsin Administrative Code GAB 12.03(2) requires that municipal clerks accumulate a total of six hours of election education training per election cycle to recertify for the following cycle. Approved methods of training include SVRS classes, Web-Based Election Training System (WBETS) modules or Baseline Chief Inspector training, among others.

Eligible statewide SRDs that wish to be reappointed for a new term must pass a performance review and submit the proper documentation to the Board before they may be recertified as a statewide SRD. They also agree to take an additional 2-hour SRD training class by July 2010 (for the current 2009-2010 term).

Board staff have worked with Wisconsin's Election Administration Council to evaluate election official training needs. This partnership has identified a need for alternative delivery methods for election official and election staff training to expand training opportunities and augment current schedules.

6. Statewide Voter Registration System (SVRS) Users

The Board will continue to provide SVRS training to new and current users of the system. As new functionalities are developed, SVRS staff will provide advanced and specialized training in election management, absentee processes and HAVA-required interfaces to allow users to work with "live" data and apply what they have learned in a classroom setting under the guidance of an experienced SVRS trainer.

Board staff has migrated some training, business processes and practices to web-based electronic format. A close collaboration between Board staff, municipal and county clerks and the University of Wisconsin-Extension's Division of Continuing Education, Outreach & E-Learning developed and launched the Web-Based Election Training

System (WBETS) in February 2008. This format provides SVRS users with the opportunity to take online training courses, download manuals, print step-by-step instructions for common SVRS tasks, watch video demonstrations and put their knowledge into practice with interactive SVRS simulations.

In June 2008, the Board made additional online training opportunities available to local election officials before the HAVA-Check interface functionality was launched. Clerks were trained on the business process and interface functionality in SVRS through a robust curriculum available on the Board's WBETS site. Clerks will continue to extensively use the site for new training and as a refresher.

The HAVA Interface training sessions for users of SVRS include step-by-step guides, demonstration videos and interactive lessons for hands-on learning. Clerks who do not use SVRS are asked to complete the first two lessons of the curriculum to at least learn the business process. Clerks are able to post questions and view the answers on the Clerks' Forum found on the main menu. The online curriculum is available on-demand to clerks for training or a refresher course. Board staff will continue to offer classroom-based HAVA Reports training to complement and enhance the WBETS HAVA Interface training available on the website.

The Board recently created an online database – the Wisconsin Election Data Collection System (WEDCS) - where municipal clerks can enter their GAB-190 Form information. The GAB-190 Form is an election statistics report that each clerk must complete following each election, within 30 days. The WEDCS has allowed clerks to move away from paper and enter information online, resulting in faster processing of election statistics for the public. The training on the system was developed by Board staff, in collaboration with the University of Wisconsin-Extension's Division of Continuing Education, Outreach & E-Learning, and is housed in the WBETS site to teach municipal clerks how to use the system and enter their data.

Accessibility Training for Election Officials

> § 261(b)(2) – How the state will provide individuals with disabilities with information about the accessibility of polling places, including the availability of these polling places and training election officials, election inspectors and election volunteers on how best to promote access and participation of individuals with disabilities in elections.

The Board has developed and made available on its website the video "Access to Voting –Access to Democracy" to ensure that every eligible voter, regardless of ability, has access to the election process and to help election workers become more aware of needs of citizens with disabilities. Board staff will update the video, distribute it to state and community organizations, and make the updated version available on the Elections Division website.

Over the course of this five-year Plan, the Government Accountability Board will take a more proactive role in assisting local election officials with recruiting election inspectors with disabilities.

2009-2014 Election Official Education and Poll Worker Training Initiatives to be Examined, Reviewed, Explored and Studied over the next Five Years

1. Migrate Existing Training Material to Other Formats

The Government Accountability Board will create training in diverse formats to ensure that training is consistent, current and uniform across the state. A training program of this type for poll workers will be developed in a DVD/VHS delivery format and administered locally by the municipal clerks. Municipal clerks may select from training sessions that are targeted to experienced election inspectors as well as new election inspectors.

The Board plans to develop and provide alternative types of training available on the WBETS for basic certification (Baseline Chief Inspector and Municipal Clerk Core Training) and recertification to expand training opportunities, offer additional delivery systems and broaden its training service area for election officials and election staff.

The Board plans to utilize a variety of training development strategies to address generational differences in the learning styles of election officials and the technologies clerks and other election officials have available to receive training. Existing materials will be converted to flexible online formats, with the ability to provide real-time training remotely through an internet connection.

The Board plans to develop and implement a multi-year training project to give clerks and other election officials continuous, on-demand training opportunities. Among the desired features of the training development project are:

- An on-demand training format to work in conjunction with and complement the existing online WBETS;
- Deliverables in both DVD and VHS;
- Training modules with audio and video capability;
- Training module videos that capture real presentations; and,
- Advanced training initiatives for recertification or other specialized training.

2. Expand the Web-Based Election Training System (WBETS) with New Content

As new Statewide Voter Registration System (SVRS) functionalities are implemented, additional training will be required. Board staff will expand WBETS to include SVRS training modules on common election management tasks that users perform before, during and after each election. Additional WBETS modules will be developed to include election administration training for clerks to enter candidate filings, nomination paper information and track reports in SVRS.

3. Train Reliers on SVRS Business Processes

Currently, it is common for smaller municipalities without technical resources (Reliers) to contract with larger municipalities or the county to provide SVRS

services (Providers). While this arrangement is economical, it has led to some problems as Reliers do not have the same frame of reference as Providers. SVRS staff will develop a business process training session for new Relier clerks and their staff. Staff will train these users in voter registration data entry and HAVA interfaces in an effort to educate these users about their role in the SVRS provider-relier relationship and the importance of collecting good data from voters.

4. Develop Accessibility Survey Training

Board staff will explore the possibility of providing regular training in various formats on how to conduct polling place accessibility surveys. Many of the questions on the survey are technically-oriented, i.e., What is the slope of the sidewalk? How many pounds of pressure does it take to open the door? This training could improve the consistency and reliability of accessibility self-reports. Attendance at these sessions could be fostered by counting this training as part of their required six hours of ongoing elections training.

5. Additional Training Initiatives

A. Election administration training for school district clerks using WisLine programming.

B. Training for SVRS users prior to anticipated redistricting due to the 2010 census on the addressing and districting functionality of SVRS.

C. Providing training tools for clerks to use to train members of their board of canvass.

D. Contracting with voter advocacy groups to provide election observer training.

E. Early voting training for municipal clerks if legislation is signed into law. Additional information on early voting may be found in the Election Administration section of this Plan.

F. If Electronic Poll Books are adopted for use in Wisconsin (see Election Administration section), training will need to be developed for election inspectors on the proper use of electronic poll books in the polling place. Additional training may also be necessary for existing SVRS users.

G. Training for SVRS users to enter canvass results directly into the system to produce faster and more accurate reports. (See Election Administration section.)

H. Board staff will develop new training plans and materials for other training needs identified through collaboration with the Wisconsin Election Administration Council and other partnerships.

I. Training for municipal clerks and chief election inspectors on current procedures to prevent or report suspected illegal voting.

Visioning The Future:
Election Administration in Wisconsin in 2014

Section 4
Voting System Guidelines

How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301?

Wisconsin has established a set of standards for the approval of electronic voting systems. Wis. Stat. § 5.91. The Government Accountability Board has also promulgated administrative rules detailing the process for approving electronic voting systems for use in Wisconsin. Wis. Admin. Code GAB Ch. 7.

Wisconsin requires any electronic voting system to be qualified against the voting systems standards established by the Federal Election Commission before it can be used in the state. The qualification must be done by an independent testing laboratory approved by the National Association of State Election Directors (NASED). The Board may not approve any electronic voting system that has not been qualified to the standards established by the Federal Election Commission in December 2002.

The Board permits any municipality that uses an optical scan voting system to continue to use the system. All new equipment approved for use in Wisconsin must meet the most current federal standards. For additional information on Voting System Guidelines, please see "Voting Equipment Certification" on pages 28-29.

Section 5
HAVA Election Fund Management

How the State will establish a separate election fund for purposes of administering the State's activities under this part, including information on fund management?

The former State Elections Board introduced legislation, 2003 Assembly Bill 123, that established the appropriate Federal account to meet the HAVA requirement for a separate election fund for managing the receipt and distribution of HAVA payments and state matching funds. This legislation was passed by the legislature and signed into law by the governor on July 24, 2003. 2003 Wisconsin Act 35.

Former State Elections Board staff met with the State Controller's office to set up the fund and review the applicable administrative guidelines. The Legislative Audit Bureau also conducted a financial and compliance audit of the fund as part of the state's adherence to the Federal Single Audit Act of 1984. The Wisconsin HAVA Elections Fund will continue for depositing all HAVA Federal Funds received, and the required State Matching Funds.

Section 6
Wisconsin's 2009-2014 Election Administration Plan Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on the costs of the activities required to be carried out to meet the requirements of Title III; the portion of the Requirements Payments which will be used to carry out activities to meet such requirements; and the portion of the Requirements Payments which will be used to carry out other activities.

It is important to note that this 2009-2014 Election Administration Plan is not meant simply to capture $3,947,062 in FFY-2008 and FFY-2009 Requirements Payments. This Plan is developed from a broader and longer-range strategic perspective. As such, the financial support needed for the five-year outlook for achieving the program activities far exceeds the $3,947,062 FFY-2008 and FFY-2009 Requirements Payments that Wisconsin is currently eligible to receive.

Staff estimates the cost to support this five-year plan to be between $17.3 and $20 million dollars over five years, or over $3.5 million dollars annually. This 2009-2014 Election Administration Plan is developed and written broadly but specific enough to accommodate additional funds that may be appropriated by the U. S. Congress over the next five years.

It is our assumption and intent to advance the Wisconsin 2009-2014 Election Administration Plan with 95% Federal funding, along with the HAVA-mandated 5% state match. If the required level of Federal funding is not generated over the course of the State's five year Plan as expected, Wisconsin reserves the right to revisit and mitigate planned activities, initiatives and reforms. Even though 95% of the Plan is expected to be supported by Federal funding, as each planned initiative and reform is carefully studied, explored and examined, the review process will include a determination of any fiscal impact on municipalities.

Wisconsin's HAVA Budget
Five Year Federal Funds Summary

	Title II Requirements Payments		Title II Funds	Title II Funds	Title I Funds	Total Federal Funds
Description	HAVA Requirements Payments FFY-2008	HAVA Requirements Payments FFY-2009	HAVA Section 251 Funds	HAVA Section Funds 261*	HAVA Section 101 Funds	Total Federal Funds
Election Administration	$306,004	$266,090			$1,877,406	$2,449,500
Ensuring Voter Accessibility in Polling Place	$53,488	$46,512		$348,500		$448,500
Ensuring Voting Systems' Integrity and Security	$5,349	$4,651			$40,000	$50,000
Maintaining Wisconsin's Statewide Voter Registration System	$685,825	$596,369	$4,717,806			$6,000,000
Voter Education, Information and Outreach Program	$97,452	$84,742			$317,806	$500,000
Education, Training and Technical Support for Local Election Officials	$150,365	$130,752	$458,186		$185,697	$925,000
Program Management, Implementation, Monitoring and Evaluation **(Personnel Costs)**	$812,736	$706,727	$4,174,869	$256,599	$1,294,069	$7,245,000
TOTAL	$2,111,219	$1,835,843	$9,350,861	$605,099	$3,714,978	$17,618,000

* The following § 261 funds must be expended by the following respective Federal Fiscal Years: FFY-2004 § 261 Funds (09/30/09); FFY-2005 § 261 Funds (09/30/2010); FFY-2006 § 261 Funds (09/30/2011); FFY-2007 § 261 Funds (09/30/2012); and, FFY-2008 § 261 Funds (09/30/2013).

Projecting budget estimates into a five year outlook framework is more art than science; nevertheless, in identifying various funding streams for support program initiatives in Wisconsin's 2009-2014 Election Administration Plan, the best available information (past expenditure trends) was used and carefully analyzed assumptions were applied to allocate these costs among funding streams.

Assumptions

1. To determine the amount of costs assigned to the HAVA Requirements Payments of FFY-2008 and FFY-2009, the allocation method was based on expending each program area proportionately until these funds run out.

2. Since we estimated the cost to support Wisconsin five-year plan to be about $17.3 million dollars (about $17.6 when all the known and anticipated fiscal allocation for accessibility is included) over five years, or a little over $3.5 million dollars annually, based on this assumption, the $3,947,062 would last the agency roughly 13 months during the first year of implementing the Plan.

3. Therefore, approximately 20% of each activity (20% = approximately 1 year of the five year outlook) has been allocated to these funds. There is some fluctuation to this percentage because it is expected that certain activities to occur during the entire timeframe (during the 13-month period) when funds are received.

4. When assigning the costs of each program area to HAVA Section 251, 261, and 101 funds, expenditures trends were analyzed from prior years' experiences that accounted for these funds.

5. The shaded cells represent areas from which no funds are expected to be expended, based on:

   - Funding Purpose;
   - Funding Availability;
   - Past expenditure spending trends; and,
   - Reporting.

Budget Summary

Description	Estimated Costs
Election Administration	$2,449,500
Ensuring Voter Accessibility in Polling Place	$448,500
Ensuring Voting Systems' Integrity and Security	$50,000
Maintaining Wisconsin's Statewide Voter Registration System	$6,000,000
Voter Education, Information and Outreach Program	$500,000
Education, Training and Technical Support for Local Election Officials	$925,000
Program Management, Implementation, Monitoring and Evaluation **(Personnel Costs)**	$7,245,000
Estimated Five-Year Total (2009-2014)	**$17,618,000**
Estimated Annual Costs	$3,523,600

Elections Administration Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Supplies			
Membership and Subscription Fees	$1,100	5	$5,500
Printing	$35,000	5	$175,000
Postage	$25,000	5	$125,000
Rent	$17,500	5	$87,500
Office Supplies and Miscellaneous Expenses	$1,800	5	$9,000
Insurance	$400	5	$2,000
Staff Computers	$70,000	1	$70,000
Replacing expired printers	$6,500	1	$6,500
Replacing expired copiers	$7,500	1	$7,500
Total Supplies			**$488,000**
Travel			
Hotels, Travel Vouchers, Airline Tickets, Fleet Car	$36,500	5	$182,500
Conference Room Rentals	$1,250	5	$6,250
Registration Fees (Seminars, Staff Training)	$7,250	5	$36,250
Total Travel			**$225,000**
IS Technical			
IS Technical	$1,736,500	Varies	$1,736,500
Total IS Technical			**$1,736,500**
Elections Administration Costs			**$2,449,500**

Ensuring Voter Accessibility in Polling Place Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Accessible Hardware and Signage	$50,000	1	$50,000
Cost-Sharing to Municipalities to Improve Accessibility	$50,000	1	$50,000
Continue Polling Place Accesibility Monitoring	$20,000	1	$20,000
Qualitative Analysis of 2008 Accessability Surveys	$75,000	1	$75,000
Accessible Device Programming Subsidy	$20,000	1	$20,000
Incentive for Accessible Devices During In-Person Absentee Period	$40,000	1	$40,000
Community Oragnization Accessibility Grants	$8,000	1	$8,000
Update Accessibility Video	$75,000	1	$75,000
Web-based Training Opportunities	$100,000	1	$100,000
Improve Accessibility of the G.A.B. Website	$10,000	1	$10,000
Improve TTD Capability and Visibility	$500	1	$500
Ensuring Voter Accessibility in Polling Place Costs			**$448,500**

Ensuring Integrity and Security of Voting Systems Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Technical Advisory Committee Costs	$5,000	5	$25,000
Research of Alternate Voting Methods	$5,000	5	$25,000
Ensuring Integrity and Security of Voting Systems Costs			**$50,000**

Maintaining Wisconsin's Statewide Voter Registration System Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Supplies			
Printing (Administrative, Newsletters, Fed Felon, Voter Verification Cards, Cancellations to Other States, Updates, DOB Compliance)	$85,000	5	$425,000
Postage (Administrative, Newsletters, Fed Felon, Voter Verification Cards, Cancellations to Other States, Updates, HAVA 4-year maintenance)	$145,000	5	$725,000
Office Supplies and Miscellaneous Expenses	$20,000	5	$100,000
Purchasing Card and Miscellaneous Postage	$6,500	5	$32,500
Rent	$115,000	5	$575,000
Travel (Hotel, Fleet Car, Travel Vouchers, Airline)	$35,000	5	$175,000
File Processing Services, UPS, Federal Express	$20,000	5	$100,000
Fax/Photocopier	$5,000	5	$25,000
Total Supplies			**$2,157,500**
Services and Contractual			
Department of Administration Support and Chargeback C	$29,000	5	$145,000
SVRS Steering Committee Expense	$5,000	5	$25,000
Agency Partner Interfaces	$17,500	5	$87,500
Temporary Staff Support	$12,500	5	$62,500
E-Learning	$17,000	5	$85,000
SVRS Upgrades and Enhancements	$85,000	5	$425,000
Incorporate SWEBIS with SVRS	$1,050,000	1	$1,050,000
IT Consulting Services	$325,000	5	$1,625,000
Total Services and Contractual			**$3,505,000**
IS Technical			
LAN Lines	$5,000	5	$25,000
Telephone, Email, and WISLINE	$30,000	5	$150,000
Database Hosting & Computer File Space Charges	$25,000	5	$125,000
Consolidated Data Network	$7,500	5	$37,500
Total IS Technical			**$337,500**
Maintaining Wisconsin's Statewide Voter Registration System Costs			**$6,000,000**

Voter Education, Information and Outreach Program Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Supplies			
Printing	$12,000	5	$60,000
Postage	$24,000	5	$120,000
Office Supplies and Miscellaneous Expenses	$2,500	5	$12,500
Reproduction for DVD(s)	$17,500	5	$87,500
Reproduction Materials for Manuals and Brochures	$10,000	5	$50,000
Total Supplies			**$330,000**
Contractual			
Design and Delivery of DVD(s)	$80,000	1	$80,000
Total Contractual			**$80,000**
IS Technical			
Web site design and development	$18,000	5	$90,000
Total IS Technical			**$90,000**
Voter Education, Information and Outreach Program Costs			**$500,000**

Education, Training and Technical Support for Election Officials Budget Details
October 1, 2009 through September 30, 2014

Description	Annual Costs	Years	Total Costs
Printing Training Materials	$11,000	5	$55,000
Postage Training Materials	$2,500	5	$12,500
Travel Costs of Chief Inspector Training	$10,500	5	$52,500
Travel Costs of Municipal Clerk Training	$9,000	5	$45,000
Travel Costs of Special Registration Deputy Training	$8,000	5	$40,000
Travel Costs of SVRS Application Training	$90,000	5	$450,000
Training Equipment	$45,000	1	$45,000
WBETS Training Program	$225,000	1	$225,000
Education, Training and Technical Support for Local Election Officials			**$925,000**

Program Management, Implementation, Monitoring, and Evaluation Budget Details (Personnel Costs)
October 1, 2009 through September 30, 2014

	Descripition	Annual Costs	Years	Total Costs
1	Staff Maintaining Wisconsin's Statewide Voter Registration Systems Salaries	$691,280	5	$3,456,400
	Staff Maintaining Wisconsin's Statewide Voter Registration Systems Fringe Benefits	$289,715	5	$1,448,577
2	Elections Administration Staff Salaries	$140,109	5	$700,545
	Elections Administration Staff Fringe Benefits	$58,720	5	$293,598
3	Staff Ensuring Voter Accessibility in Polling Places Salaries	$45,760	5	$228,800
	Staff Ensuring Voter Accessibility in Polling Places Fringe Benefits	$19,178	5	$95,890
4	Voter Education, Information and Outreach Program Staff Salaries	$37,440	5	$187,200
	Voter Education, Information and Outreach Program Staff Fringe Benefits	$15,691	5	$78,456
5	Staff Providing Education, Training and Technical Support for Local Election Officals Salaries	$106,496	5	$532,480
	Staff Providing Education, Training and Technical Support for Local Election Officals Fringe Benefits	$44,632	5	$223,162
Program Management, Implementation, Monitoring, and Evaluation Costs (Personnel Costs)				**$7,245,000**

Personnel Costs
October 1, 2009 to September 30, 2014

Position Title/Role	Average Hourly Salary	Hours Annually	Annual Salary	Fringe Benefits	Total	Five-Year Total
SVRS IT Functional Lead	$30.00	2,080	$62,400	$26,152	$88,552	$442,759.20
SVRS UAT Lead	$22.00	2,080	$45,760	$19,178	$64,938	$324,690.08
SVRS Deployment Specialist	$22.00	2,080	$45,760	$19,178	$64,938	$324,690.08
SVRS Data Quality	$22.00	2,080	$45,760	$19,178	$64,938	$324,690.08
SVRS IT Specialist	$29.00	2,080	$60,320	$25,280	$85,600	$428,000.56
SVRS IT Specialist	$29.00	2,080	$60,320	$25,280	$85,600	$428,000.56
Help Desk Lead	$22.00	2,080	$45,760	$19,178	$64,938	$324,690.08
Help Desk Support	$15.00	2,080	$31,200	$13,076	$44,276	$221,379.60
Help Desk Support	$15.00	2,080	$31,200	$13,076	$44,276	$221,379.60
Program & Planning Analyst	$21.00	2,080	$43,680	$18,306	$61,986	$309,931.44
Lead Elections Specialist	$21.00	2,080	$43,680	$18,306	$61,986	$309,931.44
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Elections Specialist	$19.00	2,080	$39,520	$16,563	$56,083	$280,414.16
Office Operations Associate	$14.00	2,080	$29,120	$12,204	$41,324	$206,620.96
Office Operations Associate	$14.00	2,080	$29,120	$12,204	$41,324	$206,620.96
Accessibility Specialist	$20.00	2,080	$41,600	$17,435	$59,035	$295,172.80
Public Information Officer	$23.00	2,080	$47,840	$20,050	$67,890	$339,448.72
Training Coordinator	$21.00	2,080	$43,680	$18,306	$61,986	$309,931.44
Training Officer	$18.45	2,080	$38,376	$16,083	$54,459	$272,296.91
Training Officer	$18.45	2,080	$38,376	$16,083	$54,459	$272,296.91
Totals			$1,021,072	$427,931	$1,449,003	**$7,245,000.00**

Section 7
Maintenance of Effort

How the State, in using the Requirements Payments, will maintain the expenditures of the State for activities funded by the Payments at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

The receipt of Help America Vote Act (HAVA) of 2002 funds were new expenditures for Wisconsin. The State was not in the business of running a Statewide Voter Registration System or acquiring accessible voting equipment prior to HAVA.

The costs for conducting elections in Wisconsin are absorbed by municipalities. No local funds were spent on HAVA requirements in the base Federal Fiscal Year (FFY) 2000. Wisconsin will continue to maintain the level of State expenditures for HAVA requirements at the same or greater level as the State spent in FFY-2000, prior to the November 2000 Election. In FFY-2000, Wisconsin spent no funds on activities related to HAVA requirements. The State's election-related budget consisted of two State fund supported Full Time Equivalent (FTE) elections specialists. These positions continue to be funded with State funds

Title III Payments have been used to meet new requirements mandated by HAVA. Wisconsin's local units of government had no responsibility for the development and implementation of the State's Statewide Voter Registration System. Prior to HAVA or receipt of HAVA funding, voting equipment used by local government for conducting elections had to meet State – not Federal standards.

In order to address accessibility requirements, Wisconsin acquired new equipment to supplement existing local voting systems. This was an additional requirement for local governments. The HAVA money was an election infrastructure investment. These requirements have resulted in increased spending of state and local funds to maintain the new systems put in place with HAVA funds. State and local governments are using non-Federal monies to maintain and replace this investment.

In Wisconsin, all previous HAVA Requirements Payments have been used to augment the preexisting level of State funding for Election Administration. Any new Requirements Payments that may be distributed to local government will be conditioned on a continuing maintenance of effort to ensure that Federal funds do not replace existing local government expenditures on election administration.

Wisconsin uses the Requirements Payments for election administration infrastructure rather than passing through funds to local government. Wisconsin will continue this practice with receipt of FFY-2008, FFY-2009, FFY-2010, and any further Requirements Payments.

Section 8
HAVA Performance Goals and Measures

Performance goals and measures have been developed by the Government Accountability Board staff in consultation with the Wisconsin Election Administration Council. The implementation strategies, including performance goals provide measurement standards for each element of the 2009-2014 Election Administration Plan.

Each performance goal is a part of a single or composite project activity designed to implement all elements of the 2009-2014 Election Administration Plan. Each goal is attributable to individual staff positions in collaboration with a team of stakeholders and interested parties.

Wisconsin's 2009-2014 Election Administration Plan will be under the general direction and executive sponsorship of the Government Accountability Board's Director and General Counsel and Wisconsin's Chief Election Official. The Elections Division Administrator will oversee management, supervision and implementation of the 2009-2014 Election Administration Plan.

Complying with HAVA Requirements

Performance Goals and Measures

> § 254(a)(8) – How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria and a description of which official is to be held responsible for ensuring that each performance goal is met.

Election Administration

Element of Plan:	Page 13
Goal:	Create a General education program warning of the effect of casting multiple votes for an office
Measure:	❑ Incorporate information into the Type B notice ❑ Distribute the document to all clerks to post ❑ Add this document to the Chief Inspector training materials
Designee:	Team Lead, Election Administration
Timeline:	Document posted and added to manuals by October 1, 2009

Element of Plan:	Page 14
Goal:	Modify GAB-117 to include "the right of an individual to cast a provisional ballot"
Measure:	❑ Change Statute(s) ❑ Distribute modified GAB-117 to clerks and every polling place ❑ Add this document to the Election Day Manual
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2009-2010 Legislative Session Document posted and added to manuals June 2010

Element of Plan:	Page 14
Goal:	Modify statutes for the extension UOCAVA voters have for proof of residence to citizens that vote under the Elderly and Handicapped Act
Measure:	❑ Change Statute(s) ❑ Distribute information to clerks ❑ Educate voters on the change
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2011-2012 Legislative Session Utilized for February 16, 2012 election

Element of Plan:	Page 14
Goal:	Implement a pilot early voting program to determine if Wisconsin should institute early voting
Measure:	❑ Gather public feedback ❑ Statutes change to allow for early voting ❑ Train county and municipal clerks on early vote processes
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2009-2010 Legislative Session Utilized for April 2010 election.

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 14
Goal:	Ease the burdens of absentee voting
Measure:	❑ Change Statute(s) ❑ Examine the requirement for witness signature ❑ Examine the envelope requirement ❑ Examine the application requirement ❑ Actions based on the examinations above ❑ Allow the return of the voted ballot by fax or email ❑ Allow all electors to receive ballots automatically for all elections ❑ Allow a facsimile signature on an absentee ballot request ❑ Allow vote by mail ❑ Explore options for reduced postage rates
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2009-2010 Legislative Session Utilized for February 2010 election

Element of Plan:	Page 16
Goal:	Research alternate voting methods
Measure:	❑ Committee formed to examine alternate voting methods used by other states ❑ Information gathered regarding voter turnout in states that use a method other than in-person voting ❑ Analysis performed by G.A.B. to determine feasibility
Designee:	Team Lead, Election Administration
Timeline:	Research completed by November 2013

Element of Plan:	Page 16
Goal:	Create system to allow all voters to track their absentee ballot status.
Measure:	❑ Modify SVRS/VPA ❑ Create administrative rule on absentee tracking requirements
Designee:	Election Division Administrator
Timeline:	SVRS/VPA modified by June 2010 Administrative rule adopted by June 2010

Element of Plan:	Page 17
Goal:	Consolidate the items to be posted at polling places on Election Day and disseminated in advance of the election or put all postings together into one poster
Measure:	❑ Change Statute(s) ❑ Fewer than 9 notices (plus sample ballot) to post ❑ All notices available by January 20, 2010
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2009-2010 Legislative Session Postings available by January 20, 2010 and posted at February 16, 2010 Election and every election thereafter

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 17
Goal:	Expand the geographic area in which an election inspector may serve
Measure:	❑ Change Statute(s) ❑ Residency requirement for poll workers modified
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2009-2010 Legislative Session Utilized for February 16, 2010 election

Element of Plan:	Page 17
Goal:	Allow the use of Electronic Poll Books
Measure:	❑ Change Statute(s) ❑ Hardware purchased ❑ Software purchased and installed ❑ Train poll workers on electronic poll books
Designee:	Team Lead, Election Administration
Timeline:	Statutes changed in 2011-2012 Legislative Session Utilized for February 2012 election

Element of Plan:	Page 18
Goal:	Provide additional support for Election Day questions
Measure:	❑ Format chosen ❑ Information updated ❑ Disseminated to clerk
Designee:	Team Lead, Election Administration
Timeline:	Format chosen by June 2012 Distributed by June 2013

Element of Plan:	Page 18
Goal:	Reduce the number of election inspectors required to administer "curbside voting" to one, if another witness is present
Measure:	❑ Change Statute(s) ❑ G.A.B. change administrative policy, if necessary
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Implemented January 1, 2012

Element of Plan:	Page 18
Goal:	Implement online registration
Measure:	❑ Change Statute(s) ❑ Voter can fill-out and submit registration form online ❑ Information shared with public by general media
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Developed and implemented by Spring Election 2013

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 19
Goal:	Change the deadline for open registration
Measure:	❑ Change Statute(s) ❑ Clerks informed of change
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Implemented Spring 2012

Element of Plan:	Page 19
Goal:	Standardize voter verification procedures
Measure:	❑ Change Statute(s) ❑ Requirements standardized ❑ Clerks informed of change
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2009-2010 Legislative Session Implemented December 1, 2009

Element of Plan:	Page 19
Goal:	Develop procedures to send and receive absentee ballot requests and voter registration forms via email and to send blank ballots via email
Measure:	❑ Administrative rule developed ❑ Manuals updated ❑ Rule communicated to the clerks
Designee:	Elections Division Administrator
Timeline:	Administrative rule developed by 2011 Manuals updated by 2011 Rule communicated with clerks by 2011

Element of Plan:	Page 20
Goal:	Redesign informational materials for overseas and military voters
Measure:	❑ Materials redesigned ❑ Website updated ❑ Clerks informed of new materials
Designee:	Elections Division Administrator
Timeline:	Redesign materials by 2011 Website updated by 2011 Clerks informed of new materials by 2011

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 20
Goal:	Create a system to allow military and overseas voters to track their absentee ballot requests
Measure:	❑ System created ❑ UOCAVA partners/resources updated
Designee:	Elections Division Administrator
Timeline:	System created by 2011 UOCAVA partners/resources updated by 2011

Element of Plan:	Page 20
Goal:	Provide Special Registration Deputy training to Department of Defense personnel
Measure:	❑ Partnerships established with Wisconsin military personnel ❑ Special Registration Deputy training need assessed
Designee:	Training Coordinator
Timeline:	Partnerships established by 2011 Training needs assessed on an annual basis

Element of Plan:	Page 20
Goal:	Clarify the definitions of residency
Measure:	❑ Statutes changed to add information and consistency ❑ Clerks and Chief Election Inspectors trained and informed
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Utilized in Spring election 2012

Element of Plan:	Page 20
Goal:	Change the date of the partisan primary
Measure:	❑ Statutes changed to allow for earlier partisan primary ❑ Information shared with public by general media
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Utilized in Fall 2012 Election

Element of Plan:	Page 21
Goal:	Adjust certification terms of municipal clerks
Measure:	❑ Municipal clerk and election inspectors have same term dates ❑ Change Statute(s) ❑ Inform clerks of new dates
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Implemented January 1, 2012

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 21
Goal:	Improve ballot design support for local election administrators
Measure:	❑ Develop guidelines for local election administrators ❑ Distribute guidance
Designee:	Team Lead, Election Administration
Timeline:	Guidelines developed by May 2011 Distributed by June 2011

Accessibility

Ensuring Voter Accessibility in the Polling Place

Element of Plan:	Page 23
Goal:	Develop a plan for sharing staff accessibility survey data with relevant clerks
Measure:	❑ Create communication ❑ Determine timeline
Designee:	Accessibility Compliance Staff
Timeline:	Communication created by October 2010 Received by clerks no later then December 2010

Element of Plan:	Page 23
Goal:	Require all municipalities with new polling places or polling places that did not meet accessibility requirements to complete accessibility surveys
Measure:	❑ List of polling places out of compliance created ❑ G.A.B. Administrative Rule created to require surveys for new or non-compliant polling locations ❑ Surveys reviewed for continuing compliance
Designee:	Accessibility Compliance Staff
Timeline:	Survey results from Spring 2009 reviewed by September 1, 2009 Out-of-compliance list created by November 15, 2009 Polling places evaluated at Spring Primary 2010

Element of Plan:	Page 24
Goal:	Migrate the Accessibility Survey to an Electronic Format
Measure:	❑ SVRS or other database code written to accept information ❑ Survey able to be electronically completed and information stored
Designee:	Elections Division Administrator, SVRS Team Lead
Timeline:	Research completed by January 2012 Migration completed by November 2012

Visioning The Future:
Election Administration in Wisconsin in 2014

Element of Plan:	Page 24
Goal:	Perform qualitative analysis of accessibility survey data
Measure:	❑ Statistics compiled ❑ Report submitted
Designee:	Elections Division Administrator
Timeline:	Analysis report submitted to G.A.B. for the January 2010 board meeting

Element of Plan:	Page 24
Goal:	Offer polling place accessibility improvement grants
Measure:	❑ Set aside funds ❑ Procedures developed to allocate funds ❑ Funds distributed
Designee:	Accessibility Compliance Staff
Timeline:	Procedures developed by June 2010 Funds distributed June 2011

Element of Plan:	Page 24
Goal:	Increase the diversity of the Accessibility Advisory Group
Measure:	❑ At least one more member is added from a currently unrepresented party
Designee:	Elections Division Administrator
Timeline:	New member attends a meeting by January 2013

Element of Plan:	Page 24
Goal:	Audit polling places that have a self-reported survey on file
Measure:	❑ G.A.B. staff will conduct polling place audits at each election ❑ Surveys will be reviewed for continuing compliance
Designee:	Accessibility Compliance Staff
Timeline:	Each Election

Voting Systems

Ensuring Voting Systems' Integrity and Security

Element of Plan:	Page 28
Goal:	Approve Voting Equipment Certification at the Wisconsin level
Measure:	❑ Committee formed and meeting dates scheduled ❑ Testing methods and applications determined ❑ G.A.B. Board ruling to exempt Requirement of Federal Certification ❑ Voting Equipment Approved and Updates allowed by vendors
Designee:	Elections Division Administrator
Timeline:	Implemented June 1, 2010

Element of Plan:	Page 29
Goal:	Change statute to allow for non-Federal election data to be cleared 14 days after any primary and 21 days after any other state or local election
Measure:	❑ Change Statute(s) ❑ G.A.B. change administrative policy, if necessary
Designee:	Elections Division Administrator
Timeline:	Statutes changed in 2011-2012 Legislative Session Implemented January 1, 2012

Element of Plan:	Page 30
Goal:	Re-evaluate accessible voting equipment
Measure:	❑ Committee re-tests devices ❑ Decision made by G.A.B. to approve or disapprove device
Designee:	Elections Division Administrator
Timeline:	Testing completed by July 2010 Approval granted or denied by December 2010

Element of Plan:	Page 30
Goal:	Explore the option of a statewide uniform voting system.
Measure:	❑ Committee established ❑ Analysis of cost and feasibility completed ❑ Committee makes recommendation to the board
Designee:	Elections Division Administrator
Timeline:	Analysis complete by July 2011

Statewide Voter Registration Database

Maintaining Wisconsin's Statewide Voter Registration System

Element of Plan:	Page 34
Goal:	Complete HAVA check on all voters registered January 1, 2006 through August 5, 2008
Measure:	❑ All voters with a registration date after January 1, 2006 have "HAVA Check" response in voter record
Designee:	Team Lead, SVRS
Timeline:	Final report on the retroactive HAVA Check process to the Board at its December 14, 2009 meeting

Element of Plan:	Page 34
Goal:	Complete voter record maintenance, per Wis. Stat. § 6.50 (1)
Measure:	❑ Voters with 4 years since they last voted are sent a notice of suspension ❑ Voter records updated in SVRS with delivery response
Designee:	Team Lead, SVRS
Timeline:	Within 90 days of General Election November 2010 Within 90 days of General Election November 2012

Element of Plan:	Page 34
Goal:	Maintain software and infrastructure maintained in order to keep the system functional
Measure:	❑ Adequate staff hired and/or retained ❑ Adequate redundant services in place so that outages do not affect performance ❑ Updates installed regularly ❑ Data back-up completed regularly
Designee:	Team Lead, SVRS
Timeline:	Ongoing need; reviewed twice each year

Element of Plan:	Page 35
Goal:	Expand the information available on VPA
Measure:	❑ Election Results viewable by public ❑ Absentee ballot status viewable by public ❑ Polling place accessibility information viewable by public ❑ Provisional ballot status viewable by public in a more timely manner
Designee:	Team Lead, SVRS
Timeline:	November 2009

Element of Plan:	Page 35, 20
Goal:	Utilize SVRS for the collection of canvass data
Measure:	❑ Improve SVRS to allow for the housing of data ❑ Data entered for Spring Primary Election 2010 ❑ Improvements made based on Spring Primary Election 2010 results ❑ Data entered for Spring Election 2010 ❑ Train SVRS Users on canvass functions
Designee:	Team Lead, SVRS
Timeline:	System changes developed and tested by January 2010 Utilized in Spring Primary and Spring Election 2010

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Element of Plan:	Page 36
Goal:	Modify the SVRS to accommodate redistricting needs
Measure:	❑ Test existing redistricting functionality to determine capability ❑ Create new functionality to meet redistricting needs
Designee:	Team Lead, SVRS
Timeline:	System changes developed and tested by January 2010 Implemented by February 2010

Element of Plan:	Page 36
Goal:	Update database indexing and improve source code in problem areas
Measure:	❑ Areas of improvement identified and prioritized ❑ Upgrades implemented and available to users
Designee:	Team Lead, SVRS
Timeline:	List created by October 2009 Improvements delivered at minimum every 6 months

Element of Plan:	Page 36
Goal:	Automate HAVA Check interface
Measure:	❑ HAVA Check sent automatically when voter application is processed
Designee:	Team Lead, SVRS
Timeline:	Implementation completed by January 2010

Element of Plan:	Page 36
Goal:	Streamline absentee processes
Measure:	❑ Reduce number of steps involved in completing basic absentee functions ❑ Increased usage of absentee statewide
Designee:	Team Lead, SVRS
Timeline:	Implementations completed by May 2010

Element of Plan:	Page 36
Goal:	Streamline other processes
Measure:	❑ Areas in needed of streamlining identified and prioritized ❑ New functionality developed and implemented for users
Designee:	Team Lead, SVRS
Timeline:	Implementations completed by May 2012

Element of Plan:	Page 37
Goal:	Upgrade reporting functionality
Measure:	❑ Data elements, naming conventions and report views standardized ❑ Allow users more flexibility in creating custom reports
Designee:	Team Lead, SVRS
Timeline:	Implementations completed by May 2010

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Element of Plan:	Page 37
Goal:	Implement upgrades to SVRS to accommodate early voting
Measure:	❑ Upgrades identified and implemented at a minimum track to allow for early voter's registration, ballots cast and participation
Designee:	Team Lead, SVRS
Timeline:	February 2010

Element of Plan:	Page 37
Goal:	Implement electronic poll books
Measure:	❑ Electronic poll book developed and compatible with SVRS ❑ Election officials adequately trained on electronic poll books
Designee:	Team Lead, SVRS
Timeline:	June 2012

Element of Plan:	Page 38
Goal:	Incorporate existing Election Day reports in the SVRS
Measure:	❑ Develop electronic databases compatible with the SVRS to track Election Day data ❑ Able to generate reports analyzing Election Day incidents
Designee:	Team Lead, SVRS
Timeline:	Implementation by November 2010

Element of Plan:	Page 38
Goal:	Continue integration of the Wisconsin Election Data Collection System (WEDCS) with the SVRS
Measure:	❑ Streamline the amount of data requested from local election officials ❑ Reduce post-election reconciliation time and effort by election officials
Designee:	Team Lead, SVRS
Timeline:	December 2009

Element of Plan:	Page 38
Goal:	Online registration for voters who move or change their name
Measure:	❑ Develop form for voters to complete registration online
Designee:	Team Lead, SVRS
Timeline:	Implementation by November 2010

Voter Education, Election Official Education and Training, and Poll Worker Training

Element of Plan:	Page 42
Goal:	Update G.A.B. website and add "Absentee" section
Measure:	❑ Gather all absentee information and convert to electronic documents ❑ Create a section on the website ❑ Post gathered information to website
Designee:	Webmaster, Public Information Officer
Timeline:	September 2009

Element of Plan:	Page 42
Goal:	Create public education materials related to accessibility
Measure:	❑ Meet with Accessibility Advisory Group ❑ Develop and print ❑ Distribute
Designee:	Public Information Officer
Timeline:	Electronic version available by July 2010

Element of Plan:	Page 43
Goal:	Offer brochure on Election Day Activities
Measure:	❑ Partner with the voter advocacy groups to create ❑ Print ❑ Distribute
Designee:	Webmaster, Public Information Officer
Timeline:	Electronic version available by July 2010

Element of Plan:	Page 43
Goal:	Disseminate information on voting opportunities for eligible high school students
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by October 2010

Element of Plan:	Page 43
Goal:	Create "How to be a Poll Worker" media
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by June 2010

Element of Plan:	Page 43
Goal:	Create materials about how to use voting equipment
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by January 2011

Element of Plan:	Page 43
Goal:	Create materials about the differences between partisan and non-partisan elections
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by August 2010

Element of Plan:	Page 44
Goal:	Materials created to educate voters on election security
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by January 2011

Element of Plan:	Page 44
Goal:	Create materials to educate on voter registration
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by January 2011

Element of Plan:	Page 44
Goal:	Voter rights and responsibilities media produced
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public Information Officer
Timeline:	Ongoing, first deliverable available by January 2010

Element of Plan:	Page 45
Goal:	Offer training for all chief inspectors throughout the state
Measure:	❑ Training schedule developed with a variety of locations ❑ Chief election inspectors trained for every polling place
Designee:	Training Coordinator
Timeline:	Schedule completed yearly no less then 45 days before an election

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Element of Plan:	Page 45
Goal:	Offer training for all municipal clerks throughout the state
Measure:	❑ Training schedule developed with a variety of locations ❑ Municipal clerk trained for every municipality
Designee:	Training Coordinator
Timeline:	Schedule completed yearly no less then 45 days before an election

Element of Plan:	Page 45
Goal:	Offer training tools for clerks to train election inspectors
Measure:	❑ On demand training ❑ Deliverables in DVD and VHS ❑ All training includes audio and video ❑ Recorded "live" sessions available
Designee:	Training Coordinator
Timeline:	Contract and outline of desired materials by November 2009 First deliverable available June 2010

Element of Plan:	Page 46
Goal:	Offer SRD training and re-certification throughout the state
Measure:	❑ Training schedule developed with a variety of locations ❑ SRD's trained for every municipality
Designee:	Training Coordinator
Timeline:	Schedule completed yearly no less then 60 days before an election

Element of Plan:	Page 46
Goal:	Offer SVRS application and business process training for clerks and staff
Measure:	❑ Training schedule developed with a variety of locations ❑ Clerk's office employees trained for every provider
Designee:	Training Coordinator
Timeline:	Schedule completed yearly no less then 45 days before an election

Element of Plan:	Page 48
Goal:	Offer public education through multiple media formats (new and current)
Measure:	❑ Media developed ❑ Information disseminated
Designee:	Public information Officer
Timeline:	Ongoing, first deliverable available by January 2010

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Element of Plan:	Page 48
Goal:	Add more modules to the WBETS training site
Measure:	❑ More then 20 modules available ❑ Topics of interest developed
Designee:	Training Coordinator
Timeline:	List of new modules created by October 2009 New modules available by July 2010

Element of Plan:	Page 48
Goal:	Train reliers on SVRS business processes
Measure:	❑ Training scheduled ❑ Materials posted to website
Designee:	Training Coordinator
Timeline:	List of new modules created by October 2009 New modules available by July 2010

Element of Plan:	Page 49
Goal:	Train local election officials on successfully completing the Accessibility Survey
Measure:	❑ Training scheduled ❑ Tool list available
Designee:	Elections Division Administrator
Timeline:	Training scheduled by February 2010

Element of Plan:	Page 49
Goal:	Offer SVRS functionality training for redistricting needs
Measure:	❑ Training curriculum developed ❑ Training schedule created and staffed
Designee:	Training Coordinator
Timeline:	Curriculum created by October 2011 Training begins December 2011

Element of Plan:	Page 49
Goal:	Provide training tools for clerks to use to train member of their board of canvass
Measure:	❑ Training tools developed ❑ Tools distributed to clerks
Designee:	Training Coordinator
Timeline:	Training tools created by November 2009 Distribution by December 2009

Element of Plan:	Page 49
Goal:	Develop training for municipal clerks and chief election inspectors on current procedures to prevent or report suspected illegal voting.
Measure:	❑ Training modules developed for MCT/CIT trainings
Designee:	Training Coordinator
Timeline:	Training modules created by November 2009

Element of Plan:	Page 50
Goal:	Provide election administration training for school district clerks using WisLine programming.
Measure:	❑ Create training materials ❑ Conduct WisLine training sessions
Designee:	Election Administration Lead
Timeline:	Create training materials by 2011 Conduct WisLine trainings by 2011

Element of Plan:	Page 50
Goal:	Provide election observer training.
Measure:	❑ Create training materials ❑ Conduct observer training
Designee:	Election Administration Lead
Timeline:	Create training materials by June 2010 Conduct observer training as needed

Section 9
State-Based Administrative Complaint Procedures

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Section 402.

The Government Accountability Board established an administrative complaint procedure to comply with HAVA § 402. Wis. Stat. § 5.06, Wis. Admin. Code GAB Ch. 10. An elector who believes that the action or inaction of an election official concerning nominations, qualification of candidates, voting qualifications, ward division and numbering, recall, ballot preparation, election administration, or the conduct of elections is contrary to law or that the actions or inactions of an election official with respect to any such matter constitute an abuse of discretion, may file a complaint with the Board.

Decisions of the Board may be appealed to the courts. Any elector who believes that an election official is acting in violation of the law may request the appropriate district attorney, or in some cases, the attorney general to petition a court for appropriate relief. However, the recount procedure is the exclusive judicial remedy for addressing any alleged irregularity, defect, or mistake committed during the voting or canvassing process.

The HAVA implementation legislation creates another procedure for addressing alleged noncompliance with any provision of HAVA relating to voting system standards, provisional voting, voting information, registration procedure and administration, and voter identification. Whenever any person (whether an individual or another entity and whether inside or outside this state) believes that a violation of HAVA has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state, that person may file a written, sworn complaint with the Board.

The agency must grant the complainant a formal hearing upon request and must issue a decision on the complaint, together with an order for any appropriate relief, within 89 days. The relief may not include any order affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

Section 10
Use of Title I Payments

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Wisconsin used HAVA §101 payments as follows:

- Personnel costs associated with preparing the State's 2004 Election Administration Plan.
- Personnel costs associated with educating and training State staff on HAVA requirements.
- Personnel costs to implement HAVA requirements.
- Supported development and implementation of training protocols for the States' Chief Election Inspectors and other election officials.
- Supported costs associated with development of voter education materials and protocols for ensuring compliance with HAVA's disability access requirements.
- Supported the hiring of a consultant to design the Request for Proposal (RFP), for selecting a vendor and project manager for implementing the Statewide Voter Registration System.
- Supported the study of the feasibility of developing an election information management system for the former State Elections Board.

Section 11
State Plan Management

How the State will conduct ongoing management of the Plan.

The Government Accountability Board's HAVA implementation legislation established an Election Administration Council (WI-EAC) whose members are appointed by the chief state election official, consistent with the directions set out in HAVA § 255(a). 2003 Wisconsin Act 265. The Board views the State 2009-2014 Election Administration Plan as a dynamic, living document. The WI-EAC will continue to meet to monitor and advise on needed adjustments annually, and more frequently as necessary.

Performance goals and measures have been developed in consultation with the Wisconsin Election Administration Council. The implementation strategies, including performance goals, provide measurement standards for each element of the 2009-2014 Election Administration Plan. (See page 57.)

Each performance goal is a part of a single or composite project activity designed to implement all elements of the 2009-2014 Election Administration Plan. Each goal is attributable to individual staff members in collaboration with a team of stakeholders and interested parties.

Administration of Wisconsin's 2009-2014 Election Administration Plan will be under the general direction and executive sponsorship of the Government Accountability Board's Director and General Counsel who is also Wisconsin's Chief Election Official. The Elections Division Administrator will oversee daily management, supervision and implementation of the 2009-2014 Election Administration Plan.

Section 12
Changes to State Plan from Previous Fiscal Year

In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the Plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

A summary of Wisconsin's 2004 priorities, accomplishments and continuing need, is detailed in the Appendix section of this Plan -- a summary that was first submitted to the U. S. Election Assistance Commission in September 2008. The 2009-2014 Election Administration Plan specifies, expands and delineates Wisconsin's continuing needs as part of the State's vision and direction for election administration over the next five years.

The 2009-2014 Election Administration Plan is consciously written broadly enough to absorb emerging issues that may manifest during the next five years; yet, it is specific enough to achieve the core goal and objective of maintaining immediate and future compliance with the Help America Vote Act of 2002.

Compared to Wisconsin's 2004 Plan, the 2009-2014 Wisconsin Election Administration Plan is more detailed, more robust, bolder, more forward looking and significantly more specific. Everything the Wisconsin's 2009-2014 Election Administration Plan proposes to continue to accomplish is embedded in enabling content provisions in the State's 2004 Election Administration Plan.

Section 13
State Plan Committee

A description of the committee which participated in the development of the State Plan in accordance with HAVA § 255 and the procedures followed by the committee.

Complying with HAVA Requirements

Procedure for Development of State Plan

§ 255 Process for Development and Filing of Plan; Publication by Commission

(a) The chief State election official shall develop the State plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the States, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official.

(b) After receiving the State plan of a State under this subtitle, the Commission shall cause to have the plan published in the Federal Register.

§ 256 Requirement for Public Notice and Comment

For the purposes of § 251(a)(1)(C), a State plan meets the public notice and comment requirements of this section if:

(1) Not later than 30 days prior to the submission of the plan, the State made a preliminary version of the plan available for public inspection and comment;

(2) The State publishes notice that the preliminary version of the plan is so available; and

(3) The State took the public comments made regarding the preliminary version of the plan into account in preparing the plan which was filed with the Commission.

In 2009, the Board's staff, in collaboration with the Wisconsin Election Administration Council's (WI-EAC), commenced a process that included review and analysis of Wisconsin compliance with the 2004 Plan and the development of a new five-year (2009-2014) strategic vision and direction for election administration in Wisconsin by the year 2014. The WI-EAC, was created by the Wisconsin Legislature as a nonpartisan committee to oversee the development, implementation, monitoring and evaluation of the 2004 Plan. The WI-EAC reconvened on April 16, 2009, June 17, 2009, and July 28, 2009.

The Wisconsin Government Accountability Board gave approval of a synopsis of the Draft 2009-2014 Wisconsin Election Administration Plan on June 22, 2009, for submission to the Wisconsin Legislature, and Wisconsin's residents for a 30-day review and comment period, starting June 27, 2009. The Board will give final approval on August 10, 2009, at which time the new Plan will be submitted to the U.S. Election Assistance Commission for publication in the Federal Register. Wisconsin's 2009-2014 Wisconsin Election Administration Plan will take effect 30 days after publication in the Federal Register.

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The WI-EAC will continue to meet at least once per year to review and revise the 2009-2014 Election Administration Plan as necessary. Performance goals and measures have been developed in consultation with the WI-EAC. The implementation strategies, including performance goals, provide measurement standards for each element of the 2009-2014 Election Administration Plan.

Each performance goal is a part of a single or composite project activity designed to implement all elements of the 2009-2014 Election Administration Plan. Each goal is attributable to specific staff positions in collaboration with a team of stakeholders and interested parties.

Administration of Wisconsin's 2009-2014 Election Administration Plan will be under the general direction and executive sponsorship of the Government Accountability Board's Director and General Counsel who is also Wisconsin's Chief Election Official. The Elections Division Administrator will oversee daily management, supervision and implementation of the 2009-2014 Election Administration Plan.

APPENDICES

Visioning The Future:
Election Administration in Wisconsin in 2014

Appendix 1
September 2008 Progress Report on the status of Compliance with Wisconsin's 2004 Election Administration Plan

This September 2008 Progress Report on the Status of Compliance with Wisconsin's 2004 Election Administration Plan, also served as Wisconsin's Application for accessing FFY-2008 Requirements Payments. Rather than approving Wisconsin's Application for FFY-2008 Requirements Payments, given the fact that Wisconsin's initial Plan was prepared in 2004, the U.S. Election Assistance Commission asked Wisconsin to amend, update or submit a new Plan. Wisconsin's 2009-2014 Election Administration Plan is a new Plan.

This information is included in Wisconsin's 2009-2014 Election Administration Plan for the sole purpose of providing a Progress Report on the Status of Compliance with Wisconsin's 2004 Election Administration.

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Judge Thomas Cane
Chair

Kevin J. Kennedy
Director and General Counsel

STATE OF WISCONSIN
Government Accountability Board

APPLICATION FOR FY-2008 REQUIREMENTS PAYMENTS
Help America Vote Act (HAVA) of 2002
Compliance with HAVA Section 253(b)

CONTACT INFORMATION

State Submitting Application:	WISCONSIN
Amount of FY-2008 Requirements Payments Due to Wisconsin:	$2,111,219 (HAVA Funds) $ 111,117 (Wisconsin Match)
Chief Election Official:	**KEVIN J. KENNEDY** Director and General Counsel Government Accountability Board
Contact Person:	**NATHANIEL E. ROBINSON** Elections Division Administrator Government Accountability Board 17 West Main Street, Suite 310 Madison, WI 53701-2773 608 267 0715 (LAN) 608 267 0500 (FAX) Nat.Robinson@wi.gov http://gab.wi.gov

INTRODUCTION

Information contained on the following pages is a summary of how the State of Wisconsin has complied with Section 253(b) and all requirements delineated under Section 254 of the Help America Vote Act of 2002. Information also spells-out how Wisconsin intends to utilize the 2008 Requirements Payments to continue to improve and advance the administration of open, fair and transparent Federal and State elections.

The Current State of Wisconsin Plan

Wisconsin's 2004 Plan, developed in response to the Help America Vote Act of 2002 requirements, established the following four priorities or use of Requirements Payments and the corresponding State Match:

1. Design, develop and implement a Statewide Voter Registration System.
2. Evaluate new voting systems and all polling places for HAVA Section 301 and disability access compliance.
3. Develop an implementation and acquisition plan for compliant voting system.
4. Develop training and education programs for voters, elections officials and poll workers.

These four priorities have been achieved in varying degrees - none to the extent that either has reached its fullest performance level, operational potential or expectations. All four priorities are dynamic and require ongoing intervention that requires continuous financial support.

Wisconsin Officials understood from the very beginning -- when the 2004 Plan was being developed -- that the Federal Requirements Payments made available at that time, were not nearly enough to fully fund a complete implementation of the Plan's proposed activities, methodology evaluation, and assessment. This understanding is reflected in the Plan's language starting on Page 19. Relevant excerpts:

> Wisconsin is assuming that the costs of complying with HAVA will not end after Federal appropriations have ceased. The State Elections Board (now the Government Accountability Board) plans on holding in the Election Fund any unspent Federal funds remaining after all HAVA requirements have been met and using the interests earned from these funds to pay ongoing maintenance and program costs at the State and Local levels.
>
> The Federal government has not appropriated the full funding authorized in HAVA. It is essential that the Federal government follow-through on its commitment to assist in the funding of the HAVA mandated changes. The lack of full Federal funding will make implementation of HAVA virtually impossible. The State Elections Board (now the Government Accountability Board) is also concerned that beyond the three years of Federal funding, the ongoing costs of operating and maintaining the Statewide Voter Registration System and new voter equipment will be considerably higher than current local budgets for these efforts and any unspent money in the State Election Fund. The operation and maintenance of the new infrastructure will be a financial burden when HAVA funding is no longer available.

Status of Wisconsin's Four Priorities

Wisconsin has made great strides in achieving the four priorities delineated in the 2004 Plan. For example, in accordance with goals and objectives detailed in Wisconsin's 2004 Plan, a brief update follows:

1. Design, develop and implement a Statewide Voter Registration System

A Statewide Voter Registration System (SVRS) has been designed, developed, implemented, and has been used for printing voter poll lists since the September 2006, Primary Election. Given the complexity of the SVRS and its widespread and heavy use by over 2,000 county and municipal clerks and their staff (election officials), there is a constant and costly need for ongoing infrastructure maintenance and fixes, and software upgrades and upkeep.

The annual cost for hosting the infrastructure alone is over $800 thousand dollars! This expenditure does not include staffing costs for retaining advance journey-level computer experts who possess the highly technical skill-sets that are necessary to keep the SVRS functional. Wisconsin's SVRS HAVA-Check interface functionalities that allow for crossing-checking voter data with Wisconsin Department of Transportation, the Social Security Administration database, and convicted felon and deceased records, became operational on August 6, 2008.

Status: Although Wisconsin has technically achieved this priority, keeping the SVRS maintained, updated, and operational is a monumental and costly challenge, and requires an ongoing influx of new Federal funds in order to do so.

2. Evaluate new voting systems and all polling places for HAVA Section 301 and disability access compliance

3. Develop an implementation and acquisition plan for compliant voting system

In Wisconsin, elections are administered at the State level by the Government Accountability Board, but are conducted at the municipal level by 1,923 county and municipal clerks, throughout 1,850 towns, villages and cities. A full and comprehensive assessment and evaluation of voting systems' needs and requirements was made throughout Wisconsin, and an implementation and acquisition plan for compliant voting system was developed and followed. While each jurisdiction was given broad latitude to select a type of system from a pre-approved list, all of Wisconsin's municipalities and 2,822 polling places have approved voting systems that allow disabled, elderly and handicapped voters to vote privately and independently.

Wisconsin has made some progress in ensuring access to the polling place and inside the polling place for disabled, elderly and handicapped voters in the State's 2,822 polling places. An Accessibility Survey was developed and used by Wisconsin's 1,923 county and municipal clerks and has been revised twice since 2004. The Survey is undergoing a third revision to comply with recommendations made by Wisconsin's Legislative Audit Bureau (LAB). LAB is one of several service bureaus created by the Wisconsin Legislature, specifically to perform program and financial and other legislative administrative functions for the Legislature, some of which are of monitoring and evaluation of State and Federally funded initiatives administered by Wisconsin Government State Agencies.

The LAB conducted an assessment of the Wisconsin Elections Board (now the Government Accountability Board) and published its findings in a November 2007, Report (#07-16), on Wisconsin State and Local governments' compliance with election laws ("An Evaluation: Compliance with Election Laws"). As part of the evaluation process, the LAB dispatched its staff onsite to 39 different polling places. The LAB recommended the Accessibility Survey be revised and the Government Accountability Board follow-up the accountability

self-assessments of polling places done by Wisconsin's 1,923 county and municipal clerks. Since February 2008, the Government Accountability Board's staff has gone onsite during scheduled and special elections to conduct accessibility reviews. The revised draft Survey has been used as a pre-test for this purpose. Since February 2008 and to date, over 200 Accessibility Surveys have been completed onsite by staff of the Government Accountability Board. Progress reports have been provided to the LAB and to the Wisconsin Legislature's Joint Committee on Audit.

As stated in Wisconsin's 2004 Plan, a special toll free telephone line was installed specially for any voter to call free of charge, to voice concerns and/or file complaints about any aspect of elections administration in Wisconsin. Approximately 8-12 concerns/complaints are reported monthly through that line.

A detailed record kept with dispositions noted for follow-up, policy development consideration, and for audit purposes. Most voters call the Government Accountability Board's Help Desk to voice a concern or a complaint. This is likely due to the fact that the Help Desk phone number is more widely and broadly publicized.

Status: Ensuring that every polling place in Wisconsin is equipped with approved and properly working voting systems – including systems for disabled, elderly and handicapped voters -- is one of Wisconsin's highest priorities. However, given the frequent need for service and resulting high maintenance, maintaining operating compliance and the need for systems' replacements presents a precarious situation. An ongoing influx of new Federal funds is needed to ensure that disabled, elderly and handicapped voters are able to vote privately and independently.

Wisconsin is making progress but struggling to have staff visit and evaluate all 2,822 polling places in a timely manner. Additional efforts and steps need to be taken to conduct an independent and unbiased assessment of all Wisconsin's polling places and within a reasonable period of time. In conjunction with partners and advisors from Wisconsin's disability community, the Government Accountability Board is reviewing options and efficient and effective ways to accomplish independent reviews rather than returning to simply relying solely on the 1,923 Clerks for self-evaluations. It should also be noted that Wisconsin has translated some of its elections administrative business practices (materials) into alternative languages, i.e. Spanish and Hmong.

4. Develop training and education programs for voters, elections officials and poll workers

Wisconsin has developed and implemented exemplary model training, education programs and materials for elections officials (County and Municipal Clerks, Chief Inspectors, State Elections Board staff (now the Government Accountability Board staff) Inspectors, and poll workers. The Board staff need to convert paper training manuals and related training pamphlets, publications and documents to an electronic format.

The Government Accountability Board has converted some training business processes and practices to an electronic or online format but not nearly enough. For example, in February 2008, a new Web-Based Election Training System (WBETS), an eLearning website was launched. This format provides SVRS users (Wisconsin 1,923 Clerks) with the opportunity to take on-line training courses, download manuals, print step-by-step instructions for common tasks, watch how-to video demonstrations, and put their knowledge into practice with interactive SVRS simulations.

WBETS was developed over the past year through close collaboration among G.A.B. staff, municipal and county clerks, and the University of Wisconsin-Extension's Division of Continuing Education, Outreach & E-Learning. This partnership has produced a website with several features designed to help Wisconsin's clerk community carry the ever-increasing burden of elections management responsibilities.

In early February 2008, the Government Accountability Board announced the availability of an online tool for the public and voters called, "Voter Public Access" or V.P.A. Using VPA, voters can learn about the State's electoral process, their registration status, where to vote (polling place) and related information about elections administration and voting information on the Internet. VPA also gives the public a new means of getting information about voter registration, voting history, current office holders, and sample ballots for upcoming elections.

VPA is available under "Voter Information" on the Elections Division web-page at http://gab.wi.gov, the Government Accountability Board's website. The information provided on VPA pages comes directly from the SVRS and is maintained by local clerks. In rare cases, a voter may vote on a provisional ballot, and the VPA page will also allow that voter to check the status of her/his provisional ballot provided the clerk enters the information into SVRS.

In July 2008, the Government Accountability Board developed and made online training opportunities available to Wisconsin's local election officials before the August 6 HAVA-Check matching interface functionality was launched. Clerks were trained on the business process and interface functionality in the Statewide Voter Registration System (SVRS) through a robust curriculum via the Government Accountability Board's Web-based Election Training System (WBETS) website.

The training sessions for users of SVRS include step-by-step guides, demonstration lessons, and interactive lessons for hands-on learning. Clerks who do not use SVRS were asked to complete lessons one and two of the curriculum to learn the business process. Clerks are able to post questions and receive answers on the Clerks' Forum found under the main menu. The online Interface curriculum is available 24/7 to Clerks at their convenience as a refresher course.

CONDITIONS SATISFIED FOR RECEIPT OF FUNDS

Section 253(b)

No Material Changes in the 2004 Plan:

The State of Wisconsin is not proposing to change, modify, revise or in any way or manner amend any of the elements of the State Plan relating to Section 254 or any other Titles (i.e. Title I; II; III; etc.) or Sections (i.e. 251; 254; 255; 256; 301; 451, etc.) under the Help America Vote Act of 2002.

No new priorities, no new goals, and no new activities are proposed for which any of the FY-2008 Requirements Payments would be used. No material changes in the administration of the 2004 Plan have been made or being proposed. As reflected by the aforementioned summary update of the four priorities delineated in the 2004 Plan, some progress has been made in accomplishing the intent of the priorities; however, significant work remains to be done in order for the 2004 Plan to be

implemented at its full performance level.

The FY-2008 Requirements Payments will be used to complete and further advance the achievement of the original intent of the already discussed 2004 priorities. These four priorities continue to accurately define, connote and reflect Wisconsin's elections administration needs and priorities. The FY-2008 Requirements Payments will allow Wisconsin to work towards reaching the full and complete intent of the goals that the four priorities were and continue to be designed to achieve.

Because there are No Material Changes in the 2004 Plan, all the commitments, terms and conditions agreed and certified to in the 2004 Plan remain unchanged. As such:

1. No 30-day public notice or review/comment period is warranted.

2. Wisconsin's existing approved plan for complying with implementation of the uniform, non-discriminatory administrative procedures required under Section 402 remains in effect.

3. Wisconsin's current agreement to comply with each of the following Federal Acts remains in effect:

   - The Voting Rights Act of 1965;
   - The Voting Accessibility for the Elderly and Handicapped Act;
   - The Uniform and Overseas Citizens Absentee Voting Act;
   - The National Vote Registration Act of 1993;
   - The Americans with Disabilities Act of 1990; and,
   - The Rehabilitation Act of 1973.

DOCUMENTATION OF WISCONSIN'S FIVE PERCENT MATCH
$111,117

The Government Accountability Board affirms the following State General Purpose Revenue (GPR) funds will continued to be used solely and exclusively for expanding the capacity and advancing the intent, purpose and goals of the Help America Vote Act of 2002.

Source of State Match

The State of Wisconsin appropriated $831,500 in General Purpose Revenue (GPR) or State funds for State Fiscal Years (SFY) 2008 and 2009, expressly for the annual support costs associated with the Wisconsin Department of Administration's Division of Enterprise Technology's (DET) hosting of the Statewide Voter Registration System (SVRS). These appropriated GPR Funds by the State of Wisconsin Legislature are more than sufficient to satisfy the required $111,117 State Match.

WISCONSIN'S CERTIFICATION STATEMENT

Wisconsin's Chief Executive Officer (The Honorable Jim Doyle, Governor) and Wisconsin's Chief Election Official (Mr. Kevin J. Kennedy, Director and General Counsel of the Government Accountability Board), signed Certification Statements, affirming that Wisconsin is in compliance with conditions set forth in Section 253(b) of the Help America Vote Act of 2002, is included in this packet in which Wisconsin is requesting its designated share of the FY-2008 Requirements Payments.

Appendix 2
Government Accountability Board Members

JUDGE MICHAEL BRENNAN
Chairperson

JUDGE WILLIAM EICH
Vice Chairperson

JUDGE GERALD NICHOL
Secretary

JUDGE THOMAS BARLAND[1]

JUDGE THOMAS CANE

JUDGE VICTOR MANIAN[2]

JUDGE GORDON MYSE

[1] Judge Barland's term began May 1, 2009.
[2] Judge Manian's term ended May, 1, 2009.

Appendix 3
Wisconsin Election Administration Council

KEVIN J. KENNEDY
Director and General Counsel
Wisconsin Government Accountability Board
(Wisconsin's Chief Election Official)

NATHANIEL E. ROBINSON
Elections Division Administrator
Wisconsin Government Accountability Board

MARILYN BHEND
Johnson Town Clerk

ALICIA M. BOEHME
Disability Rights Wisconsin

SUE EDMAN
City of Milwaukee Board of Election Commissioners

SUE ERTMER
Winnebago County Clerk

JULEE HELT
Waunakee Village Clerk

DIANE HERMANN-BROWN
Sun Prairie City Clerk

MIKE HOPPENRATH
Watertown City Clerk

ANITA JOHNSON
Citizen Action of Wisconsin

ANDREA KAMINSKI
League of Women Voters of Wisconsin

MARCIA KELLY
Dale Town Clerk

NAN KOTTKE
Marathon County Clerk

KATHY NICKOLAUS
Waukesha County Clerk

SUE PECK
Marshall Village Clerk

AUDREY RUE
Brigham Town Clerk

HOWARD SEIFERT
Wisconsin Board for People with Developmental Disabilities

LISA WEINER
Milwaukee County Board of Election Commissioners

SANDRA WESOLOWSKI
Franklin City Clerk

MAUREEN RYAN
Wisconsin Coalition of Independent Living Centers

DAVID BALLMANN[1]
The Wisconsin Center for the Blind and Visually Impaired

[1] David Ballmann resigned from the Wisconsin Election Administration Council on July 2, 2009.

Appendix 4
Accessibility Advisory Group Members

KEVIN J. KENNEDY
Director and General Counsel
Wisconsin Government Accountability Board
(Wisconsin's Chief Election Official)

NATHANIEL E. ROBINSON
Elections Division Administrator
Wisconsin Government Accountability Board

ALICIA M. BOEHME
Disability Rights Wisconsin

HOWARD SEIFERT
Wisconsin Board for People with Developmental Disabilities

MAUREEN RYAN[1]
Wisconsin Coalition of Independent Living Centers

JEREMIAH BEASLEY
National Federation of the Blind – Wisconsin

DOTTI MILNER
Elections Specialist – SVRS & Accessibility

ROSS HEIN
Elections Specialist – Voting Equipment

DAVID BUERGER
Elections Specialist – HAVA Compliance

JAMES NILSESTUEN
Program Operations Associate

[1] Maureen Ryan resigned from the Accessibility Advisory Group in March, 2008.

Appendix 5
Government Accountability Board Election Administration Staff who Participated in Developing Wisconsin's 2009-2014 State Plan

KEVIN J. KENNEDY
Director and General Counsel
Wisconsin Government Accountability Board
(Wisconsin's Chief Election Official)

NATHANIEL E. ROBINSON
Elections Division Administrator
Wisconsin Government Accountability Board

DAVID BUERGER
Elections Specialist – HAVA Compliance

ALLISON COAKLEY
Training Coordinator

EDWARD EDNEY
SVRS Application Trainer

SHANE FALK
Staff Counsel

MICHAEL HAAS
Staff Counsel

BARBARA HANSEN
SVRS Director

ADAM HARVELL
SVRS Application Trainer

SHARRIE HAUGE
Special Assistant to the Director and General Counsel

ROSS HEIN
Elections Specialist – Voting Equipment

JOHN HOETH
Help Desk Associate

NATHAN JUDNIC
SVRS Specialist

DIANE LOWE
Elections Specialist – Lead

DAVID MEICHER
EAC Grant Accountant

DOTTI MILNER
Elections Specialist – SVRS & Accessibility

ANN OBERLE
SVRS UAT – Lead

KYLE RICHMOND[1]
Public Information Officer

STEVEN ROSSMAN
Help Desk – Lead

ANGELA STEINHAUER
SVRS Specialist

[1] Served through May 22, 2009.

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Federal Register

Thursday,
November 12, 2009

Part III

Department of Education

34 CFR Chapter II

State Fiscal Stabilization Fund Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2009–OESE–0007]

RIN 1810–AB04

State Fiscal Stabilization Fund Program

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund)

AGENCY: Department of Education.

ACTION: Final requirements, definitions, and approval criteria.

SUMMARY: The Secretary of Education (Secretary) establishes requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund (Stabilization or SFSF) program. The Secretary may use one or more of these requirements, definitions, and approval criteria in awarding funds under this program in fiscal year (FY) 2010. These requirements, definitions, and approval criteria are based on the assurances regarding education reform that grantees are required to provide in exchange for receiving funds under the Stabilization program. We take this action to specify the data and information that grantees must collect and publicly report with respect to those assurances and to help ensure grantees' ability to collect and publicly report the required data and information.

DATES: These requirements, definitions, and approval criteria are effective January 11, 2010.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E108, Washington, DC 20202. *Telephone:* (202) 260–2274 or by *e-mail: phase2comments@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.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The State Fiscal Stabilization Fund program provides approximately $48.6 billion in formula grants to States to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in key areas.

Background: Section 14005(d) of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) requires a State receiving funds under the SFSF program to provide assurances in four key areas of education reform: (a) Achieving equity in teacher distribution, (b) improving collection and use of data, (c) standards and assessments, and (d) supporting struggling schools. For each area of reform, the ARRA prescribes specific actions that the State must assure that it will implement. In addition, section 14005(a) of the ARRA requires a State that seeks funds under the Stabilization program to submit an application to the Department containing such information as the Secretary may reasonably require. In this notice, we establish specific data and information requirements (the assurance indicators and descriptors) that a State receiving funds under the SFSF program must meet with respect to the statutory assurances. We also establish specific requirements for a plan that a State must submit (the State plan), as part of its application for the second phase [1] of funding under the SFSF program, describing its ability to collect and publicly report the required data and other information. Together, these two sets of requirements will provide transparency on the extent to which a State is implementing the actions for which it has provided assurances. Increased access to and focus on this information will better enable States and other stakeholders to identify strengths and weaknesses in education systems and determine where concentrated reform effort is warranted. We also intend to use the data and information that States collect and publicly report in assessing whether a State is qualified to participate in and receive funds under other reform-oriented programs administered by the Department.

As discussed elsewhere in this notice, an assurance indicator or descriptor may relate to data or other information that States currently collect and report to the Department, or to data or other information for which the Department is itself the source. In those cases, we do not establish any new data or information collection requirements for a State; rather, the Department will provide the State with the relevant data or other information that the State will confirm and publicly report.

The Department recognizes that requests for data and information should reflect an integrated and coordinated approach among the various programs supported with ARRA funds, particularly the SFSF, Race to the Top, School Improvement Grants (SIG), and Statewide Longitudinal Data Systems Grant programs. Accordingly, the Department has evaluated the requirements and definitions for this program in context with those other programs.

Section 14005(d)(2) of the ARRA requires a State receiving funds under the SFSF program to assure that it will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6311(b)(8)(C)), in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. The indicators the Department has established will measure the extent to which a State is taking such actions and will provide data and other information on: (1) Student access to highly qualified teachers in high- and low-poverty schools, (2) current strategies and efforts to address inequities in the distribution of inexperienced, unqualified, or out-of-field teachers, (3) how teacher and principal performance is evaluated and how the results of these evaluations are used, and (4) the distribution of performance evaluation ratings or levels among teachers and principals.

Section 14005(d)(3) requires each State to assure that it will establish a longitudinal data system that includes the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act. The Department has established an indicator that will measure the extent to which States have implemented statewide longitudinal data systems that include all of the required elements. These elements constitute the minimum requirements of a modern statewide longitudinal data system. Such a system will enable States, local educational agencies (LEAs), and schools to, among other things: Follow student academic progress as a student moves from grade to grade; identify persistently lowest-achieving schools; and evaluate the effectiveness of specific programs.

The Department has established additional indicators identifying

[1] The Department is awarding SFSF program funds in two phases. In the first phase, the Department awarded 67 percent of a State's Education Stabilization Fund allocation, unless the State demonstrated that additional funds were required to restore FY 2009 State support for education, in which case the Department awarded the State up to 90 percent of that allocation. In addition, the Department awarded 100 percent of each State's Government Services Fund allocation in Phase I. The Department will award the remainder of a State's Education Stabilization Fund allocation in the second phase. A table listing the allocations to States under the SFSF program is available at: *http://www.ed.gov/programs/statestabilization/funding.html.*

whether a State provides teachers in grades and subjects in which it administers assessments with student growth data and with reports of individual teacher impact on student achievement. We believe that teachers' receipt of these data and reports should be a natural product of a statewide longitudinal data system that includes the required elements, particularly the requirements that such a system includes unique statewide student identifiers and a teacher identifier system with the ability to match teachers to students. Moreover, we believe that these are key examples of how reliable, high-quality data from a State's system can drive education reform in general and improvements in instructional programs in particular.

The ARRA also requires a State receiving funds under the SFSF program to assure that it will: (A) Enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of the ESEA (20 U.S.C. 7301a(a)); (B) comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students [2] in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and (C) take steps to improve State academic content standards and student academic achievement standards for secondary schools consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act (20 U.S.C. 9871(e)(1)(A)(ii)). To assess the extent to which a State is taking these actions, we are requiring that the State collect and publicly report data and other information regarding State assessment systems, including on the assessment of students with disabilities and limited English proficient students; State National Assessment of Educational Progress (NAEP) data; and data on the number of students who graduate from high school using a four-year adjusted cohort graduation rate, enroll in an institution of higher education (IHE) within 16 months of receiving a regular high school diploma, and complete at least one year of college credit (towards a degree) within two years of enrollment.

As many States prepare to significantly improve the rigor and effectiveness of their standards and assessment systems, we believe this information will provide stakeholders with vital transparency on the current status of those systems and inform efforts that are currently underway to improve them. The Department continues to encourage States to work together to develop and implement common internationally benchmarked standards and assessments aligned to those standards in order to ensure that students are college- and career-ready. However, until those standards and assessments are complete, States need to continue to ensure both the quality of their current standards and assessments, and that students are provided accommodations as necessary.

Section 14005(d)(5) of the ARRA requires a State receiving funds under the SFSF program to provide an assurance that it will comply with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA (20 U.S.C. 6316(b)(7)(C)(iv) and 6316(b)(8)(B)) with respect to Title I schools identified for corrective action and restructuring. In order to provide indicators of the extent to which a State is implementing this statutory assurance, we are requiring that the State provide data on the extent to which dramatic reforms to improve student academic achievement are implemented in Title I schools in improvement under section 1116(b)(1)(A) of the ESEA,[3] in corrective action, or in restructuring and secondary schools that are eligible for, but not receiving, Title I funds. Additionally, a State must provide data on the operation and performance of its charter schools. SFSF definitions and requirements for these indicators and descriptors will, where appropriate, be consistent with those in the Department's Race to the Top Fund and SIG notices to encourage and enable States to plan effectively and use diverse funding sources to accomplish consistent goals.

In addition to the specific data and information requirements relating to the four ARRA education reform assurances, we also establish requirements for a plan that a State must submit to the Department. In general, the State plan must describe the State's current ability to collect the data or other information needed for the assurance indicators and descriptors as well as the State's current ability to make the data or information easily available to the public. If the State is currently able to fully collect and publicly report the required data or other information at least annually, the State must provide the most recent data or information with its plan. If a State is not currently able to collect or publicly report the data or other information at least annually, the plan must describe the State's process and timeline for developing and implementing the means to do so as soon as possible but no later than September 30, 2011, the date by which States must obligate funds received under the SFSF program consistent with section 421 of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)). The State plan must describe the State's collection and public reporting abilities with respect to each individual indicator or descriptor.

As discussed previously, the data or information needed for an assurance indicator or descriptor is in some cases already reported to the Department by the State, or is provided by the Department. In those cases, it is understood that the State is currently able to collect the data or information; accordingly, the State's plan need only address the State's ability to publicly report the data or information, and the State need not include the data or information with its plan.

The State plan requirements apply generally across the education reform areas discussed above with the exception of education reform area (b) (improving collection and use of data) and new Indicators (c)(10) and (c)(11) (proposed Indicators (c)(11) and (c)(12)), for which we establish slightly different plan requirements. For example, for Indicator (b)(1) we require that a State describe in its plan whether the State's data system includes the required elements of a statewide longitudinal data system and, if the data system does not, the State's process and timeline for developing and implementing a system

[2] The Department recognizes that stakeholders often use terms such as ''English language learners'' rather than ''limited English proficient students'' when referring to students who are acquiring basic English proficiency and developing academic English skills. However, because the ESEA defines the term ''limited English proficient,'' and both the statute and the implementing regulations use this term, as well as the phrase ''students with limited English proficiency,'' we will continue to use the latter terms in this notice.

[3] Although the statutory assurance concerns only Title I schools in corrective action and restructuring, we are requiring that States include Title I schools in improvement as well when providing data on the extent to which dramatic reforms to improve student academic achievement are being implemented. Making this addition would be consistent with the school reform strategies that States are implementing using funds available under section 1003(g) of the ESEA (20 U.S.C. 6303(g)) (School Improvement Grants), which are intended to be applied to schools in improvement as well as to schools in corrective action or restructuring.

that meets all requirements as soon as possible but no later than September 30, 2011. As this indicator relates to a State's ability to collect and publicly report data, however, these requirements do not in effect differ substantially from the generally applicable State plan requirements (*i.e.*, the requirements that the State describe its abilities to collect and publicly report data or other information for a given indicator or descriptor). Moreover, the development and implementation of such a statewide longitudinal data system is intrinsic to a State's ability to collect and publicly report the data required by certain other indicators (*e.g.*, the indicators on student enrollment and credit completion in IHEs after graduation from high school).

In the case of new Indicators (c)(11) and (c)(12), regarding the data States will collect from IHEs on student enrollment and credit completion, the State is required to, at a minimum, possess the ability to collect and publicly report the data by September 30, 2011. As a result, a State plan need only address the development of capacity, and not implementation and public reporting for these indicators.

In addition to requirements relating to a State's ability to collect and publicly report data or other information for the respective assurance indicators and descriptors, we establish other general requirements for the State plan relating to the State's institutional infrastructure and capacity, the nature of any technical assistance or other support provided, the budget for implementing the plan, and the processes the State employs to ensure data and information quality and student privacy.

For the purposes of this program, the data and information are largely intended for public use, rather than for Federal reporting. Individual States and communities have the greatest power to hold their LEAs and schools accountable for the reforms that are in the best interest of their students. Rather than the Department collecting and warehousing this information, it is our intention that States and LEAs will make the information available to the public in a manner that is useful for stakeholders in understanding key information about education in each State and community. The Department believes that the most effective and expeditious way for States to share information with the public is via the Internet. Accordingly, any State that receives SFSF funding in Phase II must maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data and information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

In developing a plan as required in this notice, the State is encouraged to consult with key stakeholders, such as superintendents, educators, content experts, and parents as well as teachers' union, business, community, and civil rights leaders. Such consultation would ensure that these stakeholders are aware of the State's current ability to meet the requirements, can provide input on the means the State will develop to comply with the requirements, and can prepare to assist the State in implementing those means.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Public Law No. 111–5.

We published a notice of proposed requirements, definitions, and approval criteria (NPR) for this program in the **Federal Register** on July 29, 2009 (74 FR 37837–37872). That notice contained background information and our reasons for proposing the particular requirements, definitions, and approval criteria. In addition to some minor editorial changes, there are several substantive differences between the NPR and this notice of final requirements, definitions, and approval criteria (NFR). These changes are summarized in the next section and described in greater detail in the *Analysis of Comments and Changes* section elsewhere in this notice.

Major Changes in the Final Requirements, Definitions, and Approved Criteria

The following is a summary of the major substantive changes in these final requirements from the requirements proposed in the NPR. (The rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section elsewhere in this preamble.)

• The NFR makes several changes to the requirements for *Achieving equity in teacher distribution*. The specific changes are:

—The Department is adding a new Indicator (a)(2) that requires each State to confirm whether the State's Teacher Equity Plan (part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA).

—Descriptors (a)(1) and (a)(2) have been revised to require States also to describe the use of results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

—New Indicator (a)(3) (proposed Indicator (a)(2)) and new Indicator (a)(5) (proposed Indicator (a)(4)) have been revised to have States indicate whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.

• The NFR makes the following changes to the requirements for *Improving collection and use of data:*

—New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

—New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. Under proposed Indicator (b)(2), a State would have been required to indicate whether it provides such teachers with data on the performance of their students on those assessments that include estimates of individual teacher impact on student achievement, in a manner that is timely and informs instruction.

• The final requirements make several changes to the indicators for *Standards and assessments*. The specific changes are:

—Proposed Indicator (c)(2), which required each State to indicate whether it was engaged in activities to enhance the quality of its assessments, and Proposed Descriptor (c)(1), which required States to describe those activities, have been removed from the final requirements.

—New Indicator (c)(11) (proposed Indicator (c)(12)) has been modified to require a State to provide data on student enrollment for students who enroll in an IHE within 16 months of

receiving a regular high school diploma. Proposed Indicator (c)(12) did not include a timeframe for this data element.

—New Indicator (c)(12) (proposed Indicator (c)(13)) now requires that a State collect data on progress toward a postsecondary degree only for students who attend a public IHE in the State. Under proposed Indicator (c)(13), a State would have provided these data for students who attended public IHEs both in State and out of State.

• The NFR makes several changes to the requirements for *Supporting struggling schools*. The specific changes are:

—Indicator (d)(1) and Indicator (d)(2) now require that a State also publicly report on average statewide school gains in the ''all students'' category and for each student subgroup (as defined under section 1111(b)(2)(C)(v) of the ESEA).

—New Descriptor (d)(1) requires each State to provide its definition of *persistently lowest-achieving schools.*

—Indicator (d)(3) now requires a State to provide the number and identity of Title I schools in improvement, corrective action, or restructuring that are persistently lowest-achieving schools.

—Indicator (d)(4) now requires a State to provide, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

—Indicator (d)(5) now requires a State to provide the number and identity of secondary schools that are eligible for, but do not receive, Title I funds that are persistently lowest-achieving schools.

—Indicator (d)(6) now requires a State to provide, of the persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

—New Indicator (d)(9) requires a State to provide the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.

—New Indicator (d)(10) requires a State to provide the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.

—New Indicators (d)(11) and (d)(12) (proposed Indicators (d)(8) and (d)(9)) require States to provide data and information on charter schools that have been closed within each of the last five years instead of over the last five years.

• The NFR makes several changes to the requirements under *State Plans.* The specific changes are:

—The NFR adds requirements regarding new Indicator (b)(2). For new Indicator (b)(2), the State must provide student growth data on their current students and students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs. A State must indicate whether the State provides teachers with such data; if the State does not provide teachers with such data, it must submit a plan for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data.

—The NFR revises the requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so. Under the NPR, the State would have been required to provide those teachers with such reports (consistent with the indicator); if the State did not provide those teachers with such reports, it would have been required to submit a plan for how it would develop and implement the means to do so as soon as possible but no later than September 30, 2011.

—The NFR revises the requirements for new Indicators (c)(11) and (c)(12). For new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)), if a State will develop *but not implement* the means to collect and publicly report the data by September 30, 2011, it must submit a plan for how it will develop the means to collect and publicly report the data and provide evidence, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data. If a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report those data) by September 30, 2011, the State must submit a plan for how it will collect and publicly report the data by the established deadline.

• The NFR includes definitions for *publicly report, student growth, persistently lowest-achieving schools, turnaround model, restart model, school closure, transformation model,* and *increased learning time.*

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPR, 60 parties submitted comments on the proposed requirements, definitions, and approval criteria. An analysis of the comments and changes to the requirements, definitions, and approval criteria since publication of the NPR follows.

We discuss substantive issues under the sections of the requirements to which they pertain. Generally, we do not address technical or minor changes, or suggested changes that we are not authorized to make under applicable law.

Indicator and Descriptor Requirements in General

Comment: A few commenters asserted that the proposed data and information requirements do not reflect Congressional intent that the SFSF program relieve the economic crisis in schools and districts nationwide. Commenters stated that SFSF funds are intended to help maintain support for education, not to support new programs or initiatives. One commenter noted that requirements for new programs or initiatives may be appropriate for competitive programs such as the Race to the Top Fund, but not for the SFSF program. In contrast, another commenter asserted that States should use SFSF funds for more than simply maintaining support for current education programs.

Discussion: The Department believes that SFSF funds should be used both to help restore support for education and to advance education reform. When States received funds under Phase I of the SFSF program, they provided assurances that they would take steps to address the key reform areas required under the ARRA. The data collected will provide information on the status of States' efforts to comply with these assurances.

Changes: None.

Comment: A number of commenters supported the Department's emphasis on the four reform areas and noted that focus on those four areas will improve

educational outcomes for students. Several commenters also expressed support specifically for the focus on data systems and improving teacher quality. One commenter supported linking student data to teachers. Some commenters stated that the requirements outlined in the notice were well-aligned with the reform areas of ARRA. Another commenter believed that the Department should have worked to ensure greater alignment among the four reform areas. A few commenters believed the proposed requirements went beyond the intention of the ARRA, and a few commenters stated that they did not believe the ARRA provided the Department with the statutory authority to require States to collect and publicly report the data and information as proposed in the NPR. One commenter stated that the proposed requirements would be an intrusion by the Federal Government into State and local control of education.

Discussion: In its application for initial funding under the SFSF program, each State was required, consistent with the statute, to provide an assurance that it would take steps to advance reforms in achieving equity in teacher distribution, enhancing standards and assessments, and supporting struggling schools. Each State also provided an assurance that it would establish a statewide longitudinal data system. The Department believes the requirements as proposed in the NPR and established in final in this notice are consistent with the statutory intent and requirements of the ARRA and will provide comprehensive information on a State's progress in the four assurance areas. The data and information that States will publicly report under the indicators and descriptors will inform State and local reform efforts and enable the Department to verify that a State is fulfilling the commitments it made in order to receive ARRA funds.

Changes: None.

Comment: Many commenters supported the Department's emphasis on making the data and information collected under the SFSF program publicly available. Commenters also noted that increased access to the data and information would help inform decision-making and increase transparency around education reform.

Discussion: The Department appreciates the commenters' support and agrees that the indicator and descriptor requirements will provide the public with valuable information on the status of education reform in their State.

Changes: None.

Comment: Several commenters requested that the Department provide States with a template for publicly reporting the data and information collected under the SFSF program. One commenter asserted that the Department must provide guidance to ensure that States fully understand the public reporting requirements. As an example, the commenter questioned what constitutes making the data ''easily accessible'' for parents and the general public. Another commenter questioned whether the lack of specific guidance from the Department on how to publicly report the information collected meant that we would allow States to use a variety of methods to meet their reporting obligation. The commenter encouraged the Department to provide States with flexibility in meeting these requirements. One commenter noted that the Department would need to consider the unique demographics of States when evaluating applications.

Discussion: The Department agrees that it is important to have clear guidance on the public reporting that is required under this notice. Accordingly, we have added a definition of *publicly report* to provide additional specificity and direction. We will also provide guidance on how States may meet the public reporting requirements for this program, and will be available to provide technical assistance to States throughout the application and reporting process.

Changes: The Department has added a definition of *publicly report,* which provides that the data or information required for an indicator or descriptor are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information. Under this definition, States are required to maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data or information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

In light of our addition of the definition of *publicly report,* we have modified the indicators, descriptors, plan requirements, definitions, and approval criteria, as appropriate, to substitute the term ''publicly report'' for ''report.''

Comment: Some commenters supported our intent to ensure consistency in collection and reporting requirements across the various programs funded under the ARRA. One commenter requested that the Department review the reporting requirements across all ARRA programs and use single data-element definitions for all programs in order to reduce redundant reporting and maintain transparency. A few commenters expressed concern that applications submitted for programs under the ARRA will be duplicative.

Discussion: The Department is coordinating the implementation of the programs under the ARRA in order to support a comprehensive approach to education reform and to minimize the burden on States to the extent possible. To that end, where appropriate, the Department is developing consistent requirements and definitions for SFSF, the Race to the Top Fund, SIG, the Investing in Innovation Fund, the Teacher Incentive Fund, and other ARRA programs; those changes are discussed later in this notice. The Department will evaluate applications based on the specific approval criteria we have announced for each program, and recognizes that, in certain instances, States will provide similar information across applications.

Changes: None.

Comment: One commenter stated that the Department did not propose requirements that comprehensively address the four education reform areas. Specifically, the commenter believed more indicators are needed in areas addressing the closing of achievement gaps, improving overall student performance, and achieving equity between high- and low-performing schools.

Discussion: While we agree that additional information in the four reform areas could be valuable to the public, educators, and policy-makers, we believe that adding the suggested indicators would be overly burdensome to States and LEAs. We believe the indicators and descriptors established in this notice generally provide sufficient data and information to measure State progress in the four reform areas for the purposes of the SFSF program. Additionally, the Department believes that meeting the requirement for each State to include all 12 elements described in the America COMPETES Act in its statewide longitudinal data system will provide a State with the capability to collect, analyze, and report meaningful information on the effectiveness of its programs in closing the achievement gap and improving student outcomes.

Changes: None.

Comment: One commenter stated that the Department is missing a major

opportunity to learn more about the role of professional development in school reform. The commenter encouraged the Department to collect data on how States are using and improving professional development to increase the performance levels of educators and their students.

Discussion: The Department agrees that professional development is an important factor in developing and supporting educators in improving their practices and encourages States and LEAs to collect and share data on professional development, but we do not believe that we should add an indicator requiring a State to report on professional development. However, we note that we have added a new indicator requiring States to make publicly available their Teacher Equity Plans, which include information on teacher professional development, and indicate if they have updated those plans. In addition, we have revised Descriptors (a)(1) and (a)(2) to require States to describe the use of results from teacher and principal evaluation systems in decisions regarding, among other things, professional development.

Changes: The Department has added new Indicator (a)(2) and has also revised Descriptors (a)(1) and (a)(2); these changes are described in more detail in the section of this notice entitled *Education Reform Area (a)—Achieving Equity in Teacher Distribution*.

Comment: One commenter stated that the Department should require each State to indicate whether the information it publicly reports includes information from charter schools and, if such information is not currently available, require the State to provide information in its State plan on the steps it will take to collect information on charter schools.

Discussion: Under the requirements as established in this notice, States will publicly report information on charter schools that are LEAs in the same manner that they provide information on any LEA. Further, information on public charter schools that are not LEAs will be provided in the same manner as for other public elementary and secondary schools.

Additionally, as proposed in the NPR and as established in this notice, the Department is requiring States to collect and publicly report information on the number of charter schools that are permitted to operate and that are actually operating in the State and each LEA (new Indicators (d)(7) and (d)(8) (proposed Indicators (d)(6) and (d)(7))). Moreover, and as discussed in greater detail later in this notice, the Department agrees that it is important to collect information on the academic achievement of students who attend charter schools and has added new Indicators (d)(9) and (d)(10), which measure the performance of charter school students on State assessments in reading/language arts and mathematics.

Changes: The Department has added new Indicators (d)(9) and (d)(10) to education reform area (d). These changes are described in greater detail in the section of this notice entitled *Education Reform Area (d)—Supporting Struggling Schools*.

Comment: A few commenters suggested that the Department create a sequence of reform requirements instead of asking States to implement simultaneous reforms in all areas. They specifically suggested the Department include goals, targets, or benchmarks for improving performance on the indicators and descriptors in order to move States closer to the goal of college and career readiness for all students.

Discussion: Section 14005(d) of the ARRA requires States to take action in each of the education reform areas and the Department envisions that in order to achieve the reform goals States will address each reform area simultaneously. We do not believe it is necessary to establish goals, targets, or benchmarks for improving performance because the purpose of the indicator and descriptor requirements is to provide transparency on the extent to which a State is implementing the actions for which it provided an assurance in its application for initial SFSF funding.

Changes: None.

Burden and Costs

Comment: Many commenters expressed concern that States and LEAs do not have the financial resources necessary to collect and publicly report the data and information that the Department proposed to require of States. One commenter noted that in order to comply with the collection and public reporting requirements, LEAs would need to take staff away from other essential functions. Another commenter stated that the requirements should reflect the fact that the SFSF program will not provide an ongoing source of funding for States.

Discussion: The Department acknowledges that there are costs associated with the data collection and public reporting requirements and encourages States to consider available sources of Federal funds to support this reporting. For example, a State may use SFSF Government Services funds to meet the Phase II application requirements. The Department has also raised the statutory caps on State administration under Title I, part A of the ESEA and part B, section 611 of the Individuals with Disabilities Education Act (IDEA) with respect to funds available for those programs under the ARRA in order to make it easier for States to meet ARRA reporting requirements.

Further, in response to comments, the Department is reducing the burden on States. For example, the Department is not requiring States to provide estimates of teacher impact on student achievement (new Indicator (b)(3) (proposed Indicator (b)(2)) but is now requiring that States provide student growth data to teachers (new Indicator (b)(2)).[4] In the NPR, the Department estimated that the total cost to States, LEAs, and IHEs of meeting the proposed requirements was approximately $61.7 million. Of that amount, approximately $30 million was associated with the costs of providing estimates of teacher impact on student achievement. The Department believes that providing teachers of reading/language arts and mathematics in grades in which the State administers assessments with student growth data will be much less costly.

Furthermore, the Department believes that the potential benefits from collecting and publicly reporting this information (*e.g.*, greater accountability, implementation of a statewide longitudinal data system to inform instruction, and more effective teacher and principal evaluation systems) outweigh the costs associated with the data requirements. The estimated costs and benefits of these requirements are described in greater detail in the *Summary of Costs and Benefits* section of this notice.

Changes: The Department has revised the State Plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)) to remove the requirement that States provide estimates of teacher impact on student achievement.

Comment: A few commenters claimed that the reporting requirements may lead to unnecessary costs for States and LEAs that have already invested time and effort in creating data systems or in implementing school reform programs that are not directly aligned with the assurance areas.

Discussion: The Department does not believe States will need to significantly reconfigure current State data systems in order to meet the ARRA requirement to establish a statewide longitudinal

[4] States are still required, however, to indicate whether they provide reports of individual teacher impact on student achievement through new Indicator (b)(3) (proposed Indicator (b)(2)) and, if they do not, to provide a plan for doing so.

data system that includes the 12 elements identified in the America COMPETES Act (although a State may need to expand its data system in order to include all 12 data elements). The America COMPETES Act predates enactment of the ARRA, and States are already designing data systems that incorporate the America COMPETES Act elements. We note that the elements have also been incorporated into the application requirements and guidance for the Department's Statewide Longitudinal Data Systems Grant program.

As part of the SFSF program, the Department is not requiring States to implement new school reform programs, but to publicly report on the current status of their programs and if they have implemented certain reform models in their persistently lowest-achieving schools.

Changes: None.

Comment: Several commenters supported our proposal to use data that the Department currently collects from States through ED*Facts* to meet the public reporting requirements of the program. Commenters noted that the use of these data would minimize some of the burden associated with the reporting requirements for this program.

Discussion: The Department agrees with the comments and has attempted to reduce the reporting burden by using data from ED*Facts* and other readily available data whenever possible.

Changes: None.

State Plan Requirements

Comment: One commenter suggested that the Department require States to obtain the support of key stakeholders for the plan the State will develop to meet the SFSF requirements. Another commenter suggested that the Department require States to collaborate with youth-serving organizations in their planning efforts so as to ensure the success of every young person; the commenter recommended adding workforce organizations, child welfare and juvenile/criminal justice agencies, and child and youth-serving community-based organizations to the list of stakeholders with whom a State must consult when developing the State plan.

Discussion: The Department recognizes the importance of collaboration and cooperation among educational agencies, community stakeholders, policy-makers, and youth-serving organizations. While the Department encourages States to consult with key stakeholders when developing the State plan, we do not believe it is necessary to require States to consult with stakeholders generally or with any specific group because there will be great variation across States as to the groups with whom it would be appropriate to consult.

Changes: None.

Comment: Many commenters indicated that it is unrealistic to require States to implement their plans by September 30, 2011. One commenter characterized the deadline as arbitrary. Another commenter noted that the deadline will not allow States to collect data reflecting the potentially positive impact of SFSF funds on student achievement. Commenters recommended reconsideration of this timeline. One commenter suggested that the Department grant individual States extensions of the deadline without requiring States to justify such extensions.

Discussion: The Department believes that the requirements of the State plan provide critical information that is more useful to stakeholders if it is presented in a timely manner. Further, the Department believes that two years is an appropriate amount of time to implement a plan to collect and publicly report the required information. However, in recognition of existing State work in transitioning to the adjusted four-year cohort graduation rate, the Department has modified the plan requirements applicable to new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) so that a State is required only to provide evidence that it has developed the means to collect and publicly report the data by the deadline.

As discussed in more detail later in this notice, we are also revising the State plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so. Under the NPR, the State would have been required to provide those teachers with such reports (consistent with the indicator); if the State did not provide those teachers with such reports, it would have been required to submit a plan for how it would develop and implement the means to do so as soon as possible but no later than September 30, 2011.

Changes: The Department has revised the State plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)), new Indicator (c)(11) (proposed Indicator (c)(12)), and new Indicator (c)(12) (proposed Indicator (c)(13)). These revisions are discussed in greater detail later in this notice.

Applications and Approval Criteria

Comment: Three commenters expressed concern regarding the timeline for submission of the SFSF Phase II application, given the extensive information the application requires. One commenter elaborated that the SFSF Phase II application timeline could negatively affect a State's ability to meet the Race to the Top application deadline because, in a July 29, 2009 **Federal Register** notice, the Department proposed that States must have an approved SFSF Phase II application to be eligible for Race to the Top funds. One of these commenters emphasized that SFSF Phase II funds are critical to preventing more serious school aid reductions than those currently under consideration in the State.

Discussion: The Department will review Phase II applications submitted by the deadline, which we will publish in a separate notice in the **Federal Register**, on a timely basis to ensure that States will meet any Race to the Top eligibility requirements related to SFSF application approval and to provide additional resources expeditiously to support elementary, secondary, and postsecondary education.

Changes: None.

Comment: One commenter proposed that the Department include an additional approval criterion requiring States to demonstrate that they have expended their SFSF funds consistent with program requirements.

Discussion: We do not believe that the suggested approval criterion is necessary. States will provide information on the uses of funds in the quarterly reports that they submit pursuant to section 1512 of the ARRA; these reports will be publicly available at *http://www.recovery.gov*. In addition, the Department will collect information on uses of SFSF funds through the annual performance reports States are required to submit under section 14008 of the ARRA. The annual performance reports will be made available to the public on the Department's Web site at *http://www.ed.gov*. Furthermore, during its monitoring of State implementation of the SFSF program, the Department will review State and local uses of program funds to ensure compliance with applicable requirements.

Changes: None.

Indicator and Descriptor Requirements Education Reform Area (a)—Achieving Equity in Teacher Distribution

Teacher Qualifications: Indicator (a)(1)

Comment: Several commenters expressed support for our proposal to use existing data on teacher qualifications from the Department's ED*Facts* system for proposed Indicator (a)(1). These commenters believed that leveraging existing data in ED*Facts* would minimize collection and reporting burden on States and LEAs while still ensuring that high-quality information is provided to the public. However, one commenter requested clarification as to the State's responsibilities for confirming the data in ED*Facts*.

Discussion: In general, we have sought to ensure that existing data from the Department's ED*Facts* system (or other data for which the Department is itself the source) are used to populate the indicators for this program wherever possible so as to minimize the burden on States and LEAs. In this case, we believe that existing data in ED*Facts* on courses taught by highly qualified teachers is appropriate as a measure of States' compliance with the statutory assurance.

As stated in the NPR, a State will not be required to perform any additional analysis or verification in confirming indicator data that are in ED*Facts*. We believe there are sufficient safeguards in place to ensure the completeness and accuracy of data submitted by States in ED*Facts* and do not expect or require a State to reexamine or refresh the data. Rather, the confirmation a State will provide is meant to be limited to an acknowledgment that the data provided by the Department are the same data submitted by the State.

Changes: None.

Comment: One commenter requested that the Department clarify how stakeholders should use the data reported for proposed Indicator (a)(1) to identify inequities in the distribution of highly qualified teachers across LEAs. Specifically, the commenter requested clarification on whether stakeholders should identify inequities by comparing the data generally for all LEAs across the State, or for subsets of LEAs in the State based on shared characteristics such as size or location.

Discussion: The Department is requiring States to make publicly available data on the distribution of highly qualified teachers across LEAs so that educators, policymakers, and other stakeholders may address inequities in the distribution of teachers between high- and low-poverty schools. Decisions on how best to use the specific data should be made at the State and local levels.

Changes: None.

Comment: A few commenters recommended that the definitions of *highest-poverty school* and *lowest-poverty school* applicable to proposed Indicator (a)(1) be revised to require States to identify these schools specifically using data on student eligibility for free- or reduced-price lunches under the Richard B. Russell National School Lunch Act (NSLA), rather than using the poverty measure chosen by the State. One of these commenters asserted that these terms should be given the same meaning across States to prevent inconsistencies in reporting and to ensure that the data reported by States can be aggregated at the national level.

Discussion: The Department permits States to use a poverty measure of their choice when reporting data on courses taught by highly qualified teachers in the highest- and lowest-poverty schools in their Consolidated State Performance Reports and in the annual State Report Cards required under section 1111(h)(1) of the ESEA. While States may and frequently do use student eligibility for free- or reduced-price lunches under the NSLA as the poverty measure for reporting these data, this is not always the case. While the Department appreciates the concern for comparability of data for this indicator, we believe that requiring the use of student eligibility for free- or reduced-price lunches under the NSLA as the poverty measure for this indicator would introduce unnecessary confusion for States that use other poverty measures when reporting data on the poverty level of students in their schools.

Changes: None.

Comment: One commenter recommended that the Department include additional metrics relating to the equitable distribution of teachers that would require States to describe their plans for ensuring, consistent with the statutory assurance, that students from low-income families and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and to describe the measures States would use to evaluate and report on the implementation of those plans.

Discussion: We agree with the commenter on the importance of States' developing plans to ensure equity in the qualifications of teachers serving disadvantaged students and their peers and evaluating the impact of those plans. We note, however, that, to assess States' compliance with the requirements of the ESEA referenced in the statutory assurance in this reform area (*i.e.*, the requirements of section 1111(b)(8)(C)), the Department has previously required States to develop Highly Qualified Teachers State Plans. Included in these plans is a component (known as a ''Teacher Equity Plan'') in which the State describes the steps being taken to ensure that students from low-income families and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.[5] Rather than include indicators that would collect information on this topic that is additional to or duplicative of the information already provided by States in their Teacher Equity Plans, we have added an indicator that requires States to indicate whether they have updated and publicly reported these plans.

Changes: We have revised the indicators in this education reform area to include a new Indicator (a)(2), which requires a State to confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA). With the addition of these Indicators, we have renumbered the remaining Indicators and Descriptors in this Education Reform Area.

Comment: A number of commenters expressed concern that, while proposed Indicator (a)(1) would require States to provide data on the distribution of highly qualified teachers between highest- and lowest-poverty schools, it would not provide similar data with respect to teachers of minority students. These commenters typically recommended that an indicator be added in this education reform area requiring States to provide data on the distribution of highly qualified teachers between highest- and lowest-minority schools; one of these commenters further recommended that the Department include in the final requirements definitions of ''highest-minority school'' and ''lowest-minority school.''

Discussion: As discussed previously, we have revised the indicators in this education reform area to include an indicator requiring a State to confirm that its Teacher Equity Plan accurately and fully reflects the steps the State is

[5] These plans are available at *http://www.ed.gov/programs/teacherqual/hqtplans/index.html.*

taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. These plans include data related to whether minority student populations are served by highly qualified teachers (in addition to data related to whether such teachers serve students from low-income families). We expect that, in confirming or providing their current plans, States will provide up-to-date data on this indicator as well as on the distribution of highly qualified teachers between highest- and lowest-minority schools. For this reason, we do not believe it is necessary to include the additional indicators recommended by the commenters.

Changes: None.

Comment: Several commenters asserted that proposed Indicator (a)(1) would not furnish data on whether students from low-income families or minority students are taught at higher rates than other students by out-of-field or inexperienced teachers. These commenters typically recommended that indicators be added in this education reform area to provide data on the distribution of in-field and experienced teachers between highest- and lowest-poverty schools, as well as between highest- and lowest-minority schools.

Discussion: Inasmuch as we have revised the requirements in this education reform area, as discussed previously, to include an indicator regarding States' Teacher Equity Plans (in which States describe the steps being taken to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers), we do not believe it is necessary to include additional indicators that would provide data specifically on the distribution of in-field or experienced teachers. (We note also that section 9101(23) of the ESEA requires that a highly qualified teacher demonstrate subject knowledge or competence in the subjects the teacher teaches in addition to possessing a State teaching credential; consideration of whether a teacher is teaching in or out of field is, thus, incorporated in the definition of ''highly qualified teacher'' used in Indicator (a)(1).)

Changes: None.

Comment: Several commenters made general statements that the definition of ''highly qualified teacher'' is flawed or does not identify high-quality teachers, though some acknowledged the ''interim utility'' of the term as other, more accurate or more effective measures of teacher quality are considered.

Discussion: While the Department believes that data on highly qualified teachers do have value, we recognize that these data are limited by their sole focus on teacher qualifications. As reflected in the other indicators in this education reform area (discussed in further detail later in this notice), the Department believes that other measures, such as measures of teacher effectiveness, are needed if efforts to identify high-quality teachers are to be successful.

Changes: None.

Teacher and Principal Effectiveness: General

Comment: Several commenters expressed support for including in this education reform area the proposed metrics relating to teacher and principal effectiveness, in particular the indicators on performance ratings from teacher and principal performance evaluation systems (proposed Indicators (a)(2) through (a)(6)). However, several commenters questioned whether the Department had sufficient justification for including these metrics. One commenter asserted that requiring States to collect and publicly report data and information for these metrics is not statutorily relevant, and another asserted that the metrics exceed the requirements of the statute. Another commenter believed that these indicators, as they concern evaluation systems that are typically developed and implemented locally, represent an unwarranted intrusion by the Federal Government into local matters. Another commenter asserted that the ARRA does not provide the Department with the authority to require States to collect and publicly report data and information on principals.

Discussion: We disagree with the commenters that the Department has insufficient justification for establishing these requirements. Section 14005(a) of the ARRA authorizes the Secretary to require States to submit an application for funds under this program containing such information as the Secretary may reasonably require. In addition to requiring States to take actions to address inequities in the distribution of highly qualified teachers, the statutory assurance in this education reform area (section 14005(d)(2)) requires States to ''take actions to improve teacher effectiveness'' and, thus, clearly provides a basis on which to establish requirements for the collection and public reporting of data and information related to teacher effectiveness. As stated in the NPR (74 FR 37838), we believe that local evaluation systems play a principal role in determining teacher effectiveness. Accordingly, we believe that requiring States to collect and publicly report data and information on teacher evaluation systems is reasonable and justified.

With respect to principal evaluation systems, as stated in the NPR (74 FR 37838), effective school administration is a key factor in effective teaching and learning. We likewise believe that local evaluation systems play a primary role in determining the effectiveness of school principals. Accordingly, we believe that requiring States to collect and publicly report data and information on principal evaluation systems is also reasonable and justified.

Changes: None.

Comment: A few commenters stated that, with the proposed metrics, the Department incorrectly or improperly equated the terms ''highly qualified teacher'' and ''effective teacher.''

Discussion: As discussed earlier, the statutory assurance in this reform area provides a basis on which to collect data and information related both to teacher effectiveness and to teacher qualifications. In collecting data and information on both of these items, it is not the intention of the Department to conflate the two; on the contrary, the intent is precisely to acknowledge a difference in these concepts. Historically, in assessing the quality of our nation's teachers, the Department has focused, through ''highly qualified teacher'' measures, on the qualifications of teachers to the exclusion of other factors. By including considerations of teacher effectiveness in the statutory assurance, we believe the Congress has now signaled that this focus is unnecessarily narrow and that additional measures of teacher quality are needed—and, in particular, measures that are associated more closely with the outcomes of teaching and learning than with inputs such as qualifications. The metrics related to teacher effectiveness are accordingly intended to provide new information on teacher quality, separate and apart from information currently available on States' compliance with the highly qualified teacher requirements of the ESEA.

Changes: None.

Comment: One commenter objected to the proposed metrics relating to teacher and principal effectiveness on the grounds that, in estimating the burden associated with these requirements, the Department stated that it does not possess definitive information on the extent to which teacher and principal

evaluations are officially implemented in LEAs.

Discussion: We disagree with the commenter's assertion that a lack of information on whether teacher and principal evaluations are officially implemented in LEAs casts doubt on the justification for these metrics and believe, moreover, that the metrics will help to fill the information gaps that caused the Department's burden estimates to be speculative.

Changes: None.

Comment: Numerous commenters expressed concerns about the utility or purpose of the proposed metrics relating to teacher and principal effectiveness. A few commenters asserted that the data and information collected and publicly reported for these metrics would not enable stakeholders to identify effective teachers or principals or to improve student achievement; to this point, many commenters asserted that, due to variation in the design and implementation of local evaluation systems, the data and information collected and publicly reported for these metrics would not be comparable across LEAs (or States), while another commenter asserted that local evaluation systems are generally of poor quality. In light of concerns about comparability, one commenter suggested that the Department provide a model for reporting the data and information for these proposed metrics, while another commenter recommended that, in lieu of these metrics, the Department instead direct States to develop plans for working with their LEAs to improve evaluation systems and the distribution of effective teachers and principals across LEAs and schools.

Discussion: While we appreciate the questions raised by these commenters regarding the purpose of the data and information that States will collect and publicly report under these metrics, we believe that the metrics will serve a very important purpose, namely, providing new, crucially valuable information on teacher and principal quality. As discussed earlier, information available on teacher and principal quality has historically been limited, at both the State and Federal levels, to information on the qualifications or years of service of teachers. By requiring States to comply with these metrics, the Department intends that new and more comprehensive information will be available for stakeholders and that this availability will, in turn, shift the focus of teacher quality debates toward the effectiveness of educators.

Although variations in the design and implementation of evaluation systems may mean that the data on teacher and principal effectiveness ratings (as required under proposed Indicators (a)(2) through (a)(6)) are not comparable across those systems (*i.e.,* in States that do not require the implementation of uniform evaluation systems across LEAs), such data will nonetheless provide information on teacher and principal effectiveness that is informative for stakeholders, most importantly parents. Although variations in the quality of those evaluation systems may also mean that these ratings data are not reliable in all cases, requiring the reporting of these data for all LEAs will nonetheless shine a light on the limitations of current evaluation systems where they exist and can drive efforts to improve those systems where such improvements are needed. Because the methods for evaluating teachers vary greatly across States and LEAs, the Department does not believe that establishing a national model for reporting these data is appropriate.

Changes: None.

Comment: Several commenters cautioned that the proposed metrics would force standardization upon local evaluation systems (which in some cases would be prohibited by State laws providing for local control over education) and would reduce opportunities for local innovation; related to this point, one commenter requested clarification about whether the proposed metrics would effectively require that all LEAs in a State employ a single, uniform system for evaluating teachers and for evaluating principals and that LEAs aggregate and report results from that system.

Discussion: Although the Department hopes that the metrics in this area will help promote the effective design and use of evaluation systems generally across LEAs and States, we are not requiring with these metrics that States and LEAs implement uniform teacher and principal evaluation practices.

Changes: None.

Comment: Several commenters asserted that the proposed metrics relating to teacher and principal effectiveness would be unduly burdensome on States and LEAs, particularly on small States and States with many small LEAs. A few of these commenters requested that the Department provide States with the flexibility in meeting these requirements, such as by collecting the data and information for a representative sample rather than for all of the LEAs in the State.

Discussion: We recognize that the proposed requirements for this program place some burden on States and LEAs and have sought to reduce that burden significantly, as reflected in the changes to the proposed requirements discussed elsewhere in this notice. With respect to these indicators, however, we continue to believe that the benefits of collecting and reporting the data and information for all LEAs outweigh the costs of doing so.

Further, we do not believe that it would be sufficient to report data for only a sample of LEAs. The Department believes that the State should make this information publicly available for all LEAs so that each LEA can make any necessary reforms.

Changes: None.

Comment: A few commenters recommended that the Department review data collections currently in the ED*Facts* system to ascertain whether data for the proposed metrics on teacher and principal effectiveness are already available or potentially available through modifications to other data. Related to this point, one commenter noted that new data collection requirements may not be the most immediately effective means for measuring a State's compliance with the statutory assurance, given the amount of time and effort initially needed to meet the requirements.

Discussion: The Department appreciates these comments and, as noted, has sought to use data and information from existing Department collections in the metrics for this program to the extent possible. However, the Department does not currently collect data related to teacher and principal effectiveness from States through the ED*Facts* system or other systems so it is necessary for us to establish a new requirement for the collection of those data.

Changes: None.

Comment: One commenter requested clarification as to whether the collection and reporting of data and information for the proposed metrics relating to teacher and principal effectiveness must occur regularly or one time only.

Discussion: Consistent with the final State Plan requirements established in this notice, a State must collect and publicly report the data and information required for these metrics at least annually and must be able to complete its first collection and reporting of the data and information as soon as possible but no later than September 30, 2011. The Department will determine at a later date whether the collection and public reporting of these data and information will continue after September 30, 2011.

Changes: None.

Comment: A few commenters recommended that the Department or States take a more proactive approach toward improving teacher and principal evaluation systems and developing effective school personnel than what is reflected in the proposed metrics in this area. These commenters' recommendations include the following: the Department should promote the development of evaluation systems that are specifically designed for that purpose, incorporate student achievement and evidence-based instructional practices as evaluation criteria, and use a range of ratings beyond simple bimodal ratings (*e.g.,* ''meets expectations'' versus ''does not meet expectations''); the Department should define ''teacher effectiveness'' and provide guidance to States and LEAs on how to align evaluation systems with that definition; the Department should provide guidance to States and LEAs on standards for principal evaluation; and States should work toward developing systems for licensing teachers based on effectiveness.

Discussion: We appreciate these recommendations and agree in large part that the Department should play a role in supporting the development of effective teachers and principals and the systems used to evaluate their performance. In fact, the Department has sought and continues to seek to promote the implementation by States and LEAs of evaluation systems that produce meaningful and actionable information on teacher and principal effectiveness through its competitive grant programs, including the Teacher Incentive Fund. While we will take these recommendations into consideration for those programs and in future policymaking (including in the reauthorization of the ESEA), we do not believe it would be appropriate to incorporate them formally into the requirements for this program.

Changes: None.

Comment: Several commenters recommended that the Department include additional metrics related to effective teaching and learning, including: Indicators about State efforts to improve teacher preparation, recruitment, and compensation; indicators about factors likely to attract high-quality teachers to struggling schools, such as teaching and learning conditions, leadership, safety, autonomy, and flexibility; indicators about other factors likely to affect student achievement, such as class size, attendance, and student migration; indicators relating to specific educational actions and practices in schools that lead to dramatic gains in student achievement; indicators on the teaching of Advanced Placement, International Baccalaureate, and other advanced courses in secondary schools; and an indicator on teacher attendance, particularly in high-poverty schools.

Discussion: Although the Department believes that there is value in establishing indicators such as those mentioned by the commenters in the requirements for this program, we are mindful of ensuring that we minimize to the extent possible the burden on States and LEAs in meeting these requirements and, in this instance, do not wish to create additional burden in the form of additional requirements.

Changes: None.

Teacher and Principal Effectiveness: Descriptors (a)(1) and (a)(2)—Evaluation System Descriptions

Comment: One commenter requested clarification as to the purpose of the proposed requirements to describe the systems used to evaluate the performance of teachers and principals in LEAs (Descriptors (a)(1) and (a)(2)). The commenter intimated that the proposed descriptors were unnecessary and that indicators alone should be sufficient to provide information on teacher and principal effectiveness.

Discussion: As reflected in the NPR and discussed previously in this notice, we believe that descriptions of teacher and principal evaluation systems will provide stakeholders with much-needed (and, often, otherwise unavailable) information on the design and usage of these systems in LEAs and States. Moreover, we believe that these descriptions will provide necessary context for the data and information collected and reported for the indicators on ratings received by teachers and principals from these systems (new Indicators (a)(3) through (a)(7) (proposed Indicators (a)(2) through (a)(6)); without information on the design and usage of evaluation systems, data on these ratings may be too open to interpretation by stakeholders and may ultimately not be useful.

Changes: None.

Comment: Several commenters requested that the Department provide more information or greater prescription on the proposed requirements to describe the systems used to evaluate the performance of teachers and principals in LEAs. Several commenters recommended that the Department further specify the information that should be included in providing these descriptions, and a few commenters inquired as to whether the Department would provide a sample or rubric for the descriptions. A few other commenters recommended or intimated that States be required to describe specific components or aspects of evaluation systems used in LEAs, such as purpose, methodology, participants, frequency of implementation, feedback protocols, and procedures for review and appeals. In contrast, one commenter recommended that States be provided flexibility in the types of information or level of detail to be included in these descriptions.

Discussion: We agree that more information on how States may meet the requirements to describe teacher and principal evaluations is necessary and will address this issue in guidance for this program. In recognition, however, of the limited availability of information on a ''typical'' evaluation system and the potential for wide variation in these systems across LEAs and States, and also of the additional burden that may be conferred upon States and LEAs in responding to additional requirements, we do not believe it would be appropriate to include additional requirements in this area.

Changes: None.

Teacher and Principal Effectiveness: New Indicators (a)(3) and (a)(6) (Proposed Indicators (a)(2) and (a)(5))—Whether Systems Include Student Achievement Outcomes as Evaluation Criterion

Comment: One commenter expressed support for proposed Indicators (a)(2) and (a)(5), which ask whether the systems used by LEAs to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criterion, and encouraged the Department to promote the use of such outcomes in performance evaluations. A number of other commenters expressed concern about these proposed indicators. These commenters asserted that fair and effective teacher and principal evaluation systems include multiple evaluation criteria and/or employ comprehensive evaluation frameworks and that, through the proposed indicators, the Department was placing undue weight or focus on the inclusion of student achievement outcomes to the detriment of other factors important to evaluation. One commenter asserted that using student achievement outcomes in evaluating teachers and principals is inappropriate.

In light of concerns such as these, a few commenters recommended that the Department ask for data or information on specific criteria used to evaluate teacher and principal performance other than student achievement outcomes,

such as preparation, planning, teaching practices, leadership skills, cultural competence, extracurricular roles and assignments, working conditions, and staff turnover rates.

Discussion: The Department agrees that teacher and principal evaluation systems generally should include, in addition to criteria relating to student achievement outcomes, other criteria such as those noted by the commenters. In providing the descriptions of teacher and principal evaluation systems under Descriptors (a)(1) and (a)(2), we encourage States to include discussion of those criteria. (As noted previously, the Department plans to provide guidance for this program that will provide more information to States on describing their teacher and principal evaluation systems; among other topics, this guidance will address the information a State may want to include in these descriptions with respect to evaluation criteria.)

However, we also believe that student achievement outcomes are a central factor in evaluation systems that yield fair and reliable assessments of performance (as stated in the NPR (74 FR 37838)). Therefore, we believe that requiring States to report on the inclusion of student achievement outcomes as a specific criterion in evaluation systems is warranted.

Changes: None.

Comment: Several commenters recommended that we include indicators to address whether teacher and principal evaluation systems incorporate opportunities for feedback and professional development and the nature or types of those opportunities.

Discussion: The Department agrees that strong teacher and principal evaluation systems will include mechanisms for providing teachers and principals with feedback about their performance and for identifying professional development and other support needs and opportunities based on those results. We encourage States to discuss the inclusion of these elements in their descriptions of teacher and principal evaluation systems under Descriptors (a)(1) and (a)(2), but are not requiring States to collect and report information separately and specifically on these elements as part of the requirements for this program.

Changes: None.

Comment: Several commenters objected to the Department's proposal to require the use of student achievement outcomes in teacher and principal evaluations on the grounds that to do so exceeds the requirements of the statute or is not supported by research.

Discussion: These commenters appear to misunderstand the requirements proposed by the Department. Although (as discussed previously) we believe that student achievement outcomes are a central factor in effective teacher and principal evaluations, we are not requiring, through new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)), the use of student achievement outcomes as an evaluation criterion; rather, we are requiring merely that States indicate whether such outcomes are used in local teacher and principal evaluation systems.

Changes: None.

Comment: Several commenters asserted that student assessment results should not be the sole or central student achievement outcome used in teacher and principal evaluations and that multiple other outcomes should be considered, such as grades; portfolios; and results of written work, group work, presentations, and ''capstone'' projects. In contrast, one commenter recommended that the definition of *student achievement outcomes* include only summative and interim assessments, and another commenter suggested that, in the evaluation of principals, student growth should be the only student achievement outcome specified.

Discussion: We agree with the commenters that student assessment results should not be the sole achievement outcome used in evaluating teachers and principals. The definition of *student achievement outcomes* applicable to new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)) includes, in addition to student assessment results, student grades and rates at which students are on track to graduate from high school and does not prohibit the consideration of additional outcomes in teacher and principal evaluations, provided at least one of these outcomes is used. Further, we note that the purpose of the definition of *student achievement outcomes* is, again, not to require the use of any specific student achievement outcome in teacher and principal evaluations, but rather to specify the types of student achievement outcomes that a State would include when responding to the indicators. Although (as reflected in the discussions earlier in this notice) the Department believes that such outcomes should be included in local evaluation systems, a State and its LEAs remain permitted to use these or other achievement outcomes or no such outcomes at all.

Changes: None.

Comment: A number of commenters expressed concern about the specific use of results from academic assessments administered by the State for accountability purposes as a student achievement outcome in teacher and principal evaluations. One commenter noted that using such results to evaluate teachers and principals is prohibited by law in the commenter's State. Several other commenters cautioned against using State assessment results to evaluate teacher and principal performance as such assessments, they believe, are not designed specifically for this purpose. In contrast, one commenter recommended that the definition of ''student achievement outcomes'' applicable to proposed Indicators (a)(2) and (a)(5) include State academic assessments only or primarily, so as to prevent inconsistencies in reporting and the uncoupling of instruction from State standards.

Discussion: As discussed previously, new Indicators (a)(3) and (a)(6) (proposed Indicators (a)(2) and (a)(5)) do not require the use of any specific student achievement outcome (including results from student assessments such as the State's assessments) in teacher and principal evaluations. If an LEA or State were to use student assessment results as an evaluation criterion, it would be free to use results from assessments other than the State assessments if it finds those assessments to be appropriate or effective (and permissible) in the teacher or principal evaluation context.

Changes: None.

Comment: One commenter suggested that using student assessment results may be problematic in cases where teachers and principals are not evaluated on an annual basis.

Discussion: As stated previously, the Department is not requiring the use of student assessment results in teacher and principal evaluations as part of the requirements for this program. In general, however, the Department does not believe that considerations of the frequency of teacher and principal evaluations should negatively affect decisions to include results from student assessments in those evaluations. In the Department's view, there is nothing to prevent LEAs from using student assessment results over multiple years in evaluations of teachers and principals if such evaluations occur less than annually.

Changes: None.

Comment: One commenter requested clarification of the phrase ''rates at which students are on track to graduate from high school,'' which is included among the outcomes identified in the Department's definition of *student achievement outcomes* applicable to

proposed Indicators (a)(2) and (a)(5). The commenter asserted that this phrase is ambiguous as written.

Discussion: Although we are uncertain of the ambiguity to which the commenter is referring, we will further clarify this phrase in guidance for this program.

Changes: None.

Comment: One commenter requested clarification as to the relationship between proposed Indicators (a)(2) and (a)(5) and the proposed selection criterion for the Department's Race to the Top Fund regarding the extent to which an applying State, in collaboration with its LEAs, has a plan to increase the use of student growth as a significant factor in the evaluation of teachers and principals.

Discussion: In the July 29, 2009 notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top Fund, the Department proposed a definition of ''student growth,'' which defined that term as the change in achievement data for an individual student between two points in time. We agree that, to the extent possible, there should be consistency in definitions across programs.

Changes: The Department has revised proposed Indicators (a)(2) and (a)(5) so that States will now report on the extent to which systems used to evaluate the performance of teachers and principals include student achievement outcomes or student growth data as an evaluation criterion. These Indicators have been renumbered as Indicators (a)(3) and (a)(6) respectively.

The Department has also added a new definition of *student growth*, which is defined as the change in achievement for an individual student between two or more points in time. The definition further provides that for grades in which the State administers summative assessments in reading/language arts and mathematics, student growth data must be based on a student's score on the State's assessment under section 1111(b)(3) of the ESEA. A State may also include other measures that are rigorous and comparable across classrooms.

Teacher and Principal Effectiveness: New Indicators (a)(3) Through (a)(7) (Proposed Indicators (a)(2) Through (a)(6))

Comment: A few commenters expressed support for proposed Indicators (a)(2) through (a)(6) pursuant to which States would be required to provide data and information on the performance ratings of teachers and principals. These commenters further recommended that additional information be collected and reported on the teachers and principals receiving the lowest ratings from evaluations, including whether those teachers and principals continue teaching or remain employed by the LEA.

Discussion: We appreciate the commenters' support for these indicators and agree that information such as that suggested by the commenters would be valuable to collect. We are mindful here, however, of local restrictions on reporting data on the outcomes of teacher and principal evaluations in terms of retention or removal, and thus believe it would be more appropriate to collect information on policies for the use of evaluation results, rather than actual outcomes. In addition, we believe that it is important to collect information on the use of evaluation results not just with respect to teacher and principal retention and removal, but for other employment decisions as well, such as development, compensation, and promotion.

Changes: We are revising Descriptors (a)(1) and (a)(2) to require States also to describe the use of results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

Comment: A few commenters requested clarification as to how these requirements could be met in the case of an LEA whose evaluation system does not provide ratings or levels. One of these commenters questioned whether reporting would be required for an LEA that uses its evaluation system to determine whether teachers or principals meet or do not meet expectations but does not otherwise implement a rating scale.

Discussion: The Department will provide guidance to States on how to publicly report indicator data for LEAs whose evaluations systems do not produce ratings or levels for teacher or principals. We note here, however, that we would consider binary classifications of effectiveness (*e.g.,* ''meets expectations'' versus ''does not meet expectations'') as effectiveness ratings and that States should include LEAs using such classifications when publicly reporting data on these indicators.

Changes: None.

Comment: A number of commenters expressed concerns about ensuring that teacher and principal privacy is protected in publicly reporting data and information for these proposed indicators. In general, these commenters asserted that information that is personally identifiable must be protected and not made publicly available. In support of this assertion, one commenter stated that reporting personally identifiable information may violate employment laws, and another stated that reporting such information is prohibited by a court ruling in the commenter's State. Other commenters asserted or suggested that reporting personally identifiable information unfairly affects teachers and principals in small and rural LEAs.

Discussion: We agree that teacher and principal privacy must be protected and will provide guidance to States on publicly reporting data and information for these indicators in a manner that achieves the twin goals of optimized reporting and protection of personally identifiable information.

Changes: None.

Comment: One commenter requested clarification as to whether and how the requirements of the Family Educational Rights and Privacy Act (FERPA) apply to the public reporting of data and information for the proposed indicators.

Discussion: The requirements of FERPA apply to the disclosure of information from education records of students. They do not address disclosure of information in records relating to the employment of teachers and principals and, thus, do not apply to the collection and public reporting of data and information for new Indicators (a)(3) through (a)(7) (proposed Indicators (a)(2) through (a)(6)).

Changes: None.

Comment: One commenter noted that teacher evaluations are typically performed by principals and claimed that collecting and publicly reporting the data and information for proposed Indicators (a)(3) and (a)(4) would have the unintended consequence of principals providing all teachers with the same rating out of fear of public scrutiny.

Discussion: We believe that concern over this potential consequence is outweighed by the value to stakeholders and other interested parties of making the data and information for these indicators publicly available. In addition, we question whether this concern is warranted, as a public observer would typically expect to see variation in ratings according to performance and, accordingly, would be struck by a decision to provide all teachers with a uniform rating.

Changes: None.

Comment: One commenter requested clarification as to whether the collection and public reporting of data for the proposed indicators on the ratings of teachers (proposed Indicators (a)(3) and (a)(4)) would apply only with respect to teachers who meet the definition of ''highly qualified teacher.''

Discussion: The collection and public reporting of data for these indicators applies with respect to all teachers who receive ratings from the evaluation systems, not just to those who are highly qualified.

Changes: None.

Comment: One commenter requested clarification as to how full-time equivalent teachers should be calculated for purposes of reporting data on the proposed indicators on the ratings of teachers.

Discussion: In reporting data for these indicators, teacher ''head counts'' should be used rather than full-time equivalent counts. In other words, data should be reported for each teacher who receives a rating from the evaluation system regardless of the full-time or part-time status of that teacher.

Changes: None.

Comment: Regarding the indicator on whether the number and percentage of teachers rated at each performance rating or level are available for each school in the LEA in a manner easily accessible and a format easily understandable by the public (proposed Indicator (a)(4)), one commenter requested clarification on the meaning of ''in a manner easily accessible and a format easily understandable by the public.'' Specifically, the commenter sought clarification as to whether this phrase meant that, to respond affirmatively to this indicator, the data for an LEA must be made available in multiple languages.

Discussion: The Department did not intend by the referenced phrase to require the reporting of data in multiple languages. To clarify the Department's intent, we are revising new Indicator (a)(5) (proposed Indicator (a)(4)) to require States to indicate, for each LEA, whether teacher performance data are publicly reported for each school in the LEA, consistent with the definition of *publicly report* that we have established in this notice. Accordingly, this indicator concerns whether such data are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information.

Changes: We are revising new Indicator (a)(5) (proposed Indicator (a)(4)) to require States to indicate, for each LEA, whether teacher performance data are publicly reported for each school in the LEA, consistent with the definition of *publicly report* that we have established in this notice.

Education Reform Area (b)—Improving the Collection and Use of Data

Indicator (b)(1)

General

Comment: Numerous commenters opposed the proposed requirement that States have in place, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system (SLDS) that contains all of the elements described in section 6401(e)(2)(D) of the America COMPETES Act (COMPETES Act). They described the deadline as arbitrary and unrealistic, and indicated that it would not allow States sufficient time to plan, develop, and implement a system that includes valid and reliable data.

The commenters presented various arguments why States would not be able to meet this deadline. One commenter indicated that States would need more time to build teacher knowledge, support, and trust around the implementation of an SLDS. Another commenter emphasized that the Department should consider that it takes time to collaborate and build trust among the various stakeholders involved with such systems. Another argued that States would be unable to meet the deadline because Federal law does not currently authorize the sharing of data between K–12 and postsecondary systems. Finally, several commenters indicated that States would not have the financial resources necessary to develop and implement an SLDS by the September 30, 2011 deadline.

Some commenters suggested alternative deadlines for the establishment of an SLDS. A few of these commenters argued that the Department should establish deadlines on a State-by-State basis, taking into consideration a State's current progress in developing such a system. Others argued that States that have received an award under the Department's SLDS grant program should be permitted to abide by the implementation timeline under that program. One commenter recommended accelerating the deadline to September 30, 2010 to ensure that States comply with the requirement before the September 30, 2011 deadline for obligating SFSF funds. One commenter argued that data collected as early as 2011 will not reflect the potentially positive impact of SFSF funds on student achievement.

Discussion: The ARRA requires every State receiving SFSF funds to implement an SLDS that contains all of the elements specified in section 6401(e)(2)(D) of the COMPETES Act. While the ARRA does not establish a specific deadline for States to implement such a system, the Department believes that the ability of States to collect and analyze data is vital to advancing essential education reforms. As a result, the Department is encouraging States to implement an SLDS as soon as possible and is requiring that they do so no later than September 30, 2011. The Department believes that two years is sufficient time for each State to implement fully an SLDS, including to consult with key stakeholders, regardless of how many of the required elements it currently has in place. We do not agree that the timeline should be shortened, recognizing that the full development and implementation of these systems, in many cases, could not be accomplished in less than a year.

To meet the costs of developing and implementing an SLDS, States have available a number of resources. States may use the Government Services funds they have received under SFSF and funds awarded under the Department's SLDS Grant program. States may also use funds they receive under the Race to the Top Fund to develop and implement an SLDS.

Federal law does not prohibit the sharing and use of data between K–12 and postsecondary systems, provided that certain Federal requirements are met, so there is no reason to extend the deadline on that basis. Elsewhere in this section, we provide a fuller discussion of issues relating to data sharing and student privacy.

Changes: None.

Comment: One commenter suggested that the Department consider using the Data Quality Campaign's (DQC) collection efforts on statewide longitudinal data systems in order to minimize the State reporting burden and consider pre-populating the SFSF reporting tool with the information reported to DQC.

Discussion: The Department appreciates DQC's role in collecting and analyzing information on States' efforts in developing statewide longitudinal data systems. The information States voluntarily collect and provide to the DQC is valuable in measuring States' progress on SLDS development and should facilitate States' ability to report the requirements in the SFSF. The Department, however, is not using the data provided by States through the annual DQC survey for several reasons. First, DQC's survey does not fully align with the elements specified in the COMPETES Act. Second, we do not believe it is appropriate to rely on data collected by a third party to confirm States' efforts with respect to the

development and implementation of an SLDS that includes all of the elements specified in the COMPETES Act. Finally, we note that if States are collecting and providing this information to the DQC, it should not pose much additional burden on States to provide similar information to the Department.

Changes: None.

Comment: Some commenters urged the Department to focus on both governance and implementation of an SLDS to ensure meaningful data may be accessed by teachers and administrators to inform decisions and instruction. One commenter noted that access and use by teachers and administrators are key elements in the development of an SLDS. A few commenters requested that the Department provide guidance on how, in establishing an SLDS, a State should address such issues as governance, professional development, security, identity management, process controls, operations, and sustainability.

Discussion: When developing their plan for developing and implementing an SLDS, we encourage States to consider not only the technical requirements, but also governance issues, administrative needs, and access and use by practitioners. The Department agrees that successful management is important in establishing an SLDS that will be used effectively. The Department encourages each State to describe in its plan how it will address governance and management issues in the development and implementation of its SLDS.

To assist in system design and development, the National Center for Education Statistics (NCES) has posted standards and guidelines at the following Web site: *http://nces.ed.gov/Programs/SLDS/standardsguidelines.asp.* The NCES handbooks available at this Web site include schemas of the Schools Interoperability Framework Association and the Postsecondary Electronic Standards Council, the National Education Data Model of the National Forum on Education Statistics, the data glossary of NCES' Integrated Postsecondary Education Data System, and others. Work is currently underway to create comprehensive standards and guidelines for use by States to promote data quality and interoperability of data systems both within States and across States. The NCES site will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: A few commenters expressed concern that the notice did not address the role of professional development as a key component of implementing an SLDS and recommended that the Department require States to address the provision of professional development in their plans. Commenters also noted that addressing professional development needs in order to ensure that an SLDS is used effectively by teachers will result in additional financial burden on the States.

Discussion: The Department agrees that professional development plays a key role in ensuring that teachers and administrators are prepared to use the SLDS effectively to improve teaching and learning. The Department encourages a State to consider the professional development needs of educators when preparing its plan for implementing its SLDS. We encourage States and LEAs to use all appropriate funding sources, including those identified earlier, to support their efforts, including efforts to provide professional development.

Changes: None.

Comment: One commenter expressed concern that there were not adequate incentives for IHEs to provide the data needed for inclusion in an SLDS. One commenter stated that LEAs and States should coordinate efforts in developing an SLDS so that compatible systems are established and so that LEAs do not develop data systems that are incompatible with the SLDS.

Discussion: A high-quality SLDS containing data on students from pre-K through postsecondary education should benefit IHEs as well as LEAs and elementary and secondary schools. In developing its SLDS, a State should consult with IHEs, LEAs, and other appropriate stakeholders to ensure that the SLDS meets the needs of these various entities. Inasmuch as each State's governor assured in the State's SFSF Phase I application that the State would develop an SLDS, the governor is in a unique position to bring all of these stakeholders together to collaborate on SLDS development and implementation.

Changes: None.

Comment: Some commenters suggested that the Department provide guidance to States on how they might work together on the development of an SLDS, especially with regards to reporting data on students who move across State lines or students from the State who attend an out-of-State IHE or school. A few commenters also requested that the Department identify or develop grant opportunities that encourage States to work together to create compatible data systems. Another commenter suggested that the Department establish a uniform methodology and clearinghouse for data-sharing among State agencies.

Discussion: The Department encourages States to work together and share best practices in creating and implementing their SLDSs, in particular with respect to the reporting of data for students from the State who attend out-of-State IHEs or schools or students who have moved across State lines. We note that the Department has proposed, for the Race to the Top Fund, to establish an invitational priority for States that propose to work together to adapt one State's statewide longitudinal data system so that it may be used, in whole or in part, by other State(s), rather than having each State build or continue building its system independently. The Department will consider issuing guidance to States on ways they can collaborate with each other in developing these systems.

The Department does not plan to establish a uniform methodology and clearinghouse for data sharing among the States because the Department's goal is to assist States in developing individual data systems that can provide important data at the State, LEA, and school levels.

Changes: None.

Comment: One commenter claimed that the Department's proposal requires States to align all courses with a common core curriculum. This commenter requested that in establishing final requirements for the SFSF program, the Department reconsider the date by which States must implement an SLDS and allow States time to establish common standards and update their SLDS with those standards so as not to duplicate effort.

Discussion: The Department is not requiring that a State align all courses with a common core curriculum or that a State use a common set of standards in its SLDS. Under the ARRA, States receiving SFSF funds must establish and implement an SLDS that includes all 12 elements required under the America COMPETES Act, but these elements do not include alignment with a common core curriculum. While the Department encourages State participation in the development of common internationally benchmarked standards and assessments, we believe that the implementation of a high-quality SLDS need not wait for those activities to be completed.

Changes: None.

Compliance With the Family Educational Rights and Privacy Act

Comment: Some commenters questioned whether establishing and implementing an SLDS in the manner proposed in the NPR would violate State and Federal law, including FERPA. In this regard, a number of commenters noted that some of the Department's past interpretations of FERPA may pose a barrier to States' ability to establish an SLDS that contains all 12 COMPETES Act elements and still comply with FERPA. One commenter requested that any data collection that violated FERPA or other Federal law be deleted from the indicators and descriptors.

Many commenters supported the Department's commitment in the NPR to provide guidance regarding statewide longitudinal data systems and FERPA. The commenters suggested that the Department provide guidance or clarity on such issues as the ability to collect, report, audit, and share information between State agencies.

Discussion: The establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, by itself, does not violate FERPA. The actual implementation of such a system (including the disclosure and redisclosure of personally identifiable information from education records) also does not violate FERPA provided that States follow FERPA's specific requirements. In the following sections, in response to specific questions from commenters, we provide greater detail about how an SLDS may be established and implemented in compliance with FERPA. The Department is not aware of any other Federal laws that would prohibit or pose barriers to a State establishing an SLDS.

To the extent that State laws present barriers to the development of an SLDS in compliance with the ARRA, the State will likely need to take specific actions to address those barriers. As part of its application, each State will identify any obstacles, including legal barriers, that may prevent it from implementing an SLDS by the September 30, 2011 deadline. The Department will provide further clarification in this area as warranted.

Changes: None.

Comment: Some commenters expressed concerns that the requirement to collect and report student data from out-of-State IHEs would violate FERPA. A few commenters asked the Department to provide guidance on how States can collect data on remedial coursework on students who attend out-of-State or private IHEs.

Discussion: Proposed Indicator (c)(13) would have requested that States collect and report college course completion data for students who enroll in a public IHE, whether or not the IHE is in-State or out-of-State. We recognize that collection of data from out-of-State IHEs in a FERPA-compliant manner could be burdensome on States and, therefore, are revising this Indicator to provide that States need only collect and publicly report these data from public IHEs within the State. We also encourage States to consult the NCES Web site for further assistance in developing statewide longitudinal data systems. This Web site can be accessed at *http://nces.ed.gov/dataguidelines/.*

Changes: We have modified new Indicator (c)(12) (proposed Indicator (c)(13)) to require that States provide college course credit data only for students enrolled in public in-State IHEs.

Comment: One commenter suggested that, because States may collect data only for those students who approve the release of their student records, the data would not be reliable.

Discussion: As discussed in more detail later in this section, under various exceptions in FERPA, a State may collect and disclose student-level data for the purpose of evaluating education programs and improving instruction without prior written student or parent consent. Moreover, the Department is not asking States to collect data only for those students who approve the release of information from their student records.

Changes: None.

Comment: Several commenters recommended that the Department clarify whether States have the authority under FERPA to share data between pre-kindergarten-through-grade-12 (pre-K–12) and postsecondary data systems, particularly with respect to the requirements in new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) that States collect and report student-level college enrollment and course completion information. One commenter specifically asked whether a State educational agency (SEA) may access postsecondary education records of former students without explicit student permission.

Discussion: As stated earlier, the establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, including the sharing of data between pre-K–12 and postsecondary data systems, by itself, does not violate FERPA. States also may implement an SLDS that includes the disclosure and redisclosure of personally identifiable information from education records in a manner that complies with FERPA.

We first address the question of the disclosure and redisclosure of personally identifiable information in the pre-K context. The disclosure of personally identifiable information from pre-K programs to LEAs is not affected by FERPA with respect to pre-K programs that do not receive funding from the Department, as FERPA does not apply to those programs. With respect to pre-K programs that receive funding from the Department, the non-consensual disclosure of personally identifiable information from the students' pre-K education records to LEAs is permitted under the enrollment exception in the FERPA regulations, provided that certain notification and access requirements are met (20 U.S.C. 1232g(b)(1)(B); 34 CFR 99.31(a)(2) and 99.34).

The second issue raised by commenters involves the sharing of information between postsecondary institutions and SEAs. Similar to the pre-K context, the non-consensual disclosure of personally identifiable information from K–12 education records to a postsecondary institution is permitted under the enrollment exception, provided the notification and access conditions are met. A postsecondary institution may disclose personally identifiable information to an SEA under the evaluation exception if the SEA has the authority to conduct an audit or evaluation of the postsecondary institution's education programs (20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5); 34 CFR 99.31(a)(3) and 99.35). States that have not established the requisite authority may do so in a number of ways, such as (1) creating an entity in the State to house the SLDS and endowing that entity with the authority to conduct evaluations of elementary, secondary, and postsecondary education programs, or (2) granting authority at the SEA or IHE level to conduct evaluations of elementary, secondary, and postsecondary education programs. States may grant authority through various vehicles, including, for example, executive orders, regulations, and legislation. In some States, the formation documents for SEAs, IHEs, or other educational entities may already grant the necessary authority.

The Department recognizes that there is considerable variation among States' governance structures and laws, and that in some States using the evaluation exception to obtain personally identifiable information from

postsecondary institutions may be difficult. The Department is currently reviewing its regulations and policies in this area and will be in close communication with States over the next several months regarding these issues. Of course, the Department also is available, upon request, to provide States with technical assistance on how to implement an SLDS that meets the requirements of FERPA.

Changes: None.

Comment: One commenter encouraged the Department to revisit FERPA interpretations related to SLDSs, including on the issue of sharing data between SEAs and State workforce agencies.

Discussion: Under current Department regulations, FERPA prevents SEAs and LEAs from non-consensually disclosing personally identifiable information from education records to State workforce agencies. However, the sharing and reporting of personally identifiable information from education records in de-identified form is permissible under FERPA (*see* 34 CFR 99.31(b)). Furthermore, the reporting of individually identifiable data by a State agency that does not maintain education records is not covered by FERPA inasmuch as FERPA applies only to the disclosure of student-level data *from* education records. In other words, because the data maintained by a workforce agency is not in an education record, FERPA does not apply and, accordingly, does not present a barrier to the disclosure of such data by State workforce agencies to educational agencies, to IHEs, or to the State agency that maintains the SLDS.

Changes: None.

Comment: One commenter requested that the Department clarify its position on the National Student Clearinghouse's ability to verify college enrollment and course completion data.

Discussion: To the Department's knowledge, while the National Student Clearinghouse does have the capacity to verify student enrollment, persistence, and graduation data for the vast majority of IHEs, it does not collect course completion data.

Changes: None.

America COMPETES Act Elements

Comment: One commenter recommended that we define what it means for students to transition successfully from secondary school to postsecondary education, which is one of the elements for an SLDS described in the America COMPETES Act. Another commenter outlined challenges in tracking students after they graduate from high school, including difficulty in disaggregating data by subgroups in a manner that is statistically accurate due to the fact that most high school graduating classes have 100 or fewer students.

Discussion: The Department does not have a definition of ''successful transition'' at this time. States and LEAs may use many indicators to determine successful transition, which may include the ability to transition from secondary school to postsecondary school within four to six years, an analysis of trends in student demographics, program participation rate, courses taken or passed as they relate to participation in remediation programs in postsecondary education settings, time needed to graduate, and differences in retention and persistence in community colleges versus four-year institutions.

As discussed previously, to assist in SLDS design and development, NCES has posted standards and guidelines at the following Web site: *http://nces.ed.gov/Programs/SLDS/standardsguidelines.asp*. The NCES handbooks available at this Web site include schemas of the Schools Interoperability Framework Association and the Postsecondary Electronic Standards Council, the National Education Data Model of the National Forum on Education Statistics, the data glossary of NCES' Integrated Postsecondary Education Data System, and others. Work is currently underway to create comprehensive standards and guidelines for use by States in promoting data quality and interoperability of data systems both within States and across States. The NCES site will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: One commenter requested that the Department provide its long-term expectations regarding the higher education data elements of an SLDS so that States may set up their systems to meet those goals and any future requirements. One commenter recommended that the Department publish criteria to judge the efficacy of SLDSs.

Discussion: As noted previously, work is underway to create comprehensive standards and guidelines for use by States to promote data quality and interoperability of data systems that span early childhood through postsecondary education. The NCES site referenced previously will be modified, as appropriate, to include up-to-date resources.

Changes: None.

Comment: Two commenters recommended that the Department clarify whether the requirement in the COMPETES Act that the SLDS have the capacity to communicate with higher education data systems means data integration or two-way communications. Another commenter asked whether these data can be merged for program evaluation and policy analysis purposes.

Discussion: The COMPETES Act specifies that an SLDS have the capacity to communicate with higher education data systems. Therefore, statewide longitudinal data systems should have the ability to link an individual student record from one system to another. Additionally, these systems should meet interoperability and portability standards, which will ensure that the systems provide timely and reliable opportunities to share data across different sectors within a State and across States. Timely and reliable information from across sectors will facilitate the evaluation of which program or combinations of programs is improving outcomes for students.

Changes: None.

Comment: One commenter expressed concern that the requirement that the SLDS communicate with postsecondary education data systems does not account for students who choose a postsecondary path other than higher education (*i.e.*, military or employment credentials). Another commenter recommended that the Department collect data on students who enter the workforce or apprenticeship programs, or follow some form of career and technical training path after high school.

Discussion: The Department acknowledges the importance of collecting data on students who enter careers or technical training upon graduating from high school. However, for the purposes of the SFSF program, the Department has chosen to focus its data collection and public reporting requirements on college enrollment and course completion. The measures included in this notice will allow parents, educators, and other key stakeholders to measure the efficacy of secondary schools in preparing their graduates for success in college. In addition, collecting and publicly reporting data on students entering employment or technical training would be extremely complex and burdensome on States.

Changes: None.

Comment: One commenter recommended that the Department require States to include in their SLDS an additional data element on the rate of out-of-school suspensions and

expulsions. The commenter also suggested that the Department make the existing data collected by the Department's Office for Civil Rights (OCR) publicly available.

Discussion: We do not believe it is necessary to require States to include in their SLDS an additional element on suspension and expulsion rates. The ARRA requires only that States implement an SLDS that contains the elements described in the America COMPETES Act. We believe that requiring States to include this additional element in their systems would be unduly burdensome.

The Department's Civil Rights Data Collection is publicly available on the Department's Web site at *http://www.ed.gov/about/offices/list/ocr/data.html*.

Changes: None.

Comment: One commenter urged the Department to clarify whether a student identifier must include pre-K students if a State is to meet the requirement that an SLDS include a unique statewide identifier that does not permit a student to be individually identified by users of the system. The commenter also requested that the Department clarify that use of such an identifier would only be required where information is being disclosed for research and analytical purposes and would not apply to providing student data to teachers. One commenter requested clarity on whether the definition of ''preschool'' included only publicly operated preschools, or also publicly funded preschools and non-publicly funded private preschools.

Discussion: For purposes of developing an SLDS that includes the elements described in the America COMPETES Act, a State will need to provide students enrolled in Federally and State-supported early learning programs with a unique identifier that will follow each student through the pre-K–12 system. This requirement applies only to Federally and State-supported preschools, not private preschools.

Changes: None.

Comment: One commenter suggested that the requirement in the COMPETES Act that an SLDS contain student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete pre-K–16 education programs should be expanded to include information on re-enrolled students.

Discussion: The ARRA specifically requires States receiving SFSF funds to develop and implement statewide longitudinal data systems that contain the elements identified in the America COMPETES Act. Accordingly, the language concerning this element that we included in the NPR is taken directly from the America COMPETES Act. The Department does not wish to add SLDS requirements that are not in the COMPETES Act.

Changes: None.

Comment: One commenter recommended that the Department eliminate the COMPETES Act requirement that an SLDS include student-level transcript information, including information on courses completed and grades earned. The commenter said that the commenter's State does not have a standard grade scale and, accordingly, the data would be meaningless.

Discussion: The Department does not have the authority to change the elements for an SLDS identified in the COMPETES Act.

Changes: None.

New Indicator (b)(3) (Proposed Indicator (b)(2))

Comment: A few commenters voiced concerns about the effect that implementation of the indicators in education reform area (b) would have on teacher privacy. One commenter requested that the Department develop guidance on teacher privacy and teacher identifier systems, including guidance on preventing unauthorized access to teacher information. The commenter recommended that teachers' identities be available only to their supervisors. One commenter recommended that the Department require States to describe how they will protect teacher confidentiality.

Discussion: The Department agrees that teacher and principal privacy must be protected. However, teacher and principal privacy is governed by State law. States, LEAs, and schools should consider their individual State statutes and policies regarding teacher and principal privacy when establishing an SLDS. As discussed in the *Education Reform Area (a)—Achieving Equity in Teacher Distribution* section of this notice, the Department will provide guidance to States on how States should address teacher and principal privacy issues when publicly reporting performance evaluation data in response to the relevant indicators in education reform area (a).

Changes: None.

Comment: Many commenters requested that the Department clarify the meaning of the term ''individual teacher impact'' in new Indicator (b)(3) (proposed Indicator (b)(2)). Of these, several expressed concerns about the difficulty in producing data that could reliably account for the complexity of factors that affect teacher impact. One commenter was specifically concerned with the requirement that States provide estimates of individual teacher impact by the proposed deadline of September 30, 2011; this commenter suggested that States instead be required to report longitudinal statistics focusing on teacher-student information and develop a timeline and plan for implementing a measure of teacher impact on student learning. One commenter did not support the use of State assessments to determine teacher impact and recommended that the data be used to inform program evaluation and professional development.

Another commenter expressed concerns about using value-added measures to compare schools across a State because the overall teacher quality in schools varies. In addition, one commenter expressed concerns about limitations in using value-added measures in schools with a highly mobile student population because class size may be too small to make accurate assessments of teacher impact. Another commenter cited challenges that States face in developing systems that provide estimates of teacher impact because there are only a few providers currently available to assist States in the development of these systems.

Many commenters requested that we clarify the meaning of the term ''student achievement'' in new Indicator (b)(3) (proposed Indicator (b)(2)). One commenter suggested that the Department require States to indicate whether they provide student performance data to teachers for every subject and grade level in which the State administers assessments.

Discussion: The Department acknowledges that few providers are currently available to support States in the development of systems that provide estimates of teacher impact and that the use of such systems is an evolving field. For these and the following reasons, the Department is adding new Indicator (b)(2) and changing proposed Indicator (b)(2) (new Indicator (b)(3)) to clarify the requirement that a State provide estimates of teacher impact.

The Department agrees with the commenter who suggested that a State report longitudinal statistics focusing on teacher-student information. Therefore, the Department is adding new Indicator (b)(2) requiring a State to indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State

administers assessments in those subjects, in a manner that is timely and informs instructional programs.

The Department also acknowledges financial and institutional challenges States face in establishing a system through which teachers are provided estimates of their individual impact on student achievement in a manner that is timely and informs instruction. However, the Department believes reports of individual teacher impact on student achievement may be a valuable tool to States, LEAs, and teachers. Appreciating that this is a goal that States should work towards in the future, the Department is revising proposed Indicator (b)(2) (new Indicator (b)(3)) to require a State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement. The Department is also revising the State Plan requirements with respect to proposed Indicator (b)(2) (new Indicator (b)(3)) to require that, if a State does not currently provide reports of teacher impact, it is required to submit a plan on how it will do so in the future; we are not requiring, however, that a State do so by any specific date.

The Department is also revising new Indicator (b)(3) (proposed Indicator (b)(2)) to clarify that, for the purpose of providing reports of teacher impact on student achievement, ''student achievement'' is measured in terms of student performance on assessments the State administers pursuant to section 1111(b)(3) of the ESEA. Thus, we are using this term in new Indicator (b)(3) (proposed Indicator (b)(2)) differently than our use of the term *student achievement outcomes*, which is used in the indicators relating to teacher and principal performance evaluation systems in education reform area (a).

The Department will provide guidance on the use of term ''teacher impact.''

Changes: New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. In addition, we are revising the State Plan requirements for new Indicator (b)(3) (proposed Indicator (b)(2)). For new Indicator (b)(3) (proposed Indicator (b)(2)), a State must indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. If the State does not provide those teachers with such reports, it must submit a plan for how it will develop and implement the means to do so.

Comment: One commenter noted that only 21 States currently report the ability to connect student and teacher data. Several individual States commented on their own limitations in linking teachers to individual students. One commenter noted that although the State can provide data linking student performance to teachers, LEAs would have to grant teachers access to the data.

Discussion: The Department acknowledges that some States have several of the COMPETES elements in place and other States have only a few. However, in the SFSF Phase I application, each State Governor committed to establishing, consistent with the requirements of the ARRA, an SLDS with all 12 elements described in the America COMPETES Act, including a teacher identifier system that enables the State to match teachers to students.

FERPA allows the nonconsensual disclosure of personally identifiable information (PII) from student records to school officials with a legitimate educational interest in the data. In general, this means that individuals in an LEA, including teachers, would need access to PII from a student's education records in order to perform their professional responsibilities. Schools should have in place criteria for appropriate ''school officials'' and ''legitimate educational interest'' and should include this information in the annual notification to parents of their rights under FERPA. Criteria for appropriate ''school officials'' and ''legitimate educational interest'' should reflect the need for teachers and school administrators to have access to PII from the SLDS to facilitate the continuous improvement of education outcomes for students.

Changes: None.

Comment: One commenter expressed the concern that States would not be able to provide teachers with the results of student assessments in time to inform instruction. Another commenter expressed concerns about the ability of teachers to use the data to inform instruction if they have no prior assessment results to serve as a basis of comparison.

Discussion: We agree that the student growth data and teacher impact reports provided under new Indicator (b)(2) and new Indicator (b)(3) (proposed Indicator (b)(2)) are unlikely to lead to timely changes in day-to-day instruction. However, the Department believes that even if student growth data or teacher impact reports are not available to teachers until the end of the school year or the beginning of the following school year, they can still be a valuable tool for supporting instructional programs. For example, a teacher receiving student growth data at the end of the year may adjust instructional strategies the following year based on weak assessment results by students in the prior year. Concurrently, the teacher in the subsequent grade could use the data to identify areas of remediation to address with incoming students.

As a result, the Department is adding new Indicator (b)(2) to require a State to indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs (rather than instruction). We are also removing the phrase ''in a manner that is timely and informs instruction'' from new Indicator (b)(3) (proposed Indicator (b)(2)).

Additionally, because States do not administer summative assessments in all grades or subjects, the requirements apply, at a minimum, to teachers in those tested grades and subjects.

Changes: New Indicator (b)(2) requires that each State indicate whether it provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in the grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.

New Indicator (b)(3) (proposed Indicator (b)(2)) has been revised to require each State to indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.

Comment: Several commenters expressed support for proposed Indicator (b)(2) (new Indicator (b)(3)) but recommended that the Department add an indicator on principals' and district administrators' ability to collect, manage, and analyze data to improve instruction and decision making.

Discussion: While the Department encourages States to provide supports and strategies to district administrators and principals on collecting, managing, and analyzing data to improve instruction and decision making, the Department believes that adding additional indicators and requiring additional information would add unnecessary burden for States.

Changes: None.

Comment: One commenter recommended that the Department encourage States to provide principals with a data ''dashboard'' that includes information on student achievement, attendance, and credit completion, and other student data that can be linked to individual teachers. Several commenters expressed concerns about how States will measure or ensure teachers' use of student data, with some commenters recommending that the Department include an indicator requiring a State to describe how it will provide data to teachers and monitor teachers' use of the data.

Discussion: While the Department encourages States to collect information beyond that required through this notice, we believe that the current data requirements are sufficient for the purposes of the SFSF program and that additional requirements would be unnecessarily burdensome on States.

Changes: None.

Education Reform Area (c)—Standards and Assessments

General

Comment: One commenter indicated that, in light of variances in State accountability systems, it is difficult to compare student achievement levels across States. The commenter noted that comparing assessment data across States may give the false impression that students in one State are underperforming when the opposite may be true.

Discussion: The Department agrees with this comment and encourages States to collaborate in developing common, internationally benchmarked standards and assessments. In the meantime, collecting information on student college enrollment and persistence rates (new Indicators (c)(11) and (c)(12)) (proposed indicators (c)(12) and (c)(13)) will provide meaningful data on how schools, districts, and States are preparing their students for postsecondary success.

Changes: None.

Comment: One commenter requested that the Department define what is meant by the term ''high-quality'' as applied to State assessments and indicate whether any States meet that standard. The commenter also requested that the Department clarify the relationship between individual State assessments and internationally benchmarked common assessments. The commenter further requested that the Department clarify how the requirement to enhance current State assessments is affected by efforts to develop common State assessments.

Discussion: By ''high-quality assessments'' the Department means those assessments that have been peer reviewed and approved by the Department. While the Department is encouraging the development of common State assessments that are aligned with common, internationally benchmarked student achievement standards, we believe that it is critical for States to continue to ensure that their current assessments are of high quality and rigorous.

Changes: None.

Indicator (c)(1)—Confirmation of Approval Status

Comment: A few commenters recommended that the Department clarify, with respect to Indicator (c)(1), whether a State that does not have a fully approved system of standards and assessments and that has entered into a compliance agreement with the Department is eligible for SFSF Phase II funding.

Discussion: Under the authority in section 457 of GEPA (20 U.S.C. 1234f), the Department has entered into compliance agreements with certain States with respect to their assessment systems. These agreements enable States to remain eligible to receive funding under Part A of Title I of the ESEA while coming into full compliance with the Title I standards and assessment requirements. A State that is operating under such a compliance agreement will not be denied SFSF Phase II funding solely due to the existence of such a compliance agreement. A State in this situation must still meet the Phase II SFSF application requirements to receive funding. The approval status of a State's assessment system will not affect its eligibility for SFSF funding.

Changes: None.

Comment: One commenter recommended that the final notice clarify how the commenter's State could confirm the approval status of its State assessment system, as determined by the Department, given that it has submitted data to the Department on its science assessments and is awaiting a decision on those assessments.

Discussion: Indicator (c)(1) requires each State to confirm the approval status, as determined by the Department, of its assessment system with respect to reading/language arts, mathematics, and science assessments. To comply with this indicator, a State merely confirms the approval status of its assessment system (*i.e.,* ''Full Approval,'' ''Full Approval with Recommendations,'' ''Approval Expected,'' ''Approval Pending,'' or ''Approval Pending, Compliance Agreement''). The fact that a final determination has not been made concerning a State's science assessments would not preclude a State from confirming its most current approval status.

Changes: None.

Proposed Indicator (c)(2) and Proposed Descriptor (c)(1)—Enhancing Assessments

Comment: One commenter recommended that the Department remove the indicators in education reform area (c) related to current State assessment systems in light of the efforts that States are making toward creating and implementing common, internationally benchmarked standards and assessments. Other commenters supported proposed Indicator (c)(2) (and proposed Descriptor (c)(1)), which would require a State to indicate whether it is engaged in activities to enhance the quality of its academic assessments. These commenters urged the Department also to collect additional data about the alignment among standards, assessments, professional development, instructional materials, accommodations for students with disabilities, and accommodations for students with limited English proficiency.

Discussion: As a condition of receiving SFSF funds, a State assures, among other things, that it will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA. The indicators in this education reform area require States to be transparent on the current status of their efforts to provide rigorous, high-quality standards and assessments. The Department acknowledges that many States are working in collaboration or in consortia with other States or organizations to improve the quality, validity, and reliability of their standards and assessments. In recognition of States'

efforts to develop common standards and assessments, the Department does not believe it is necessary to collect additional information on the steps that States may be taking to enhance their current State assessments. The Department believes that the peer review of State assessments provides sufficient information on State efforts to enhance those assessments.

While the Department strongly encourages States to take steps to align and publicly report the alignment of their standards, assessments, professional development, instructional materials, accommodations for students with disabilities, and accommodations for students with limited English proficiency, the Department believes that the current indicators are sufficient for the purposes of this program.

Changes: The Department has removed proposed Indicator (c)(2) and Descriptor (c)(1). With the removal of this indicator and descriptor, we have renumbered the remaining indicators and descriptors in this education reform area.

New Indicator (c)(3) (Proposed Indicator (c)(4))—Alternate Assessments for Students With Disabilities

Comment: One commenter recommended adding language on the validity and reliability of assessments for students with disabilities to proposed Indicator (c)(4), which requires States to confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards.

Discussion: Section 1111(b)(3)(A) of the ESEA requires each State to implement a set of high-quality student academic assessments. As further required in section 1111(b)(3)(C)(iv), such assessments must be of adequate technical quality for each purpose required under the ESEA. Each State has submitted to the Department for peer review and approval its regular and alternate assessments. This peer review includes a rigorous evaluation of the validity and reliability of each assessment, including all alternate assessments. Thus, if a State's alternate assessments for students with disabilities are determined to have met the statutory and regulatory requirements through the Department's peer review process, those assessments would necessarily be valid and reliable assessments. Accordingly, it is not necessary to add language to new Indicator (c)(3) (proposed Indicator (c)(4)) on the validity and reliability of assessments for students with disabilities.

Changes: None.

New Indicators (c)(4) and (c)(6) (Proposed Indicators (c)(5) and (c)(7))—Appropriateness and Effectiveness of Accommodations

Comment: Several commenters recommended that the Department remove new Indicators (c)(4) and (c)(6) (proposed Indicators (c)(5) and (c)(7)), which ask each State to indicate whether it has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides, for assessment purposes, to students with disabilities and students with limited English proficiency, respectively. These commenters noted that this analysis was already performed as part of the peer review process.

Discussion: The Department believes that States should regularly analyze the appropriateness and effectiveness of their assessment accommodations to ensure that the assessments fully address the needs of students with disabilities and limited English proficient students. The Department agrees that the peer review process includes a rigorous analysis of the appropriateness and effectiveness of assessment accommodations. Thus, a State that has submitted its assessment system to the Department for peer review within the last two years, or that has engaged in an alternative rigorous analysis of its assessment accommodations during this timeframe, should be able to respond to these indicators affirmatively.

Changes: None.

Comment: One commenter expressed concern that proposed Indicators (c)(5) and (c)(7) will lead to an expectation that each State complete an analysis of the accommodations it provides to students with disabilities and students with limited English proficiency for assessment purposes.

Discussion: Section 1111(b)(3)(A) of the ESEA requires each State to implement a set of high-quality student academic assessments. This requirement includes appropriate and effective accommodations for students with disabilities and students with limited English proficiency. The Department, therefore, encourages regular review of accommodations that are part of State assessment systems.

Changes: None.

Comment: A few commenters requested that the Department clarify whether the analysis of the appropriateness and effectiveness of the accommodations referenced in proposed Indicators (c)(5) and (c)(7) could be done by other States or organizations.

Discussion: For purposes of these indicators, the analysis could be done by other States or organizations. It is not necessary for each State to have undergone a Departmental peer review of its assessment system within the past two years.

Changes: None.

Comment: One commenter recommended that the Department publish criteria that States would use to review the appropriateness and effectiveness of accommodations for students with disabilities.

Discussion: Section 1111(b)(3)(A)(ix)(II) and (III) of the ESEA requires each State to ensure that students with disabilities and students with limited English proficiency, respectively, have access to appropriate accommodations necessary to measure the academic achievement of those students. Element 4.6 in the Department's peer review guidance provides the criteria the Department uses to determine whether States have complied with these requirements.[6] States may use these criteria to guide any analysis of assessment accommodations that are conducted outside the Department's peer review process.

Changes: None.

Comment: A few commenters requested that the Department require States to describe the accommodations available to students with disabilities. One of these commenters recommended that the Department require States to submit data on the number and percentage of students afforded each accommodation.

Discussion: In their assessment manuals, States include information on the accommodations available to students with disabilities. States post these manuals on their Web sites to ensure transparency and accountability for all students.

With regard to reporting the number and percentage of students afforded each accommodation, while each student's Individualized Education Program lists the accommodations to be provided to that student, States are not required by law to aggregate and report the number and percentage of students afforded each accommodation. The regulations in 34 CFR 300.160(f) require that States report to the public, among other things, the following: (1) The number of students with disabilities who participate in the general (regular) assessments, (2) the number of students

[6] This guidance is available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf.*

with disabilities provided accommodations (that did not result in an invalid score) to participate in general assessments, and (3) the number of students with disabilities who participate in alternate assessments based on grade-level, alternate, or modified academic achievement standards. We do not believe that further reporting with respect to each type of accommodation provided is warranted for the purposes of the SFSF program.

Changes: None.

Comment: A few commenters requested that States be required to describe the accommodations provided to students with limited English proficiency for assessment purposes. One of these commenters also recommended that States provide data on the number and percentage of students afforded each accommodation.

Discussion: Information on accommodations offered to limited English proficient students is already available in State assessment manuals, which States make publicly available. Requiring States to report on the number and percentage of students with limited English proficiency who receive each type of accommodation would impose significant additional burden on States and LEAs. The Department does not believe that the additional data sought by these commenters are warranted for the purposes of the SFSF program.

Changes: None.

Comment: One commenter inquired whether the data required under proposed Indicator (c)(7) are already provided by States through the Department's Education Data Exchange Network (EDEN). Another commenter requested that we clarify whether the analysis referenced in this indicator should be done at the State level or at the student level.

Discussion: The data that the Department will be collecting under new Indicator (c)(6) (proposed Indicator (c)(7)) are not reported through EDEN. Under this indicator, the Department is asking each State whether, within the last two years, it has performed a State-level analysis of its assessment accommodations for limited English proficient students. This analysis is not required at the student level.

Changes: None.

New Indicator (c)(7) (Proposed Indicator (c)(8))—Native Language Assessments

Comments: Several commenters opposed this indicator, stating that the Department does not have the authority to require native language assessments or that it improperly implies that such assessments are required or preferred.

Discussion: New Indicator (c)(7) (proposed Indicator (c)(8)) merely requires a State to confirm whether or not it is administering native language versions of State assessments, as approved by the Department, for limited English proficient students. The indicator does not suggest that the use of native language assessments is the best or only way of meeting the needs of limited English proficient students, and it is not intended to require States to use such assessments.

Changes: None.

Comment: One commenter recommended that the Department add an indicator or descriptor that would require States to list languages spoken by one percent or more of students in the State for whom translations of State assessments are provided or not provided.

Discussion: Because native language versions of State assessments are not required under the ARRA or the ESEA, the Department does not agree that this additional information should be collected as part of the SFSF Phase II application.

Changes: None.

Comments: Several commenters suggested that the Department require States to provide additional data demonstrating that the needs of limited English proficient students are being met. For example, one commenter recommended that proposed Indicator (c)(8) be broadened to include other ways of gauging a student's mastery of content and English. Another commenter suggested that the indicator be changed to require States to provide data on the percentage of limited English proficient students using native language versions of State assessments and, of this group, the percentage of students who are also receiving content instruction in their native language. A third commenter recommended that States be required to provide their process for classifying students as limited English proficient students. This commenter requested that the Department modify the SFSF Phase II requirements to require States to identify the types of valid and appropriate assessments that are available for these students. This commenter also suggested that States be required to describe the instructional practices and programs that are approved for teaching limited English proficient students.

Discussion: The Department agrees with these commenters about the importance of providing limited English proficient students with appropriate and effective instruction and assessment accommodations and supports. While the recommended modifications might provide more detailed information on the extent to which States are meeting the needs of these students, for the purposes of this program, the Department believes that new Indicators (c)(6), (c)(7), and (c)(8) (proposed Indicators (c)(7), (c)(8), and (c)(9)) will provide sufficient data in this area without imposing undue burden.

Changes: None.

New Indicators (c)(10), (c)(11), and (c)(12) (Proposed Indicators (c)(11), (c)(12), and (c)(13))—High School Graduation Rate Data and Postsecondary Enrollment and Attainment

Comments: Numerous commenters urged the Department to expand the reporting requirements in proposed Indicators (c)(11), (c)(12), and (c)(13) pertaining to high school graduation, college enrollment, and course completion to account for high school graduates who choose a path other than higher education. Several commenters argued that the scope of the proposed data collection is too narrow and suggested, for example, that the Department foster the collection of data on career readiness in addition to college readiness.

Discussion: The Department recognizes the value of alternative career pathways separate from higher education, and seeks in no way to minimize the accomplishments of individuals or States with regard to students who pursue successful careers immediately after high school through military service, career and technical education programs, or full-time employment. However, as discussed earlier, we have a particular interest in collecting information on college readiness (as an indicator of the strength of States' secondary education standards and programs) and have chosen, for the purposes of this program, to limit the burden of our reporting requirements accordingly.

Changes: None.

Comment: Many commenters stated that collecting the proposed student enrollment and course completion data would be very burdensome, time-consuming, and costly for States. Some of these commenters suggested that the indicators are unlikely to produce meaningful data. Others noted that the requirements would negatively affect students by taking valuable resources from the classroom.

Discussion: The Department acknowledges the challenges that the postsecondary data collection and

public reporting requirements present. However, we believe that collecting and publicly reporting these data will provide States, LEAs, and schools with information they need in order to continuously improve elementary and secondary education. The Department recognizes that tracking credits earned by students enrolled in private IHEs or in out-of-State IHEs is particularly challenging. Given that the majority of high school graduates enroll in an in-State IHE, and that the majority of enrollment in degree-granting institutions is in public institutions, the Department believes that at this time States should be required to collect course completion data only for students who enroll in an in-State public IHE. These data should provide an accurate reflection of the strength of States' secondary education standards and programs.

Changes: The Department has revised proposed Indicator (c)(13) (new Indicator (c)(12)) to require a State to provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.

Comment: In the background to the section of the NPR discussing the indicators and descriptors relating to standards and assessment requirements, the Department included references to both college education and technical training. The background discussion indicated that a State would be required to provide data on the extent to which students graduate from high school in four years with a regular high school diploma and pursue a college education or technical training. One commenter noted that none of the proposed indicators specifically referenced ''technical training'' and recommended that the Department delete the phrase unless the requirements of the program also reflect career or technical training.

Discussion: The Department recognizes the importance of technical training and believes it is an important option for many students. However, the Department is not requiring States to provide data on students who enroll in training programs. The Department believes that this additional collection requirement would impose an undue burden on States due to the wide range of technical training programs from which data would be required. Moreover, the Department believes that the college readiness data required under new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) are sufficient to provide a sound measure of the strength of secondary education standards and programs.

Changes: The Department has not included references to ''technical training'' in the final requirements.

Comments: One commenter asserted that States will need vendor services in order to track student enrollment, persistence, and remedial course work and suggested that States would have to rely on too few vendors during a short time period to provide the data under proposed Indicators (c)(12) and (c)(13).

Discussion: The Department believes that obtaining data on student enrollment and course completion in IHEs for these indicators will provide stakeholders with critical information on the effectiveness of secondary education across States. The Department believes that States will be able to obtain the assistance they may need to meet the requirements of new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) through available data sources such as the National Student Clearinghouse.

Changes: None.

Comment: Some commenters requested that the Department remove inconsistencies between the student subgroups identified for reporting in the SFSF NPR and the student subgroups identified for reporting in the notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top Fund.

Discussion: The proposed requirements under the Race to the Top Fund included a requirement to disaggregate student data according to the subgroups required under the National Assessment of Educational Progress (NAEP) for some items and the subgroups required under section 1111(b)(2)(C)(v)(II) of the ESEA for others. For Phase II of SFSF, we proposed that States be required to disaggregate data by the subgroups in section 1111(b)(2)(C)(v)(II) of the ESEA.

The Department is making every effort to unify requirements across programs, particularly across ARRA programs, whenever possible. NAEP presents data by a number of ''student groups,'' including gender, race or ethnicity, highest level of parental education, and type of school (public or private). Additional questionnaires also provide information on student course-taking, home discussions of school work, and television-viewing habits. By statute, the Department requires States to disaggregate State assessment data for adequate yearly progress (AYP) determinations by economically disadvantaged status, race/ethnicity, disability, and English language proficiency (section 1111(b)(2)(C)(v)(II)). State report cards must report assessment data disaggregated by gender, race/ethnicity, English language proficiency, migrant status, disability status, and economic advantage status, unless such disaggregation would reveal personally identifiable student information (section 1111(b)(3)(C)(xiii)). Under 34 CFR 200.19(a)(4)(i), with respect to high school graduation rates, the Department requires that data be disaggregated by the subgroups in section 1111(b)(2)(C)(v)(II) of the ESEA. Because new Indicator (c)(10) (proposed Indicator (c)(11)) addresses graduation rates, the subgroups identified in section 1111(b)(2)(C)(v)(II) of the ESEA are the most appropriate.

Changes: None.

Comment: One commenter stated that the timeline for States to report graduation rate data under proposed Indicator (c)(11) using a four-year adjusted cohort graduation rate appears to be inconsistent with the timeline in the Title I regulations.

Discussion: New Indicator (c)(10) (proposed Indicator (c)(11)) requires States to provide, for the State, for each LEA in the State, and for each high school in the State, data disaggregated by student subgroup on the number and percentage of students who graduate from high school using the four-year adjusted cohort graduation rate as required by the Title I regulations in 34 CFR 200.19(b). Under the Title I regulations, the four-year adjusted cohort graduation rate must be reported at the State, LEA, and high school levels, as well as disaggregated by each subgroup described in section 1111(b)(2)(C)(v)(II) of the ESEA, beginning with report cards providing results of assessments administered in the 2010–2011 school year. The Department does not believe that the timeline for reporting under new Indicator (c)(10) (proposed Indicator (c)(11)) is inconsistent with the Title I regulations because those regulations do not specify a date by which the four-year adjusted cohort graduation rate for school year 2010–2011 must be reported. We believe that States should have the capacity to publicly report these data by September 30, 2011, as required in this notice.

Changes: None.

Comment: Numerous commenters questioned why the Department is collecting data only on the basis of a four-year adjusted cohort graduation rate and requested that the Department amend proposed Indicator (c)(11) to take into consideration extended-year adjusted cohort graduation rates. Several of the commenters indicated that use of the adjusted four-year cohort graduation rate fails to take into account legitimate reasons a student might take more than four years to graduate. One commenter suggested adding a new indicator that collects at the State, LEA, and high school levels, as well as disaggregated by subgroups, data on the number and percentage of students who graduate from high school using an extended-year adjusted cohort graduation rate as approved by the Department.

Discussion: The reporting of data using a four-year adjusted cohort graduation rate, which States must uniformly implement as required in the Title I regulations, helps ensure that there is an accurate method of comparing graduation rate data across States. Without such comparability, it is difficult to measure adequately how well schools, LEAs, and States are doing in addressing the educational needs of high school students. Thus, for the purposes of this program, the Department is requiring the collection and public reporting of graduation rate data only using the four-year adjusted cohort graduation rate.

Changes: None.

Comment: One commenter suggested that, in directing States to submit graduation rate data under proposed Indicator (c)(11), the Department establish an ''n size'' (minimum subgroup size) for reporting so that student data are not personally identifiable.

Discussion: When presenting disaggregated data, States, LEAs, and schools are responsible for ensuring that they do not reveal personally identifiable information about individual students. As part of its approved Consolidated State Application Accountability Workbook (Accountability Workbook) under Title I, each State has identified a minimum number of students for reporting purposes. These established minimum subgroup sizes are to be used in reporting the graduation rate data under new Indicator (c)(10) (proposed Indicator (c)(11)).

Changes: None.

Comment: One commenter recommended that the Department consider whether there are ways to better align college admissions requirements with student performance expectations. The commenter asserted that such alignment could more accurately assess the extent to which postsecondary students require remediation. The commenter argued that the extent to which college students require remediation is largely within the control of IHEs because IHEs establish admissions requirements. Further, this commenter contended that those IHEs with no or low admissions requirements will likely have to provide more remediation.

Discussion: The Department acknowledges that IHEs, in some respects, may have control over the extent to which their students require remediation. The Department encourages States to involve IHEs in the process of aligning pre-K–12 standards, curricula, and assessments so that students are better prepared for college.

Changes: None.

Comment: A few commenters encouraged the use of college entrance exams (such as SATs and ACTs) or NAEP data to demonstrate whether high school standards and assessments are appropriately aligned to facilitate college and career readiness. One commenter requested that the Department gather information on whether graduation requirements align with evidence of college and work readiness. This commenter requested that the Department also require States to report, and disaggregate by subgroups, the number and percentage of students who earn two-year and four-year degrees at IHEs in three and six years, respectively.

Discussion: While we recognize the value of college entrance test data, the Department believes that new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) will provide data that accurately and sufficiently reflect the strength of secondary education standards and programs. In addition, not all IHEs require entrance exams as a prerequisite for admission. With respect to using NAEP data to validate State assessments, the Department affirms the utility of comparing NAEP scores but notes that the NAEP is not administered annually to high school students. In addition, we recognize that data on the number and percentage of students who earn two-year and four-year degrees within three and six years, respectively, would be a reliable measure of the strength of secondary education. However, the Department seeks to minimize the burden on States and believes that the postsecondary enrollment and course-completion indicators in new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)) will address the underlying issue the commenters raised—namely, how well high schools are preparing students for college.

Changes: None.

Comments: Numerous commenters opposed proposed Indicator (c)(12), regarding the number of students who graduate from high school and enroll in an IHE, claiming that the data collection would be too costly, unreliable, or impractical to conduct at this time. One commenter had specific concerns about the costs of obtaining enrollment data on students who attend private or out-of-State IHEs.

Discussion: College enrollment data will help measure the extent to which secondary schools have prepared their students for colleges and universities. While difficult to quantify, the benefits associated with collecting these data should outweigh the costs.

Changes: None.

Comment: One commenter requested that the Department clarify which entity in the State (elementary or secondary school or IHE) will be responsible for reporting on proposed Indicators (c)(12) and (c)(13).

Discussion: States are responsible for collecting and publicly reporting these data and should implement the collection of these data in the manner that is most effective for each State.

Changes: None.

Comment: None.

Discussion: In light of the number of recent high school graduates who engage in experiential learning or other activities during the year immediately following their high school graduation, the Department believes it is important to collect data on students who enroll in an IHE even if they do not do so immediately after receiving a regular high school diploma. Collecting data on students who enroll in an IHE within sixteen months of obtaining a regular high school diploma will more accurately reflect the effectiveness of secondary education.

Changes: The Department has revised new Indicator (c)(11) (proposed Indicator (c)(12)) to require a State to provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.

Comment: One commenter requested that, in order to measure students'

academic readiness for postsecondary-level work, the Department require States to collect both aggregated and disaggregated information on students who are placed in one or more remedial courses during their first year of enrollment in an IHE.

Discussion: The Department included new Indicator (c)(12) (proposed Indicator (c)(13)) in order to provide a measure of students' college readiness. Remedial courses generally do not result in credit toward a degree, the type of credit measured by this indicator.

Changes: None.

Comment: A few commenters requested that the Department define the term ''one-year's worth of college credit'' in proposed Indicator (c)(13).

Discussion: There is considerable variation among IHEs about what it means to complete at least one year's worth of college credit. As a result, it would not be feasible to establish a uniform definition of this term at this time. The Department believes that permitting each public IHE to define this term in a manner consistent with its own academic requirements will not only minimize the reporting burden on the IHEs and States, but will result in meaningful data on student progress toward a college degree.

Changes: None.

Comment: Several commenters suggested that proposed Indicators (c)(12) on college enrollment and (c)(13) on course completion raise potential FERPA issues and requested that the Department provide guidance around creating a FERPA-compliant pre-K–16 data system. The commenters sought additional guidance regarding the authority to share data between pre-K–12 and postsecondary data systems, especially where the systems are administered by separate State agencies.

One commenter specifically suggested that the Department provide States with flexibility to set data aggregation and masking standards to avoid reporting of small data cells that could identify an individual student. The commenter suggested that the Department consider collecting data aggregated at a higher level.

Discussion: As stated earlier in response to the comments on implementing an SLDS that is compliant with FERPA, establishment of a statewide longitudinal data system with the necessary functionality to incorporate all 12 of the COMPETES Act elements, including the sharing of data between pre-K–12 and postsecondary data systems does not by itself violate FERPA. States also may implement an SLDS that includes the disclosure and redisclosure of personally identifiable information from education records in a manner that complies with FERPA. The non-consensual disclosure of personally identifiable information from K–12 education records to a postsecondary institution is permitted under the enrollment exception, provided the notification and access conditions are met. Postsecondary institutions may disclose personally identifiable information to an SEA under the evaluation exception if the SEA has the authority to conduct an audit or evaluation of the postsecondary institution's education programs. (20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5); 34 CFR 99.31(a)(3) and 99.35).

The Department is not requiring States to report student data that would reveal personally identifiable information. In reporting data under new Indicators (c)(11) and (c)(12) (proposed Indicators (c)(12) and (c)(13)), States should use the minimum subgroup sizes that are part of their approved Accountability Workbooks under Title I.

Changes: None.

Comment: One commenter recommended that the Department strengthen the metrics regarding standards and assessments by adding an indicator on the number and percentage of students in each grade who are enrolled in and successfully complete a college- or career-ready high school curriculum (aligned with college- and career-ready standards), disaggregated by subgroup and reported at the State, district, and school levels.

Discussion: The Department recognizes the value of this information but believes that the indicators on the adjusted four-year cohort graduation rate, college enrollment, and college course completion are sufficient to obtain data on elementary/secondary education and on postsecondary outcomes. Given these other indicators, the Department does not believe that the additional burden that would result from the suggested indicator is warranted.

Changes: None.

Comment: Several commenters requested that the Department require States to collect and report data on the percentage of students who earn college credit during their first year of college. These commenters indicated that such data more accurately predict degree completion.

Discussion: The Department's requirement that States collect data on the number and percentage of high school graduates who complete at least one year's worth of college credit within two years of enrollment in the IHE will capture data on students who earn college credit during their first year of college. The Department acknowledges the value of data on college credit earned during their first year of college but recognizes that students may attend college part-time and prefers to establish a requirement that more flexibly accounts for a broader spectrum of situations.

Changes: None.

Comment: None.

Discussion: New Indicator (c)(11) (proposed Indicator (c)(12)) requires States to report, for the State, and for each LEA and high school in the State, disaggregated data on the number and percentage of high school graduates who enroll in an IHE within 16 months of receiving a regular high school diploma. New Indicator (c)(12) (proposed Indicator (c)(13)) requires States to report, for the State, and for each LEA and high school in the State, disaggregated data on the number and percentage of those graduates who complete at least one year's worth of college credit within two years of enrollment at a public IHE in the State. States are required to identify graduates using a four-year adjusted cohort graduation rate. The Department recognizes that many States will be unable to report on postsecondary enrollment and attainment of high school graduates consistent with the four-year adjusted cohort rate by September 30, 2011. Therefore, the Department has modified the plan requirements for new Indicators (c)(11) and (c)(12).

Changes: The Department has modified the plan requirements for new Indicators (c)(11) and (c)(12). These requirements now provide that the State is required to, at a minimum, possess the ability to collect and publicly report the data. As a result, the requirements of paragraph (a) of the *Plan Requirements* section of this notice apply to these indicators, at a minimum, with respect to the State's development of the means to collect and to publicly report the data. Accordingly—

(1) If, for either of these indicators, a State will develop *but not implement* the means to collect and publicly report the data (i.e., the State will not collect and publicly report the data) by September 30, 2011, the State—

(i) May submit a plan with respect to the indicator that addresses the requirements of paragraph (a) only with respect to the State's development of the means to collect and to publicly report the data, and not the State's implementation of those means; and

(ii) If submitting a plan in this manner, must include in its plan a description of the evidence it will

provide to the Department of Education, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data.

(2) If, however, for either of these indicators, a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report the data) by September 30, 2011, the State must submit a plan with respect to the indicator that fully addresses the requirements of paragraph (a).

Education Reform Area (d)—Supporting Struggling Schools

Introduction

A central purpose of ARRA funds is to increase the academic achievement of students in struggling schools. As a result, the NPRs regarding the State Fiscal Stabilization Fund, the Race to the Top Fund, and the School Improvement Grants each included requirements related to struggling schools. The most explicit requirements were included in the SIG NPR that was published in the **Federal Register** on August 26, 2009 (74 FR 43101), in which the Department proposed four rigorous school intervention models—turnaround, restart, school closure, and transformation—that an LEA seeking SIG funds would implement in the lowest-achieving Title I schools in improvement, corrective action, or restructuring identified by each State and could also implement in secondary schools that are eligible for, but do not receive, Title I funds. Commenters on each notice recommended that the Department make the identity of, and requirements for, struggling schools consistent among all three programs. We agree with these comments and, in response, have revised the four school intervention models and are integrating them into the criteria, definitions, and requirements for all three programs. In addition, we have developed a definition of *persistently lowest-achieving schools* to substitute for ''schools in the lowest-achieving five percent'' (SFSF) and *persistently lowest-performing schools* (Race to the Top) for use in all three programs.

Because both the SFSF and Race to the Top notices of final requirements are being published prior to the final SIG notice, we are publishing, in final, the requirements for the four models in SFSF, will append them to Race to the Top, and will incorporate them into the final SIG notice when it is issued. In order to clarify and fully explain the definition of *persistently lowest-achieving schools* and the changes that we made to the four models, we are including in this notice the comments and responses related to the definition and those models from the SIG NPR. In the following sections, we first discuss the comments we received on struggling schools in response to the SFSF NPR and our responses. We then discuss the comments we received related to the definition and the four intervention models as proposed in the SIG NPR and our responses to those comments.

Persistently Lowest-Achieving Schools

Comment: Some commenters expressed support for our proposal in education reform area (d) that States identify and support schools that are not meeting student achievement goals, but a number of commenters expressed concern that the proposed indicators in this reform area would not result in the correct identification of those schools. Many commenters were specifically concerned that high schools might not be identified among the lowest-achieving schools. One commenter argued that the strategies for turning around struggling high schools may differ from strategies for turning around other schools and that the data for the proposed indicators for education reform area (d) should be disaggregated by school type and grade span so that high schools are reported separately. Several commenters recommended broadening the definition of *lowest-achieving five percent* to include both Title I and non-Title I secondary schools with reasonably high scores on assessments but low graduation rates in an effort to better identify struggling schools. One commenter recommended that high schools with graduation rates below 60 percent be added to proposed indicators (d)(3) through (d)(5) to better identify low-achieving high schools.

Discussion: The Department agrees that it is important to identify the lowest-achieving schools in each State so that parents, policy-makers, and other stakeholders can take appropriate action and measure the progress made in improving the achievement of students who attend those schools. We also agree that strategies and approaches to reform schools may vary according to school type and grade span. The Department agrees that the proposed definition of *lowest-achieving five percent* of schools might fail to identify some struggling secondary schools, including those whose students are performing adequately on State assessments but are failing to graduate.

Changes: The Department has removed the definition of *lowest-achieving five percent* and added a new definition for the term *persistently lowest-achieving schools.* This term is defined as follows:

With respect to the requirements that a State collect and publicly report data and information on the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring or secondary schools that are eligible for, but do not receive, Title I funds, *persistently lowest-achieving schools* means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's approved assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

We have added a new Descriptor (d)(1), which requires States to provide their definition of *persistently lowest-achieving schools* (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools.

We also have made two additional changes to education reform area (d) that require States to report on reform efforts in secondary schools. We have revised Indicator (d)(5) to require States to provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds that are identified as persistently lowest-achieving schools. We have added new

Indicator (d)(6), which requires States to provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year.

Comment: With respect to Indicator (d)(3), one commenter questioned the value of requiring States to collect data on schools in improvement status in addition to schools identified for corrective action and restructuring. The commenter further questioned whether the additional collection of information is necessary to focus on the lowest-achieving five percent.

Discussion: In order to remain consistent with school reform strategies that States are implementing using funds available under section 1003(g) of the ESEA (School Improvement Grants), the Department chose to collect data on schools in improvement status. It is important to capture information regarding all schools that are persistently lowest-achieving schools in the State, including those in improvement.

Because the Department believes that States should place a priority on reforming the persistently lowest-achieving schools, we are requiring States to collect and publicly report information only on the intervention strategies in those schools and not on every school in improvement, corrective action, or restructuring.

Changes: Indicator (d)(3) has been revised to require States to provide, for the State, the number and identity of Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest-achieving schools. Indicator (d)(4) has been revised to require the State to provide, for the State, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year.

Comment: One commenter questioned the usefulness of the stratification in proposed Indicators (d)(3), (d)(4), and (d)(5) and recommended creating a new indicator that provides the identity and grade levels of the schools identified for improvement, corrective action, or restructuring and the lowest-achieving five percent of schools in the State.

Discussion: The Department agrees that identifying schools and providing greater disaggregation of data required on the persistently lowest-achieving schools provides greater transparency and more information that is useful to parents, educators, and other stakeholders.

Changes: As noted in the previous responses, a new definition of *persistently lowest-achieving schools* has been added and Indicators (d)(3), (d)(4), and (d)(5) have been revised to require States to provide the number and identity of the schools being reported under these indicators. We also have removed the requirement that States report the percentages for these schools.

Comment: One commenter requested that the Department provide States with the flexibility to determine which schools are struggling.

Discussion: We believe that the definition of *persistently lowest-achieving schools* that we have established in this notice provides States with flexibility in identifying these schools while setting forth basic parameters for States to follow in developing their definitions. The SFSF definition and requirements for persistently lowest-achieving schools and school intervention models will now be consistent with those in the Race to the Top notice and the upcoming School Improvement Grants notice; this consistency may encourage and enable States to use diverse funding sources to accomplish consistent goals. We encourage States to think comprehensively across these programs in order to develop plans that best target and meet the needs of their persistently lowest-achieving schools.

Changes: None.

Comment: One commenter expressed concern that State-by-State comparisons will not identify the lowest-achieving schools in the Nation.

Discussion: The purpose of the data collection and public reporting requirements in education reform area (d) is not to provide a list of the lowest-achieving schools in the Nation. Rather, the Department intends that the required data collection and public reporting will provide transparency on the persistently lowest-achieving schools in each State. This will allow parents, students, and educators in each State to make informed decisions and implement reform strategies that will work best for their individual situations.

Changes: None.

The Four Intervention Models

Comment: Some commenters objected to our proposed definitions of the intervention models (turnaround, school closure, consolidation) used in Indicators (d)(3), (d)(4), and (d)(5). These commenters argued that the definitions are overly restrictive and lack a sufficient research base. Also, several commenters expressed a belief that the definition for a school that has been turned around is too restrictive. Many of these commenters recommended that States be given a broader range of options for choosing intervention models and that the data collection requirements be expanded to require States to report on other models that have been used to assist struggling schools.

Discussion: The Department recognizes that there are reform models and other intervention efforts not identified in the NPR that can be successful in turning around struggling schools. We also understand that no single reform model will be effective in every State or every LEA. However, the intervention strategies proposed in the NPR focus on dramatic change, including significant changes in leadership, staffing, and governance, and as they are targeted to the Nation's persistently lowest-achieving schools, which in most cases have not responded to multiple earlier school improvement and turnaround efforts. Research indicates that fundamental, comprehensive changes in leadership, staffing, and governance hold the greatest promise for bringing about the improvements in school structure, climate, and culture that are required to break the cycle of chronic educational failure. We believe that the reform models proposed in the NPR hold great promise in their ability to turn around the Nation's persistently lowest-achieving schools and that they are flexible enough to allow States and LEAs to adapt them to meet their specific needs. As noted earlier, to be consistent with the definitions and requirements in the School Improvement Grants notice and to encourage and enable States to plan effectively across these programs, these indicators, descriptors and definitions, where appropriate, have been revised. Specifically, we have added a fourth model, the transformation model, and revised and clarified requirements in the turnaround, restart, and school closure models.

At this time, the Department declines to require States to collect data on other reform models as we believe that these hold the most potential for turning around struggling schools.

Changes: We have revised the definitions of the intervention models as detailed in the *Final Definitions* section of this notice.

We have revised Indicator (d)(4), which requires States to provide, for the State, of the persistently lowest-achieving schools that are Title I schools

in improvement, corrective action, or restructuring, the number and identify of those schools that have been turned around, restarted, closed, or transformed in the last year.

We have added new Indicator (d)(6), which requires States to provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year. With the addition of new Indicator (d)(6) and the addition of several new indicators regarding charter schools, we have renumbered the indicators in this education reform area.

Comment: A few commenters stated that the proposed models for intervening in struggling schools are process or structural reforms rather than results-based approaches focusing on gains in student achievement. They believe that the collection of data will provide information only on where reform efforts have occurred, not on the success of those efforts.

Discussion: The Department believes that if the four reform models established in this notice are implemented effectively, they will lead to gains in student achievement. In addition, via ED*Facts* the Department collects data on Title I schools in improvement, corrective action, or restructuring and on whether those schools have improved student achievement outcomes to a point that they are no longer classified in those categories. The Department does not, therefore, believe it is necessary to collect such data through these requirements.

Changes: None.

Comment: A few commenters recommended that the Department add an indicator that would require States to report the number of Title I schools in restructuring in the last five years for each LEA and, for these schools, also report the number that have been turned around with new leadership and a majority of new staff, the number that have been turned around through conversion to charter schools, and the number that have been closed and the students placed in higher-performing schools.

Discussion: The Department currently collects, through its ED*Facts* data system, information on the number and identity of Title I schools in improvement, corrective action, or restructuring in each State. Through the SFSF Phase II application, States will report publicly on the types of reforms implemented in persistently lowest-achieving schools, which are the schools most in need of the types of interventions included in this notice and the schools on which States and LEAs should be focusing their reform efforts. Accordingly, we do not think it is necessary to establish the additional reporting requirements suggested by the commenters.

Changes: None.

Comment: One commenter recommended that States report the name and number of all schools eligible for and receiving Title I funds by grade span.

Discussion: The Department currently makes public information regarding the name and number of Title I-eligible schools by grade span in the Common Core of Data (CCD). We believe that the data available in the CCD, combined with the information that States will report under this notice, is sufficient to enable parents, educators, and other stakeholders to judge State and local reform efforts.

Changes: None.

Comment: One commenter argued that closing schools in some rural areas is not an option due to an already difficult time that districts have in recruiting and retaining highly qualified staff.

Discussion: We agree that not all reform models are appropriate in all circumstances. As States and LEAs work to implement reforms in the persistently lowest-achieving schools, they should exercise great care in determining exactly which reforms actions to implement in which schools. This notice includes three intervention models (turnaround, restart, and transformation) that do not require the closing of a school.

Changes: None.

Schools That Have Been Turned Around

Comment: Some commenters expressed concern that the use of the phrase *schools that have been turned around* implies improvement in academic results in a formerly low-performing school. Commenters recommend restricting the use of the term ''turned around'' to circumstances in which States can demonstrate significant improvement in student achievement. Further, the commenters recommended defining this model as ''major reform actions'' or ''school that has undertaken a turn-around strategy.''

Discussion: The Department appreciates the commenters' concern that the term *schools that have been turned around* implies an outcome rather than an input. The term ''turnaround'' has several meanings, but we believe that this notice clearly uses it to describe a process for improving student achievement in a persistently lowest-achieving school.

Changes: None.

Comment: Several commenters expressed concern regarding the requirement that one element of the turnaround model is the replacement of at least 50 percent of the existing staff. Several commenters indicated that the 50 percent figure is arbitrary. A few commenters stated that there is a lack of existing research that supports the assertion that a certain percentage of staff need to be replaced in order to successfully turn around a school. Several commenters recommended that the definition not include a specific percentage. One commenter recommended that, under this model, all teachers should be required to reapply for a teaching position with the new school leadership having the authority to rehire teachers regardless of seniority or tenure. Another commenter expressed concern that replacing a majority of staff may not be the most effective approach for every school; the new school leadership may determine, after an evaluation of existing staff, that less than a majority be replaced to support the turn-around effort. One commenter recommended that schools operating under this model should be required to retain at least 50 percent of current qualified staff.

Discussion: The Department recognizes that replacing leadership and staff is one of the most difficult aspects of the school turnaround option. However, we also believe that in our lowest-performing schools, many of which have failed to improve despite repeated turnaround efforts, dramatic and wholesale changes in leadership and staffing can be the key to creating the new climate and culture needed to break the cycle of educational failure. Moreover, the required turnaround option leaves room to accommodate many of the flexibilities suggested by these commenters. For example, a principal has the option of retaining roughly half of existing staff who are deemed effective and who commit to supporting other key elements of the school's turnaround plan. With regard to the comment that new school leadership have the authority to rehire teachers regardless of seniority or tenure, the Department believes such issues are best resolved at the State and local levels in the context of existing collective bargaining agreements; however, in schools implementing a turnaround model, the principal must be provided with sufficient operational flexibility, including in making staffing

decisions, to implement fully a comprehensive approach to substantially improving student achievement outcomes. Finally, the Department would like to make clear that the turnaround option is only one of four reform models outlined in this notice. If a school determines that the requirements of a turnaround model are too restrictive, the LEA may choose to implement another reform model in the school.

Changes: The definition of a *turnaround model* has been revised to require that the principal be given sufficient operational flexibility, including in selecting staff, to implement fully a comprehensive approach to substantially improving student achievement outcomes.

Comment: One commenter recommended that States be encouraged to develop or support programs for rigorous preparation for principals who are hired to turn around a school.

Discussion: We agree that principals need rigorous preparation and support in order to achieve results in persistently lowest-achieving schools. We encourage States and LEAs to work with existing, or develop new, principal and school leadership programs that ensure adequate preparation and ongoing support for principals working in persistently lowest-achieving schools. We decline in this notice to require such actions of States because the purpose of this notice is to have States collect and publicly report data, not to establish professional development policies.

Changes: None.

Schools That Have Made Progress

Comment: A few commenters expressed concern that the proposed definition of *schools that have made progress* will not provide information on whether schools are improving student achievement. The commenters stated that this definition assumes that, on average, rates in reading and mathematics are improving from year to year. Commenters noted that, while this is true in many States, proficiency rates in some States have been nearly flat or have declined from year to year. A few commenters recommended that the Department require States to report the average statewide gains used to determine whether schools meet the definition of making progress in reading/language arts and mathematics. Commenters recommended that the definition stipulate that gains in the ''all students'' category be greater than zero and, for schools identified in the ''all students'' category, that the gains in the ''all students'' category be equal to or greater than the average gains of schools in the State in the ''all students category.'' Additionally, several commenters expressed concern that underperformance by subgroups could go unchecked. Some commenters recommended that the definition of a school that has made progress require gains for the subgroup or subgroups that are equal to or greater than the average gains of schools in the State in the ''all students'' category, and that are greater than zero. Another commenter recommended changing the phrase ''in the 'all students' category (as under section 1111(b)(2)(C)(v)(I) of ESEA'' to ''in the 'all students' and 'subgroups' categories (as under section 1111(b)(2)(C)(v) of ESEA.''

Discussion: We agree that a school that has made progress must demonstrate positive gains. We also agree that, in order to monitor progress on closing the achievement gap the data collection must include measures of subgroup performance and average statewide subgroup performance within the State. The reporting of average statewide gains will provide useful information regarding progress in the State.

Changes: We have revised the definition of *school that has made progress* as follows:

With respect to the requirements that a State collect and publicly report the numbers and percentages of certain groups of schools that have made progress on State assessments in reading/language arts and in mathematics in the last year, *school that has made progress* means a school whose gains on the assessment, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), are equal to or greater than the average statewide school gain in the State on that assessment, in the ''all students'' category and for each student subgroup, except that if the average statewide school gains in the State on that assessment are equal to or less than zero, the gains of the school must be greater than zero.

We also have revised Indicators (d)(1) and (d)(2). Indicator (d)(1) requires that a State provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year.

Indicator (d)(2) requires a State to provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year.

Comment: One commenter asserted that student achievement must be used in conjunction with graduation rates for high schools to ensure that there is no incentive for schools to have low-performing students leave the school prior to graduation. The commenter recommended adding to the definition of *school that has made progress* that a high school must also have made gains in graduating students at a rate that is equal to or greater than the average graduation rate gain of other schools in the State and that the definition of continuous and substantial improvement as defined by the Department in 34 CFR 200.19(b)(1) be met.

Discussion: The Department agrees that all high schools should work to ensure that all of their students are graduating with a regular high school diploma. As a result of our concern over graduation rates, we have chosen, as discussed previously, to require States to collect and publicly report data and information on their persistently lowest-achieving schools . This requirement will capture secondary schools with graduation rates below 60 percent. The Department believes that the changes it has made to the definition of *persistently lowest-achieving schools* sufficiently address the commenters' concern regarding high school graduation rates.

Changes: None.

Comment: A few commenters recommended that those schools in improvement, corrective action, or restructuring determined to be making progress in reading/language arts and mathematics, respectively, be identified by name (in addition to providing the number and percentage of such schools) in the reports States provide under education reform area (d).

Discussion: While we encourage States to identify the schools in improvement, corrective action, or restructuring determined to be making progress in reading/language arts and

mathematics, we do not believe it is necessary to require States to provide these identifications.

Changes: None.

Comment: One commenter expressed concern that the number and percentage of schools that have made progress in reading/language arts and mathematics do not align with current assessment and reporting priorities since student assessments are conducted and reported by grade level. The commenter asked that the Department provide guidance on how States and LEAs should calculate school-level, rather than grade-level, improvement. Similarly, one commenter stated that guidance is needed on how States should calculate the student gains used to determine school progress; otherwise, the commenter said, there will not be a way to meaningfully compare data among States.

Discussion: The Department will provide guidance to States on calculating school-level progress in reading/language arts and mathematics.

Changes: None.

Comment: One commenter recommended that States be required to list the number of schools that have emerged from improvement, corrective action, or restructuring and to describe what activities led to these results.

Discussion: The Department agrees that it is important to make public the identity of schools that have emerged from improvement, corrective action, or restructuring. The data that States will make available under the requirements of this notice will over time provide parents, educators, and policymakers with information on the extent to which States and LEAs have had success in reforming the persistently lowest-achieving schools. Information on the type of reforms implemented in those schools will also be publicly available. However, while we encourage studies on the efficacy of particular reform strategies, we believe that requiring States to conduct such studies is beyond the scope of the SFSF program.

Changes: None.

Comment: One commenter recommended that the Department add an indicator that would provide additional information on the dollar amount and percentage of SFSF funds spent on secondary schools.

Discussion: States will provide quarterly data on the uses of funds appropriated under the ARRA as required by section 1512 of the ARRA. In addition, States will provide an annual report on uses of SFSF funds. These reports will provide a certain amount of information on the uses of ARRA funds. While we believe it would be useful also to require States to collect and publicly report information on expenditure of SFSF funds at the school level, we are mindful here, as in other areas, of the burden of such a requirement on States and LEAs. We, therefore, decline to require further reporting in this area.

Changes: None.

Charter Schools

Comment: As described earlier in this notice, one commenter stated that the Department should require each State to indicate whether the information it reports includes information from charter schools and, if such information is not currently available, require the State to provide information in its State plan on the steps it will take to collect information on charter schools.

Discussion: Under the requirements, States will report information on charter schools that are LEAs in the same manner that they will provide information on any LEA. Further, information on public charter schools that are not LEAs is provided in the same manner as it is for other public elementary and secondary schools.

Additionally, as proposed in the NPR and established in this notice, the Department is requiring States to collect and publicly report information on the number of charter schools that are permitted to operate and that are actually operating in the State (new Indicators (d)(7) and (d)(8)). However, and as discussed in greater detail later in this section, the Department agrees that it is important to collect information on the academic achievement of students who attend charter schools as well and has added new Indicators (d)(9) and (10) that measure the performance of charter school students on State assessments in reading/language arts and mathematics.

Changes: As discussed in more detail later, the Department has added new Indicators (d)(9) and (d)(10) to education reform area (d).

Comment: A few commenters expressed support for proposed indicators (d)(6) through (d)(9). However, many commenters expressed concern over the Department's focus on charter schools. Several commenters objected to the emphasis on charter schools, noting that research suggests that many charter schools perform no better than regular public schools in raising student achievement. A number of commenters believe that these indicators will promote an overemphasis on charter schools while ignoring other alternatives. They urged the Department to focus on other models for turning around schools and to allow States flexibility in determining the best strategies.

Discussion: The Department appreciates the comments in support of the goal of increasing the number of high-performing charter schools as a strategy for both turning around the persistently lowest-performing schools and for increasing the educational options for students attending such schools. The Department recognizes that the available research on the effectiveness of charter schools in raising student achievement is mixed. However, we believe strongly that high-performing charter schools can be especially valuable in communities where chronically low-performing traditional public schools have failed to improve after years of conventional turnaround efforts. In such cases, high-performing charter schools, whether created through the conversion of a traditional public school enrolling the same students or by establishing a new school that provides an alternative to traditional public schools, can offer promising and proven options for breaking the cycle of educational failure. Finally, while we believe in the ability of high-performing charter schools to turn around struggling schools, we do not believe that they are the only reform option. States and LEAs have developed alternative intervention models that have demonstrated success in raising student achievement in low-performing schools. In addition to high-quality charter schools, we encourage the use of these alternatives that have proven to be successful in transforming struggling schools.

Changes: None.

Comment: One commenter questioned why progress information is not required for charter schools when the Department has indicated that it wants to hold charter schools accountable. The commenter proposed a new indicator requiring information on charter school progress in reading and mathematics.

Discussion: We agree that information should be collected on charter school progress in improving student achievement in reading/language arts and mathematics. Charter schools can serve as models for school reform, but it is important that they be held accountable for their performance. Collecting data on charter school progress in reading/language arts and mathematics will provide valuable information on charter school performance.

Changes: Two new indicators have been added to reform area (d) to address charter school progress in reading/language arts and mathematics. New Indicator (d)(9) requires each State to

provide, for the State and for each LEA in the State that operates charter schools, information on the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year. New Indicator (d)(10) establishes the same requirement for State assessments in mathematics.

Comment: A number of commenters asserted that the proposed data collection regarding charter schools would provide only a superficial overview of charter school accountability and success and proposed new indicators to collect additional information. The proposals included collecting information on the charter school application process, the number of charter school applications received each year, and the number of applications approved and denied. The proposed indicators also included collecting data on the extent to which charter schools serve student populations comparable to non-charter public schools in the district, and if a non-charter school was converted to a charter school, the percentage of the former student population the charter school continues to serve. Commenters also suggested collecting data on reform strategies that have been applied to the lowest-achieving charter schools and requiring States that allow charter schools to show evidence of charter school success. Another commenter suggested that all data related to charter schools be disaggregated by subpopulation.

Discussion: By requiring States to publicly report the number of charter schools permitted to operate under State law, the number that are currently operating, the number of charter schools that have closed and the reason for closure, this final notice will ensure parents, policy makers and other stakeholders have access to valuable information on States' charter school laws, operations, and accountability. To ensure greater transparency, States must report this information in each of the last five years instead of, as called for in the proposed requirements, over the last five years.

While we encourage States to collect and publicly report data on the performance of charter schools beyond what is called for in this notice, we believe that the information we are requiring is sufficient for the purposes of this program.

Changes: New Indicators (d)(11) and (d)(12) (proposed Indicators (d)(8) and (d)(9)) require that the information be publicly reported for ''each of the last five years'' as opposed to ''the last five years.''

Comment: One commenter recommended that the Department prohibit charter schools from refusing students based on test scores, special needs, or any other factor.

Discussion: The Department believes that all students should have access to an excellent education. However, State and local governments possess the authority to authorize charter schools and as such, requirements for charter school admissions are primarily State and local matters. Nonetheless, Federal civil rights laws prohibit charter schools (as recipients of Federal funds or as public entities) from discriminating in admissions on the basis of race, color, national origin, sex, or disability.[7] In addition, we note that charter schools receiving funds under the Department's Charter Schools Program (CSP) may set minimum qualifications for admission only to the extent that such qualifications are: (a) Consistent with the statutory purposes of the CSP; (b) reasonably necessary to achieve the educational mission of the charter school; and (c) consistent with civil rights laws and Part B of the Individuals with Disabilities Education Act.[8]

Changes: None.

Comment: One commenter suggested adding ''mismanagement'' to the list of possible reasons a charter school may have closed.

Discussion: While the reasons for charter school closure included in the notice are not meant to be exhaustive, the Department believes that requiring States to report information on the closure of charter schools due to academic, educational or financial reasons captures the vast majority of official 'mismanagement' circumstances that would cause a charter school to close or not be renewed. The Department has provided an ''other'' category to allow for closures not reflected in the choices provided. A State could use that category for schools closed because of other instances of ''mismanagement''.

Changes: None.

Comment: One commenter asked for clarification of which entities would constitute a valid source of information on why a charter school closed.

Discussion: SEAs are ultimately responsible for all schools in the State and as such will be a valid source for why a charter school has closed.

Changes: None.

Comment: One commenter suggested that the Department consider limiting the charter school data collection to such factors as size of enrollment and length of operation. The commenter also recommended that SEAs not be required to collect data on reasons for charter school closures in previous years because some States do not have this information and would be required to collect it retroactively.

Discussion: The Department believes that many States will already have this information. States will need to collect information on charter schools for the purposes of State funding and reporting for LEAs and schools and, in doing so, will likely determine which charter schools have closed. It is also likely that States also collect information on the reasons for closure. Though some States may not currently collect and publicly report this information, the Department believes that it is important that they do so. Understanding the reasons for charter school closures can help States, LEAs, and other stakeholders determine which models of charter schools are effective and eliminate those that are not.

Changes: None.

Comment: One commenter recommended that the Department issue clear reporting guidelines and a standard form for reporting the reasons for charter school closures in order to eliminate potential problems with reporting such data.

Discussion: Policies regarding authorization and closure of charter schools vary greatly from State to State. The Department cannot provide a standard reporting form that would address all of the different issues in each State. We leave the establishment of such guidelines and reporting forms to each State.

Changes: None.

Comment: One commenter asked for clarification regarding our intent when we ask for information regarding ''the number of charter schools currently permitted to operate.''

Discussion: In this section, the Department intends to require States to collect and publicly report information on the number of charter schools currently permitted to operate under State law.

Changes: We have revised new Indicator (d)(7) so that the indicator now reads: Provide for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law.

[7] Additional information on the application of Federal civil rights laws to charter schools is available at *http://www.ed.gov/offices/OCR/archives/pdf/charter.pdf.*

[8] Additional information on the CSP is available at *http://www.ed.gov/programs/charter/legislation.html.*

Comments and Responses on the SIG NPR

As noted earlier, the following discussion summarizes the comments we received, and our responses, on the ''Tier I'' and ''Tier II'' schools proposed in the SIG NPR that are now included in the definition of *persistently lowest-achieving schools.* The discussion also summarizes the comments and our responses on the four school intervention models proposed in the SIG NPR.

Definition of Persistently Lowest-Achieving Schools

Comment: A number of commenters recommended alternatives to the process proposed in the SIG NPR for determining the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State—that is, ''Tier I'' schools. As proposed in the SIG NPR, a Tier I school is a school in the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State, or one of the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater. Under the SIG NPR, to determine this ''bottom five percent,'' a State would have had to consider both the absolute performance of a school on the State's assessments in reading/language arts and mathematics and whether its gains on those assessments for the ''all students'' group over a number of years were less than the average gains of schools in the State for the ''all students'' group.

Several commenters said this proposed process was too prescriptive and recommended that States have more flexibility in determining the lowest-achieving five percent. The commenters specifically suggested permitting States to restrict Tier I schools to schools in restructuring if this group constitutes more than five percent of a State's identified schools; to apply a State's growth model; or to consider such other factors as measures of individual student growth, writing samples, grades, and portfolios. One commenter suggested that the Department determine the lowest-achieving five percent of schools in the Nation rather than have each State determine its own lowest-achieving five percent. Other commenters recommended changes that include taking into account the length of time a school has been designated for restructuring, measuring gains related to English language proficiency, and including newly designated Title I schools (especially secondary schools) that do not yet have an improvement status.

Several commenters also suggested changing the method for determining ''lack of progress,'' including using subgroups rather than the ''all students'' group, measuring progress in meeting adequate yearly progress targets, and narrowing achievement gaps. Another commenter recommended clarifying that, even if a school shows gains greater than the State average, it should not be considered to be making progress if those gains are not greater than zero.

Finally, several commenters suggested that graduation rates be taken into account in determining the lowest-achieving Title I high schools. One of these commenters suggested including in Tier I all Title I high schools in improvement, corrective action, or restructuring with a graduation rate below 60 percent as well as their feeder middle and junior high schools.

Discussion: In developing our proposed definition of the lowest-achieving five percent of schools for each State as defined in the SIG NPR, we considered several alternatives, including the use of the existing ESEA improvement categories and the possibility of using a measure that would identify the lowest-achieving five percent of schools in the Nation rather than on a State-by-State basis. The goal was to identify a uniform measure that could be applied easily by all States using existing assessment data. We started with Title I schools in improvement, corrective action, or restructuring as the initial universe from which to select the lowest-achieving schools because those are the schools eligible to receive SIG funds. ESEA improvement categories were deemed too dependent on variations in individual subgroup performance, rather than the overall performance of an entire school, to reliably identify our worst schools. A nationwide measure, although appealing from the perspective of national education policy, would likely have identified many schools in a handful of States and few or none in the majority of States, making it an inappropriate guide for the most effective use of State formula grant funds.

In general, we believe that the changes and alternatives suggested by commenters would add complexity to the method for determining the lowest-achieving five percent of schools without meaningfully improving the outcome. With the changes noted subsequently, we believe the definition proposed in the SIG NPR is straightforward, can be easily applied using data available in all States, and can produce easily understood results in the form of a list of State's lowest-achieving schools that have not improved in a number of years.

Regarding the determination of whether a school is making progress in improving its scores on State assessments, the commenters highlighted the complexity and potential unreliability of measuring year-to-year gains on such assessments. In response, we are simplifying this aspect of the definition to give SEAs greater flexibility in determining a school's lack of progress on State assessments over a number of years.

We also agree that it is important to include Title I high schools in improvement, corrective action, or restructuring that have low graduation rates in the definition. The Secretary has made addressing our Nation's unacceptably high drop-out rates—an estimated 1 million students leave school annually, many never to return—a national priority. In recognition of this priority, and in response to recommendations from commenters, we are including in the definition any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate that is less than 60 percent over a number of years.

Accordingly, we have made these changes and incorporated the process for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring—also known as Tier I schools for purposes of SIG funds—into a new definition of *persistently lowest-achieving schools* in this notice.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the process described in the SIG NPR for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier I'' schools for purposes of SIG). This new definition also includes any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier I'' definition for SIG purposes). We have removed language in proposed section I.A.1.a(ii) of the SIG NPR defining ''a school that has not made progress.''

Comment: Numerous commenters expressed support for including chronically low-achieving secondary schools that are eligible for, but not receiving Title I funds as Tier II schools, as proposed in section I.A.1.b in the SIG

NPR, including one commenter who suggested that LEAs be required to fund Tier II schools. Other commenters, however, opposed the use of Title I funds in non-Title I schools and recommended that other funding be identified to serve those schools or stated that the inclusion of those schools is more appropriately addressed in the Title I reauthorization. One commenter suggested that it would not be appropriate to provide Title I funds to such schools when the SIG NPR would restrict the number of Title I schools that can be served in Tier I.

Discussion: We believe that low-achieving secondary schools often present unique resource, logistical, and pedagogical challenges that require rigorous interventions to address. Yet, many such schools that are eligible to receive Title I funds are not served because of competing needs for Title I funds within an LEA. The large amounts of ARRA funds—available through Stabilization, Race to the Top, and SIG—present an opportunity to address the needs of these low-achieving secondary schools. Accordingly, we have continued in this notice to include secondary schools that are eligible for, but do not receive, Title I funds in the definition of the persistently lowest-achieving schools in a State.

As proposed in the SIG NPR, such secondary schools would have been eligible if they were equally as low-achieving as a Tier I school. We realized that this standard was too vague, particularly in light of the rigorous interventions that would be required if an SEA identified, and an LEA decided to serve, such a school. As a result, we have changed the definition to include secondary schools that are eligible for, but do not receive, Title I funds and that are among the lowest-achieving five percent of such schools in a State (or the lowest five such schools, whichever number of schools is greater). An SEA must identify these schools using the same criteria as it uses to identify the lowest-achieving Title I schools in improvement, corrective action, and restructuring.

For the reasons noted earlier in this notice, we have also included in the definition any high school that is eligible for, but does not receive, Title I funds and that has had a graduation rate that is less than 60 percent over a number of years.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the lowest-achieving five percent of secondary schools in a State that are eligible for, but do not receive, Title I funds (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier II'' schools for purposes of SIG). This new definition also includes any high school that is eligible for, but does not receive, Title I funds that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier II'' definition for SIG purposes). We have removed language in proposed section I.A.1.b of the SIG NPR that required a comparison of the achievement of secondary schools to Tier I schools.

General Comments on the Four Intervention Models

Comment: One commenter supported the Secretary's intent in proposing the four interventions in the SIG NPR. The commenter noted that the majority of SIG funds are intended to target the very lowest-achieving schools in the Nation—schools that have not just missed their accountability targets by narrow margins or in a single subgroup. Rather, they are schools that have ''profoundly fail[ed]'' their students ''for some time.'' Accordingly, the commenter acknowledged that the four interventions are appropriately designed to engage these schools in bold, dramatic changes or else to close their doors.

Conversely, several commenters suggested that the four interventions are too prescriptive and do not leave room for State innovation and discretion to fashion similarly rigorous interventions that may be more workable in a particular State. The commenters noted that for some school districts, particularly the most rural districts, none of the interventions may be feasible solutions. In addition, several commenters rejected the idea that there should be any Federal requirements governing struggling schools. The commenters suggested that schools in need of improvement be permitted to engage in self-improvement strategies tailored to each individual school's needs as determined at the local level based on local data, rather than being mandated to adopt specific models by the Federal Government.

Discussion: We disagree that the four models limit State innovation. Each model provides flexibility and permits LEAs to develop approaches that are tailored to the needs of their schools within the broad context created by each model's requirements. We do not believe that any one model is appropriate for all schools; rather, it is the Department's intention that LEAs select the model that is appropriate for each particular school.

Changes: None.

Comment: Several commenters suggested adding a fifth intervention option. One commenter, for example, suggested permitting States to propose an alternative, but rigorous, intervention model for approval through a peer review process. The commenter noted that whatever accountability measure is adopted in the SIG notice of final requirements should serve to ensure that the model is held accountable for results. Another commenter suggested a ''scale up'' model, in which an LEA could use SIG funds to expand interventions with documented success in producing rapid improvement in student achievement within that LEA or in another LEA with similar demographics and challenges. Yet another commenter suggested adding a ''supported transformation'' model to accommodate, in particular, the needs of children in low-achieving schools in small, rural communities that lack the capacity to transform their schools. The commenter identified the need for an SEA to build the capacity of struggling LEAs by working to develop models for intervention, to identify specific evidence-based intervention strategies, and to provide ongoing, intensive technical, pedagogical, and practical assistance so as to increase LEAs' capacity to assist their low-achieving schools.

Discussion: We included the four school intervention models in the SIG NPR after an extensive examination of available research and literature on school turnaround strategies and after outreach to practitioners. Our goal, which we believe was achieved, was to identify fundamental, disruptive changes that LEAs could make in order to finally break the long cycle of educational failure—including the failure of previous reforms—in the Nation's persistently lowest-achieving schools. We also believe that these models, despite their limited number, potentially encompass a wide range of specific reform approaches, thus negating the need for a ''fifth model.'' We understand, for example, that school closure may not work in some LEAs, but that leaves the turnaround, restart, or transformation models as possible options for them. We also know that not all States have a charter school law, limiting the restart options available to LEAs in such States. However, even where charter schools are not an option, an LEA could work with an Education Management Organization (EMO) to restart a failed school or could pursue one of the other three intervention models. And we understand that some rural areas may face unique challenges

in turning around low-achieving schools, but note that the significant amount of funding available to implement the four models will help to overcome the many resource limitations that previously have hindered successful rural school reform in many areas.

The four school intervention models described in the SIG NPR also are internally flexible, permitting LEAs to develop their own approaches in the broad context created by the models' requirements. For example, the turnaround and restart models focus on governance and leadership changes, leaving substantial flexibility and autonomy for new leadership teams to develop and implement their own comprehensive improvement plans. Even the transformation model includes a wide variety of permissible activities from which LEAs may choose to supplement required elements, which are primarily focused on creating the conditions to support effective school turnarounds rather than the specific methods and activities targeting the academic needs of the students in the school.

We also note that over the course of the past eight years, States and LEAs have had considerable time, and have been able to tap new resources, to identify and implement effective school turnaround strategies. Yet they have demonstrated little success in doing so, particularly in the Nation's persistently lowest-achieving schools, including an estimated 2,000 ''dropout factories.'' Under the ESEA, States have been required to set up statewide systems of support for LEA and school improvement; to identify low-achieving schools for a range of improvement, corrective action, and restructuring activities; and to use the school improvement reservation under section 1003(a) of the ESEA to fund such improvement activities. However, the overall number of schools identified for improvement, corrective action, and restructuring continues to grow; in particular, the number of chronically low-achieving Title I schools identified for restructuring has roughly tripled over the past three years to more than 5,000 schools. SEAs have thus far helped no more than a handful of these schools to successfully restructure and exit improvement status, in large part, we believe, because of an unwillingness to undertake the kind of radical, fundamental reforms necessary to improve the persistently lowest-achieving schools.

Finally, although we believe this recent history of failed school improvement efforts justifies using ARRA SIG funds to leverage the adoption of the more far-reaching reforms required by the four school intervention models, we note that Part A of Title I of the ESEA continues to make available nearly $15 billion annually, as well as an additional $10 billion in fiscal year 2009 through the ARRA, that SEAs and LEAs may use to develop and implement virtually any reform strategy that they believe will significantly improve student achievement and other important educational outcomes in Title I schools. In particular, we would applaud State and local efforts to use existing Title I funds to scale up successful interventions or to build State and local capacity to develop and implement other promising school intervention models. For all of these reasons, we decline to add a fifth school intervention model to this notice.

Changes: None.

Turnaround Model

Principal and Staff Replacement

Comment: Many commenters opposed replacing principals and staff as part of the turnaround model. Although several commenters acknowledged that poor leadership and ineffective staff contribute to a school's low performance, a majority claimed that staff replacement has not been established as an effective reform strategy, others stated that such a strategy is not a realistic option in many communities that already face teacher and principal shortages, and one commenter suggested that replacement requirements associated with turnaround plans would discourage teachers and principals from working in struggling schools.

In addition, many commenters opposed sanctioning principals and staff, partly because, as one commenter claimed, the turnaround model assumes that most problems in a school are attributable to these individuals. One stated that principals face ''trying'' circumstances and another stated that the proposed requirements ignore the ''vital role'' that principals play in high-need schools. These commenters stated that other factors—such as poverty, lack of proper support, and tenure and collective bargaining laws—should be addressed before decisions are made to replace principals and staff. One commenter claimed that principals and teachers in low-achieving schools could perform their jobs if they are given adequate training and support and working conditions are improved. Another opposed the replacement requirement because the commenter believed a stable and consistent staff is a key factor in school improvement.

Discussion: We understand that replacing leadership and staff is one of the most difficult aspects of the four models; however, we also know that many of our lowest-achieving schools have failed to improve despite the repeated use of many of the strategies suggested by the commenters. The emphasis of the ARRA on turning around struggling schools also reflects, in part, an acknowledgement by the Congress that past efforts have had limited or no success in breaking the cycle of chronic educational failure in the Nation's persistently lowest-achieving schools.

Accordingly, the Department believes that dramatic and wholesale changes in leadership, staffing, and governance—such as those required by the turnaround model—are an appropriate intervention option for creating an entirely new school culture that breaks a system of institutionalized failure. Although we acknowledge the possibility that the turnaround model could discourage some principals and teachers from working in the lowest-achieving schools, others will likely be attracted by the opportunity to participate in a school turnaround with other committed staff. In addition, other Federal programs, such as the Teacher Incentive Fund and Race to the Top programs, are helping to create incentives and provide resources that can be used to attract and reward effective teachers and principals and improve strategies for recruitment, retention, and professional development.

Changes: None.

Comment: A number of commenters recommended changes to the principal and staff replacement requirements. One commenter proposed a detailed ''fifth model'' that focused upon providing additional support to teachers by improving working conditions, such as reducing class size and providing professional development opportunities. Others recommended (1) providing a principal with the autonomy to make his or her own firing and hiring decisions instead of requiring the replacement of 50 percent of the staff; (2) allowing staff to reapply for their positions; (3) retaining principals who were recently hired; (4) providing principals with a ''window'' of opportunity to improve their schools before being replaced; (5) suggesting that the replacement requirement extend to superintendents and boards of education; (6) retaining at least 50 percent of current staff who reapply and meet all of the requirements of the

redesigned school; and (7) focusing on staff qualifications and putting in place effective staff rather than on a particular target level of replacements.

Discussion: We agree with some of the changes to the turnaround model suggested by commenters. For example, new language in paragraph (a)(1)(i) of the turnaround model recognizes the vital role played by the principal and acknowledges that new principals need authority to make key changes required to turn around a failing school. Under this new language, the new principal of a turnaround school would have ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates.''

We also recognize that the staff selected for a turnaround school must have the skill and expertise to be effective in this context. We are adding language clarifying that all personnel must be screened and selected based on locally adopted competencies to measure their effectiveness in a turnaround environment.

In addition, while the SIG NPR would have required an LEA to replace at least 50 percent of the staff of a turnaround school, new paragraph (a)(1)(ii)(A) of the turnaround model requires an LEA, after screening all staff using locally adopted competencies, to rehire no more than 50 percent of the school's staff. Further, some commenters appear to have overlooked proposed section I.B.1 in the SIG NPR, which would give LEAs flexibility to continue implementing interventions begun within the last two years that meet, in whole or in part, the requirements of the turnaround, restart, or transformation models and, thus, would in many cases allow an LEA to retain a recently hired principal in a turnaround school. We are retaining this flexibility provision in this notice.

Finally, the turnaround model includes significant provisions aimed at supporting teachers. For example, the SIG NPR called for ''ongoing, high-quality, job-embedded professional development to staff,'' as well as increased time for collaboration and professional development for staff. These supports for teachers and other staff are retained in this final notice.

Changes: We have modified the provisions in the turnaround model in paragraph (a)(1)(i) to give the new principal of a turnaround school ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates.'' As described earlier, we have also revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. In addition, instead of the requirement that an LEA replace ''at least 50 percent of the staff'' in a turnaround school, paragraph (a)(1)(ii)(A) of the definition requires an LEA to screen and rehire ''no more than 50 percent'' of the existing staff.

Comment: Numerous commenters expressed concerns that a national shortage of principals and teachers would prevent successful implementation of the turnaround model. Two commenters stated that, in order to replace half of the staff as required by the turnaround model, an LEA would likely be forced to hire less experienced teachers and rely on emergency credentials or licensure to fully staff a turnaround school. One commenter claimed that research shows that large pools of available applicants are essential for successful replacement of principals and teachers. Another commenter stated that there is a ''national shortage of transformational leaders'' who can lead turnaround schools. Further, many commenters claimed that replacing half of a school's staff would be difficult or even impossible in rural schools and small communities. One commenter asserted that the shortage of teachers in rural areas would disqualify these LEAs from applying for school improvement funds. Another stated that even with recruitment incentives it would be difficult to fill staff vacancies. One commenter urged the Secretary to take such shortages into account before requiring ''blanket firings'' of teachers. In addition, several commenters observed that chronically low-performing schools already suffer from a number of vacancies due to high staff turnover rates. In fact, one commenter believed replacing 50 percent of the staff was not a ''tough'' consequence because these schools already experience high turnover.

These concerns led several commenters to recommend flexibility regarding the staff replacement requirement of the turnaround model, including the opportunity to request a waiver if an LEA could demonstrate an inability to fill vacancies, and a required evaluation before principals and staff can be replaced. Other commenters opposed the replacement of principals without consideration of such factors as years of experience and district-level support, recommended a three-year window in which to make replacement decisions based upon multiple measures, and suggested the provision of high-quality professional development before replacing any staff.

Discussion: We recognize that the replacement requirement will present challenges for LEAs, particularly in rural areas, where highly effective principals and teachers capable of leading educational transformation may be in short supply; however, the difficulty of identifying new qualified teachers and school leaders for a turnaround school must be measured against the enormous human and economic cost of accepting the status quo for the Nation's persistently lowest-achieving schools. We simply cannot afford to continue graduating hundreds of thousands of students annually who are unprepared for either further education or the workforce, or to permit roughly one million students to drop out of high school each year, many of them never to return to school. Instead, States and LEAs must work together to recruit, place, and retain the effective principals and staff needed to implement the turnaround model. The Department is supporting these efforts through Federal grant programs that can provide resources for improving strategies used to recruit effective principals and teachers, such as the Teacher Incentive Fund program, which helps increase the number of effective teachers teaching poor, minority, and disadvantaged students in hard-to-staff subjects and schools.

Finally, we wish to clarify that the requirements for the turnaround model do not require ''blanket firings'' of staff. The Department agrees that staff should be carefully evaluated before any replacement decisions are made and has added new language requiring LEAs to use ''locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students.'' If required by State laws or union contracts, principals and staff may have to be reassigned to other schools as necessary.

Changes: As described earlier, we have revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. The LEA must then screen all existing staff before rehiring no more than 50 percent of them.

Comment: Numerous commenters claimed that there is little research supporting the replacement of leadership and staff in school turnaround efforts. One commenter cited a 2008 Institute of Education Sciences (IES) report, ''Turning Around Chronically Low-Performing Schools,'' that, according to the commenter, recommends that decisions to remove staff should be made on an individual basis. Several others also asserted that the proposed requirement to replace at least 50 percent of staff was arbitrary, with two commenters recommending instead that the Department ''empower the turnaround principal with the autonomy to hire, based on merit, for every position in the school.''

Discussion: We are not claiming that merely replacing a principal and 50 percent of a school's staff is sufficient to turn around a low-achieving school. Although principal and staff replacement are key features of the turnaround model proposed in the SIG NPR, they are not the only features. The strength of the turnaround model lies in its comprehensive combination of significant staffing and governance changes, an improved instructional program, ongoing high-quality professional development, the use of data to drive continuous improvement, increased time for learning and for staff collaboration, and appropriate supports for students. The staffing and governance changes are intended primarily to create the conditions within a school, including school climate and culture, that will permit effective implementation of the other elements of the turnaround model. Dramatic changes in leadership, staff, and governance structure help lay the groundwork to create the conditions for autonomy and flexibility that are associated with successful turnaround efforts. Accordingly, we decline to remove the requirement for replacing staff in a turnaround model.

Changes: None.

Comment: Many commenters claimed that teacher tenure, State collective bargaining laws, and union contracts prevent school administrators from replacing staff as required by the turnaround model. Several commenters stated that union contracts would force school administrators to reassign dismissed teaching staff to other schools, and the turnaround model would not solve the problem of removing ineffective teachers from the classroom. One commenter asked if an LEA would have to negotiate staff replacement with the union or if the Federal grant requirements supersede State due process laws. One commenter noted that the Department would have to provide ''involuntary transfer authority'' to LEAs in order for them to implement the turnaround model in collective bargaining States.

Several commenters called for the Department to foster collaboration with teacher unions as well as the larger community. One of these commenters claimed that collaboration ''increases leadership and builds professionalism'' and recommended that evidence of collaboration be documented. Another asserted the involvement of school-based personnel in decision-making is key to the successful implementation of school interventions. Another recommended that an LEA seek ''feedback'' from all stakeholders, including students, parents, and unions, as to whether an intervention is ''feasible or warranted.''

Discussion: We recognize that collective bargaining agreements and union contracts may present barriers to implementation of the turnaround model; however, we do not believe these barriers are insurmountable. In particular, drawing upon pockets of success in cities and States across the country, the Secretary believes LEAs and unions can work together to bring about dramatic, positive changes in our persistently lowest-achieving schools. Accordingly, the Department encourages collaborations and partnerships between LEAs and teacher unions and teacher membership associations to resolve issues created by school intervention models in the context of existing collective bargaining agreements. We also encourage LEAs to collaborate with stakeholders in schools and in the larger community as they implement school interventions.

Changes: None.

Comment: Many commenters stated that the term ''staff'' was not clearly defined. One commenter presumed it excluded maintenance, food services, and other support staff. Another stated that the Department should allow LEAs to develop their own definition of ''staff,'' and permit LEAs to determine whether non-instructional staff should be included in the replacement calculus. Two commenters also requested greater clarity regarding the meaning of ''new governance.''

Discussion: We believe that, in high-achieving schools facing the most challenging of circumstances, every adult in the school contributes to the school's success, including the principal, teachers, non-certificated staff, custodians, security guards, food service staff, and others working in the school. Conversely, in a persistently lowest-achieving school, we believe that no single group of adults in the school is responsible for a culture of persistent failure. For this reason, our general guidance is that an LEA should define ''staff'' broadly in developing and implementing a turnaround model. The Department declines to define the term ''staff'' in this notice, but plans to issue guidance that will clarify this and other issues related to the turnaround model. As for the term ''governance,'' the language in paragraph (a)(1)(v) suggests a number of possible governance alternatives that may be adopted in the context of a turnaround model. The Department declines to provide a more specific definition in order to permit LEAs the flexibility needed to adopt a turnaround governance structure that meets their local needs and circumstances.

Changes: None.

Comment: Several commenters asked that the Department consider the possible negative consequences of replacing staff on a school and community, with one commenter suggesting that replacing half of the staff could result in more damage ''to a fragile school than no change at all.'' Another commenter stated that maintaining a consistent staff is a key to school success.

Discussion: The Secretary disagrees that implementing a turnaround model would be worse than ''no change at all.'' The schools that would implement a turnaround model have, by definition, persistently failed our children for years, and dramatic and fundamental change is warranted. In addition, as stated elsewhere in this notice, the commenters overlook the fact that the other options—the transformation, school closure, and restart models—do not require replacement of 50 percent of a school's staff. If an LEA believes that it cannot successfully meet the requirements of the turnaround model, we recommend that it consider one of the other three options.

Changes: None.

Comment: Numerous commenters stated that decisions regarding school restructuring are best decided on the local, rather than the Federal, level. One commenter opposed the requirements for the turnaround model as being too prescriptive, and another recommended that the local school board be provided with the discretion to determine how best to implement the turnaround model. One commenter agreed that ''ineffective staff and leadership should be replaced in order for school improvement to work,'' but stated that the turnaround model's ''one-size-fits-all formula may not be the best approach for all schools.'' Two

commenters specifically stated that the decision to remove a principal and staff should be determined by a local school board. Similarly, another commenter noted that decisions to replace a principal and staff should be based upon ''local data'' rather than Federal requirements that are not tailored to an individual school's needs. One of these commenters stated that local decision-making is particularly important if a school has been underperforming for a period longer than the ''principal's tenure or if the principal has begun a transformative process that could be harmed by a leadership change.''

Discussion: An LEA is free to exercise local control and use local data and leadership to determine which of the four school intervention models to follow in turning around a persistently lowest-achieving school. However, after nearly a decade of broad State and local discretion in implementing, with little success, the school improvement provisions of the ESEA, the Department believes, for the purpose of this program, it is appropriate and necessary to limit that discretion and require the use of a carefully developed set of school intervention models in the Nation's lowest-achieving schools. In particular, the turnaround and transformation models include a combination of staffing, governance, and structural changes with specific comprehensive instructional reforms that the Department believes hold great promise for effective investment of the $3 billion provided for the SIG program by the ARRA.

Changes: None.

Relationship Between Turnaround and Transformation Models

Comment: Several commenters believed the turnaround model lacked sufficient detail and did not provide adequate direction to LEAs attempting to implement the model. In contrast, several commenters appreciated the level of detail contained in the transformation model and suggested that the turnaround model provide a similar level of detail. Some of these commenters recommended that the turnaround model incorporate some of the specific provisions contained in the transformation model. For example, one commenter suggested that the turnaround model include the transformation model's provisions regarding implementation of instructional changes. Another commenter specifically recommended that the turnaround model incorporate the transformation model's criteria for teacher effectiveness.

Discussion: We agree that the turnaround model in the SIG NPR lacked clarity and potentially created confusion about whether applicants could draw upon permissible activities described in the transformation model. The Department did not intend to limit LEA discretion in adapting elements of the transformation model to the turnaround model. Accordingly, we are adding new language in paragraph (a)(2)(i) to clarify that an LEA implementing the turnaround model may implement any of the required and permissible activities under the transformation model.

Changes: We have clarified in paragraph (a)(2)(i) that an LEA implementing a turnaround model may also implement other strategies such as ''[a]ny of the required and permissible activities under the transformation model.'' In addition, we have made changes in the turnaround model that correspond to changes we made in response to comments on the transformation model. The specific changes are noted subsequently in this notice in our discussion of comments on the transformation model.

Restart Model

Comment: Many commenters opposed the restart model described in the SIG NPR because, they claimed, charter schools generally do not perform better than regular public schools. In particular, these commenters cited recent research from the Center for Research on Education Outcomes (CREDO) at Stanford University showing that fewer than one-fifth of charter schools demonstrated gains in student achievement that exceeded those of traditional public schools. One commenter also mentioned a RAND study highlighting the low performance of charter schools in Texas and a study by researchers at Johns Hopkins University showing that most EMO-operated schools were outperformed by traditional public schools. Most of these commenters proposed broadening or strengthening the restart option, but one commenter recommended removing it from the list of permitted school intervention models. One commenter claimed that, where charter schools had raised student achievement, in most cases it was attributable to high student attrition rates brought about by demanding school schedules and behavioral rules that did not work for all students. A few commenters noted either that some States do not allow charter schools or that the restart model would be unlikely to work in rural areas. Several commenters also opposed the restart model because it might displace students and disrupt existing efforts to build community schools; another commenter recommended that any planning and reorganization for a restart model take place during the school year, while students remain in the school, so that there would be no disruption in services if the school were closed and then reopened as a restart school.

Discussion: We acknowledge that the available research on the effectiveness of charter schools in raising student achievement is mixed, that some State laws significantly limit the creation or expansion of charter schools, and that smaller communities, particularly in rural areas, may not have sufficient access to providers or teachers to support the creation of charter schools. However, there are many examples of high-quality charter schools, and the Secretary believes very strongly that high-achieving charter schools can be a significant educational resource in communities with chronically low-achieving regular public schools that have failed to improve after years of conventional turnaround efforts. Although they are not a ''silver bullet'' for failing schools or communities, a more balanced view of the results produced by charter schools suggests that they offer promising and proven options for breaking the cycle of educational failure and fully merit inclusion in the restart model.

The Department also recognizes the concerns expressed by commenters about the potential disruption to students, parents, and communities that may be connected with a restart plan that involves closing and then reopening a school. To help address this concern, we are adding language to this notice allowing a school conversion—and not just closing and reopening a school—to qualify as an acceptable restart model.

At the same time, the Department emphasizes that just as the restart model is one of four school intervention models supported by this notice, charter schools are just one option under the restart model. Contracting with an EMO is another restart option that may provide sufficient flexibility in States without charter school laws or in rural areas where few charter schools operate. An EMO also may be able to develop and implement a plan that permits students to stay in their school while undergoing a restart. For example, some EMOs hired to turn around a low-achieving school may begin planning for the turnaround in late winter or early spring, hire and train staff in late spring and early summer, reconfigure and re-equip the school—including the

acquisition of curricular materials and technology—during the summer, and then reopen promptly in the fall, resulting in minimal, if any, disruption to students and parents.

Changes: We have changed the language in paragraph (b) to define a restart model as one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an EMO that has been selected through a rigorous review process.

Defining Rigorous Review

Comment: Several commenters supported the requirement in the SIG NPR that LEAs select a charter school operator, a CMO, or an EMO through a ''rigorous review process.'' In general, these commenters viewed this requirement as essential to ensuring the quality of a restart model. Commenters also asked for clarification of how such a review would be conducted, including guidance for SEAs and LEAs and opportunities for parent and community involvement in reviewing and selecting a restart school operator. One commenter raised a concern about how it would be possible to review rigorously a new charter school operator, CMO, or EMO.

Discussion: We believe that SEAs and LEAs should have flexibility to develop their own review processes for charter school operators, CMOs, and EMOs, based both on local circumstances and on their experiences in authorizing charter schools. We will provide guidance and technical assistance in this area, but will leave final decisions on review requirements to SEAs and LEAs. We believe flexibility in defining ''rigorous review'' is warranted because of the wide variation in local need and community context as well as in the size, structure, and experience of charter school operators, CMOs, and EMOs.

Changes: None.

Clarifying Restart Operator Definitions

Comment: One commenter recommended that the Department provide a definition of CMO and EMO, while other commenters suggested changes or requested clarification of the definitions of CMO and EMO provided in the SIG NPR. One commenter recommended defining a CMO as an organization that ''operates or manages a school or schools'' rather than, as in the SIG NPR, ''operates charter schools.'' This commenter also urged the Department to define ''whole school operations'' as applied to the definition of EMO. Another commenter recommended that the Department include charter schools operated or managed by an LEA in the definition of CMO. One commenter also urged the Department to establish reporting requirements for CMOs and EMOs, including data on student achievement, the impact of reforms on student achievement, information on how CMOs and EMOs serve students with disabilities, and other accountability data. Finally, two commenters also suggested that the Department award funding directly to CMOs and EMOs to pay for planning, outreach, and training staff for a restart effort.

Discussion: We included definitions of CMO and EMO in the preamble of the SIG NPR and are adding these definitions in the definition of *restart model* for clarification purposes. We agree that the definition of CMO should include organizations that operate or manage charter schools and have made this change to the CMO definition in this notice accordingly. Although a charter school may exist as part of an LEA, it is unlikely that the LEA would be responsible for operating or managing the charter school. Therefore, we have not expressly included LEAs in the definition of CMO. We are retaining the EMO definition from the SIG NPR, and believe the emphasis on ''whole-school operation'' is sufficient to distinguish EMOs from other providers that may help with certain specific aspects of school operation and management, but that do not assume full responsibility for the entire school, as is required by the restart model.

The Department does not believe it is necessary to add new or additional reporting requirements for EMOs and CMOs, as their performance will be captured by the reporting metrics established in the final SIG notice. More specifically, SEAs and LEAs already must report on the intervention model used for each persistently lowest-achieving school, as well as outcome data for those schools, including outcome data disaggregated by student subgroups. As for providing SIG funding directly to CMOs and EMOs, the SIG program is a State formula grant program, and the Department must allocate funds to States in accordance with the requirements of section 1003(g) of the ESEA. Moreover, the only eligible SIG subgrantees are LEAs.

Changes: We have included the definitions of CMO and EMO in the definition of *restart model.* We have also modified the definition of CMO slightly to reflect the fact that a CMO may either operate or manage charter schools.

Flexibility Under the Restart Model

Comment: Several commenters recommended greater flexibility for LEAs implementing the restart model, including options to create magnet schools or ''themed'' schools. Another commenter, claiming that few charter school operators, CMOs, or EMOs have experience in ''whole school takeover,'' recommended permitting a phase-in approach to charter schools that would allow a charter school operator to start with two or three early grades and gradually ''take over'' an entire school.

Discussion: We believe that considerable flexibility regarding the type of school program offered is inherent in the restart model, which focuses on management and not on academic or curricular requirements. For example, restart operators would be free to create ''themed'' schools, so long as those schools permit enrollment, within the grades they serve, of any former student who wishes to attend. Additionally, LEAs have the flexibility to work with providers to develop the appropriate sequence and timetable for a restart partnership. Whether through ''phase-in'' models or complete conversions, the Department encourages SEAs and LEAs to take into account local context and need in making these decisions.

Changes: None.

Comment: Many commenters asked for clarification regarding various aspects of the restart model, including whether it includes conversion of existing schools, who would have authority over the operator of restart schools (*e.g.,* LEA, SEA, independent governing board, or a State or local authorizer), and whether a group of individuals (*e.g.,* teachers) could manage a restart school.

Discussion: We have changed the definition of restart model to clarify that it includes conversion of an existing school and not just strategies involving closing and reopening a school. In particular, we believe that conversion approaches may permit implementation of a restart model with minimal disruption for students, parents, and communities. In general, an LEA would be responsible for authorizing or contracting with charter school operators, CMOs, or EMOs for implementation of a restart model. The precise form of this contract or agreement would be up to State or local authorities and could include each of the alternatives mentioned by the commenters. However, regardless of the lines of authority, autonomy and freedom to operate independently from the State or LEA are essential elements

of the restart model. A group of individuals, including teachers, would be eligible to manage a restart school so long as they met the local requirements of the rigorous review process included in the restart model.

Changes: We have revised the first sentence of the definition of restart model to read as follows: ''A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process.''

Comment: Several commenters recommended that the Department include specific elements of the turnaround and transformation models in the restart model, including improved curricula and instruction, student supports, extended learning time, community involvement, and partnering with community-based organizations. Similarly, one commenter noted that a restart model might permit a school to reopen as a charter school while changing little inside the school and urged the Department to require restart schools to use a model of reform that has been proven effective or that includes evidence-based strategies. Another commenter urged the Department to encourage use of the restart model to better serve high-risk students and help dropouts reconnect to school.

Discussion: We note that restart models could include nearly all of the specific reform elements identified under the turnaround and transformation models, but decline to require the use of any particular element or strategy. The restart model is specifically intended to give operators flexibility and freedom to implement their own reform plans and strategies. The required rigorous review process permits an LEA to examine those plans and strategies—and helps prevent an operator from assuming control of a school without a meaningful plan for turning it around—but should not involve mandating or otherwise requiring specific reform activities. However, the review process may require operators to demonstrate that their strategies are informed by research and other evidence of past success.

Changes: None.

Comment: One commenter recommended requiring the review process for CMOs and EMOs to include curriculum and staffing plans for meeting the needs of subgroups of students, including students with disabilities and limited English proficient students. Another commenter suggested that the review process include examining the extent to which a restart operator sought to ensure that restart schools would serve all former students by requiring States to collect data on the number of students from low-income families, students with disabilities, and limited English proficient students served by a restart school compared with the number of those students served by the school it replaced.

Discussion: Restart operators, by definition, have almost complete freedom to develop and implement their own curricula and staffing plans, and the Department declines to place limits in this area in recognition of the core emphasis of the restart model on outcomes rather than inputs. The requirement to enroll any former student who wishes to attend the school will help to ensure that charter school operators, CMOs, and EMOs include serving all existing groups of students in their restart plans. Moreover, the effectiveness of these curricula and staff changes in meeting the needs of subgroups of students, including students with disabilities and limited English proficient students, will be measured by the metrics in the final SIG notice, which will include disaggregated achievement data by student subgroup. We encourage SEAs and LEAs to analyze these data to ensure that subgroups of students are properly included in restart schools and that their needs are addressed.

Changes: None.

Comment: A few commenters expressed concern that charter schools are not subject to the same oversight, regulation, or accountability as are regular public schools. Other commenters emphasized the importance, particularly in the case of charter school conversions, of ensuring autonomy, flexibility, and freedom from district rules and collective bargaining agreements, so that charter schools can implement their own cultures and practices.

Discussion: The restart model is specifically intended to give providers freedom from the rules and regulations governing regular public schools, in recognition of the fact that, while such rules and regulations may be effective in requiring certain kinds of inputs, such as teacher qualification requirements or a uniform length of the school day or year, they have not been demonstrated to have a significant impact on educational outcomes. Moreover, many successful charter schools have achieved outstanding results by changing these inputs, such as by hiring non-traditional but skilled teachers and by extending the length of the school day. The Department believes that the outcome metrics established in the final SIG notice will ensure accountability for the performance of restart schools.

Changes: None.

Comment: One commenter expressed concern that LEAs could use the restart model to close an existing charter school that, while successful in raising student achievement, remained in school improvement status under section 1116 of the ESEA.

Discussion: An existing charter school that is raising student achievement would be unlikely, under the requirements for identifying a State's persistently lowest-achieving schools, to be identified for school intervention, because those requirements include not only low levels of achievement, but also making little or no progress on improving those low levels of achievement in recent years. Moreover, this notice, as did the SIG NPR, provides flexibility for a school, such as a recently converted charter school that meets the requirements of the restart model, to use SIG funds to continue or complete reforms it began within the prior two years. On the other hand, it is possible, and in some cases appropriate, for an LEA to close a charter school that is not serving its students well and implement a new intervention model in the school.

Changes: None.

School Closure

Comment: A number of commenters expressed their general views regarding whether closing schools is an appropriate intervention for raising student achievement. Although no commenter advocated extensive use of this intervention, several acknowledged that school closure is sometimes necessary, particularly for schools with a long history of very low achievement, and noted that some States and LEAs have used this strategy successfully. Other commenters, however, expressed a number of logistical concerns with this intervention. Some noted that closing schools is often not feasible in rural areas in which the distance between schools is too great to make practical enrolling students from a closed school in higher-achieving schools. Others noted that many LEAs do not have multiple schools at the same grade level in which to enroll students from a closed school. Still others noted capacity issues that would prevent schools from accommodating additional students or the lack of high-achieving schools in which to enroll students from a closed school. One

commenter noted that this intervention would not be feasible on a large scale in large, urban LEAs with limited resources and substantial numbers of low-achieving students. Another commenter recommended that this intervention be limited to those LEAs with the capacity to enroll affected students in other, higher-achieving schools.

Discussion: School closure is just one of four school intervention models from which an LEA may choose to turn around or close its persistently lowest-achieving schools, and the Department recognizes that it may not be appropriate or workable in all circumstances. To clarify this, we have revised the definition of *school closure* in this notice to clarify that this option is viable when there are re-enrollment options in higher-achieving schools in the LEA that are within reasonable proximity to the closed school that can accommodate the students from the closed school. To make this option more viable, we have changed ''high-achieving schools'' to ''higher-achieving schools.''

Changes: We have included the following clarifying language in the definition of *school closure:* ''School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.''

Comment: A number of commenters expressed the opinion that a school should never be closed if that option displaces students and disrupts communities. The commenters noted the importance of having a neighborhood school that serves as the cornerstone of a community. One commenter noted that, when students are moved to a school in a new neighborhood, parents often find it more difficult to feel a sense of belonging at the school or ownership of their child's education. Another commenter noted that school closings often anger parents, exacerbate overcrowding, increase safety and security concerns in neighboring schools, and place students who need specific supports in schools that may not be able to provide those supports. One commenter expressed concern that closing a school may not address the educational needs of specific students, which may be masked within a higher-achieving school. Another commenter suggested the need for an ''educational impact statement'' before a school is closed, and one suggested that an LEA have a detailed plan demonstrating how support would be provided to students and their families transitioning to different schools. Several commenters suggested that the final requirements provide for parent and community input before a school is closed.

Discussion: The Department recognizes and understands that school closures, by definition, displace students and disrupt communities and are among the most difficult decisions faced by local authorities. However, each of the four school intervention models is predicated on the potentially positive impact of ''disruptive change'' on student educational opportunities, achievement, and other related outcomes. Schools targeted for closure under this notice will likely have served their communities poorly for many years, if not decades, as measured by such factors as student achievement, graduation rates, and college enrollment rates. Moreover, such schools also will likely have proven impervious to positive change despite years of identification for improvement, corrective action, or restructuring under the ESEA as well as other previous reform efforts. The Department believes that, when such schools prove unwilling or unable to change, closure must be considered. Many communities have experience in closing, consolidating, or otherwise changing the structure of their existing schools and have their own processes and procedures for obtaining public input and approval for such changes, including assessment of the impact on students, families, neighborhoods, other schools, and transportation requirements, as well as for developing plans to facilitate smooth transitions for everyone involved. Although the Department encourages LEAs and SEAs to involve students, parents, educators, the community, and other stakeholders in the process, we decline to add any additional requirements in this area of appropriate local discretion.

To address the disruptiveness school closure may cause to a community, we have modified the definition of *school closure*, as noted in response to the prior comment, to clarify that closure should entail re-enrolling students from the closed school in other schools in the LEA that are within reasonable proximity to the closed school. Finally, we note that school closure is just one of the four school intervention models available under the terms of this notice. LEAs and communities that wish to preserve a neighborhood school may do so by implementing a turnaround, restart, or transformation model.

Changes: None.

Comment: Several commenters recommended that a school not be closed unless an LEA opens a new school in its place. One commenter specifically suggested closing a school in phases and reopening it as a new school. Under this concept, an LEA would permit both students and staff who choose to do so to remain in the school but the school would enroll no new students. At the same time, according to the commenter, other schools would be better prepared to absorb students who wish to transfer, logistical and facility issues would be minimized, and the new school would have adequate time to recruit and train high-quality staff and develop its instructional program.

Discussion: The Department has revised the language in the definition of *school closure* to recognize the need to have available options for accommodating the educational needs of the students in a closed school, but does not believe it is necessary to require an LEA to open a new school in place of the closed school. Many LEAs participating in the SIG program have under-utilized or under-enrolled schools that may readily accommodate students from a closed school; requiring such LEAs to open new schools simply does not make sense. However, an LEA that chooses to reopen a new school would be free to do so, either on its own or as part of a turnaround or restart model.

Changes: None.

Comment: One commenter suggested that the Department provide incentives for the development of successful charter schools in the areas in which schools are closed. Specifically, the commenter recommended that the Department require that an LEA that partners with a CMO in order to serve the area in which the LEA is closing schools receive a priority for SIG funds.

Discussion: SIG funds are intended to provide support to LEAs for school improvement efforts targeted primarily at the persistently lowest-achieving schools in a State, and not at providing incentives for the creation of new schools, charter or otherwise, that serve the same general attendance area. However, the restart model (as defined in this notice) may be used by LEAs in situations where the goal is to replace a persistently lowest-achieving school with a charter school.

Changes: None.

Comment: One commenter suggested that, in highlighting which schools may be available to enroll students from a

closed school, the Department specifically mention magnet schools along with charter schools.

Discussion: Decisions about the schools to which students from closed schools may transfer are best left to the LEAs selecting the school closure option. The language in the definition of *school closure,* as in the SIG NPR, specifically mentions charter schools only because not all available charter schools might be operated by the LEA that is closing a neighborhood public school and, thus, might not be initially included in an LEA's plan for transferring students from the closed school. This is not a concern for magnet schools and, thus, the Department declines to make the requested change.

Changes: None.

Comment: One commenter recommended that the Department require that, before an LEA may enroll students from a closed school in another school, the LEA require a prospective receiving school, including a charter school, to demonstrate a record of effectiveness in educating its existing students and the capacity to integrate and educate new students from closed schools. The commenter emphasized the importance of this latter point, noting that merely because a school is high-achieving does not mean that it is equipped to help additional students from the lowest-achieving schools succeed while maintaining the quality of its current educational program.

Discussion: The Department believes that the requirement to enroll students from a closed school in a higher-achieving school responds to the concerns of this commenter. The Department believes that such higher-achieving schools are likely in nearly all circumstances, to provide a better education for any new students than was available in the closed school.

Changes: We have added language to the definition of *school closure* clarifying that school closure entails re-enrolling students from the closed school in other schools in the LEA that are higher achieving. We have also added clarifying language that such schools may be new schools for which achievement data are not available.

Comment: Several commenters questioned how SIG funds may be used in closing a school. One commenter noted the importance of gaining community input and that the costs for closing a school may include costs associated with conducting parent and community meetings. Another commenter recommended that allowable costs include academic supports for struggling students who are enrolled in new schools.

Discussion: LEAs may use SIG funds to pay reasonable and necessary costs related to closing a persistently lowest-achieving school, including the costs associated with parent and community outreach. However, SIG funds may not be used to serve students, struggling or otherwise, in the schools to which they transfer, unless those schools are Title I schools. The Department will include additional examples of permissible uses of SIG funds in closing a school in guidance accompanying the application package for SIG funds.

Changes: None.

Transformation Model

General Comments

Comment: Many commenters expressed strong support for the transformation model. One commenter, for example, described it as ''a balanced, comprehensive approach,'' and another described it as ''a supportive and constructive approach.'' Still another commenter stated that it ''provides the greatest hope for promoting genuine school improvement.'' Several commenters noted that the transformation model would be, in reality, the only choice among the four proposed interventions, especially for many rural school districts.

A few commenters responded that the transformation model would still not enable some communities, particularly those with difficult demographics, to make adequate yearly progress. Other commenters worried that, if not monitored carefully, the transformation model would become like the ''other'' restructuring option under section 1116(b)(8)(B)(v) of the ESEA, perceived as the easiest (but least meaningful) way to intervene in a struggling school. One of these commenters recommended adding strong language to make clear that the transformation model is not an incremental approach and that, except in the area of changing staff, the model is as rigorous as the turnaround model.

Discussion: We appreciate the commenters' support. We believe the transformation model holds tremendous promise for reforming persistently lowest-achieving schools by developing and increasing teacher and school leader effectiveness, implementing comprehensive instructional reform strategies, increasing learning time and creating community-oriented schools, and providing operating flexibility and sustained support. Assuming the activities that support these components are implemented with fidelity, the transformation model represents a rigorous and wholesale approach to reforming a struggling school, unlike the manner in which the ''other'' restructuring option in section 1116 of the ESEA has often been implemented.

Changes: To strengthen the transformation model, we have made a number of changes that we discuss in the following paragraphs in our responses to specific comments.

Comment: One commenter recommended affording greater flexibility to LEAs in implementing the transformation model by allowing them to choose which activities are ''required'' and which are ''permissible'' within the four components. The commenter noted that LEAs with persistently lowest-achieving schools may not have the teacher or leader capacity or system to support, monitor, and sustain reforms across all of their schools. The commenter advocated for creating systems at the district level that enable LEAs to provide support at each school.

Discussion: We decline to make the requested changes. We have carefully reviewed the required activities within the four components of the transformation model and have concluded that each is necessary to ensure the rigor and effectiveness of the model; therefore, we continue to require each one. An LEA, of course, may implement any or all of the permissible activities as well as other activities not described in this notice.

In anticipation of receiving unprecedented amounts of SIG funds, SEAs and LEAs should begin now to plan for how they can use those funds most effectively by putting in place the systems and conditions necessary to support reform in their persistently lowest-achieving schools. Despite the best preparation, however, we know that not every LEA with persistently lowest-achieving schools has the capacity to implement one of the four interventions in this notice in each such school. As indicated in the SIG NPR, therefore, an LEA that lacks the capacity to implement an intervention in each persistently lowest-achieving school may apply to the SEA to implement an intervention in just some of those schools.

Changes: None.

Comment: One commenter recommended adding ''graduation rates,'' rated equally with test scores, to assess student achievement in evaluating staff, ensuring that a school's curriculum is implemented with fidelity, and providing operating flexibility. The commenter also recommended making increasing graduation rates a required activity.

Discussion: We agree with the commenter that increasing high-school

graduation rates is vital to improving student achievement, particularly in our Nation's ''dropout factories.'' We are, accordingly, adding increasing high school graduation rates in three provisions of the transformation model to make clear that it is also a goal of the interventions in this notice. We are also making a corresponding change in the turnaround model. In addition, we are defining ''persistently lowest-achieving schools'' to include high schools that have had a graduation rate below 60 percent over a number of years. Through these changes, we hope to identify high schools with low graduation rates that would implement one of the interventions in this notice.

Changes: We have added increasing high school graduation rates in three provisions of the transformation model: paragraphs (d)(1)(i)(B)(*1*); (d)(1)(i)(C); and (d)(4)(i)(A). We also made a corresponding change to the turnaround model in paragraph (a)(1)(i). In addition, we have included high schools that have had a graduation rate below 60 percent over a number of years in the definition of *persistently lowest-achieving schools*.

Comment: One commenter recommended that the Department require an LEA to set up an organizational entity within the LEA to be responsible and held accountable for rapid improvement in student achievement in schools implementing the transformation model in order to ''expedite the clearing of bureaucratic underbrush'' that can impede the model's effectiveness.

Discussion: Although nothing in this notice would preclude an LEA from establishing an organizational entity responsible for ensuring rapid improvement in student achievement in schools implementing the transformation model, we decline to require the establishment of such an entity. Evidence of an LEA's commitment to support its schools in carrying out the required elements of the transformation model is a factor that an SEA must consider in evaluating the LEA's application for SIG funds.

Changes: None.

Developing and Increasing Teacher and School Leader Effectiveness

Comment: A number of commenters supported the emphasis in the transformation model on strong principals and teachers, noting that they are critical to transforming a low-achieving school. Commenters cited specific provisions that they supported, such as ongoing, high-quality job-embedded professional development; strategies to recruit, place, and retain effective staff; increasing rigor through, for example, early-college high schools; extending learning time; emphasizing community-oriented schools; increased operating flexibility; and sustained support from the LEA and SEA.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Comment: One commenter suggested adding the word ''ensuring'' in the heading of the component of the transformation model that requires developing teacher and school leader effectiveness. Another suggested changing the heading to ''providing teachers and school leaders with the resources and tools needed to be effective.''

Discussion: We decline to make these changes. First, we do not believe that a school can *ensure* teacher and school leader effectiveness. We do believe, however, that a school can take steps to *improve* teacher and leader effectiveness. Second, we note that eligible schools in LEAs that receive SIG funds—all of which are among the lowest-achieving schools in a State—will have very large amounts of resources to implement the transformation model or one of the other school intervention models. Accordingly, we do not believe lack of resources will be a barrier for reforming the persistently lowest-achieving schools in a State. Moreover, there is a significant requirement that an LEA provide ongoing, high-quality, job-embedded professional development for all staff in a school implementing the transformation model. Principals, teachers, and school leaders, therefore, should have sufficient support to do their jobs.

Changes: We have revised the heading in paragraph (d)(1) to read: ''Developing and improving teacher and school leader effectiveness.''

Comment: Many commenters, many of whom were principals or represented principals, opposed the requirement to replace the principal. A number of commenters commented that such a decision should be made locally, based on local data and circumstances in individual schools, rather than being mandated by the Federal Government. One commenter, although acknowledging the importance of effective school leadership, asserted that a school's underperformance should not necessarily be blamed on the principal. The commenter cited other salient factors, such as whether the principal has the authority needed to turn a school around or whether the principal is laying a foundation for improvements not yet reflected in test scores. One commenter suggested that a principal not be removed until the principal's performance has been reviewed. Others suggested that, rather than replacing the principal immediately, the requirements permit an LEA to offer comprehensive support and leadership training for school leaders and other staff to assist them in making the significant changes needed to transform a school. Several commenters suggested removing the principal unless the person commits to and is held accountable for a turnaround plan that requires, for example, working with a partner management organization or other entity skilled in turning around struggling schools. Another commenter suggested permitting flexibility with respect to removing the principal in cases warranted by, for example, the size and geography of a school or LEA, the cause of the academic failure, the specific solutions being sought, or other barriers to removal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' in which we respond to similar public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: One commenter recommended a three-pronged approach to defining principal effectiveness: evidence of improved student achievement; changes in the number and percentage of teachers rated as effective and highly effective; and assessment of a principal's highest priority actions and practices.

Discussion: Generally, the Department agrees that multiple measures, including the use of student achievement data, should be used to evaluate principal effectiveness. Accordingly, we have revised proposed section I.A.2.d.i.A.*1* in the SIG NPR (new paragraph (d)(1)(i)(B)(*1*) to allow an LEA to use, in additional to data on student growth, observation-based assessments and ongoing collections of professional practice that reflect student achievement and increased high-school graduation rates to evaluate principal effectiveness.

Changes: We have modified paragraph (d)(1)(i)(B)(*1*) regarding evaluation systems for teachers and principals to require that those systems take into account student growth data as a significant factor as well as other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.''

Comment: Several commenters cited the shortage of principals, particularly in rural areas, as a reason to eliminate the requirement to remove the principal in a school using the transformation model. One commenter suggested hiring a ''turnaround leader'' or contracting with an external lead partner instead of replacing the principal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: A number of commenters suggested that a principal who has been recently hired to turn around a school should not be removed.

Discussion: The commenters might have overlooked the fact that proposed section I.B.1 in the SIG NPR allowed schools that have ''implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models'' to ''continue or complete the intervention being implemented.'' Thus, a recently hired principal who was hired to implement a school intervention model that meets some or all of the elements of one of the interventions in this notice would not have to be replaced for purposes of a transformation model. We have retained this flexibility in this notice.

Changes: None.

Comment: Many commenters reacted to the requirement in the SIG NPR to use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance. A few commenters supported the requirement; most opposed it for a number of reasons. Many commenters objected specifically to assessing teacher effectiveness using testing instruments not designed for that purpose. One commenter noted that standardized assessments are designed to measure students' ready retrieval of knowledge and do not accurately attribute student learning to particular lessons, pedagogical strategies, or individual teachers. In addition, the commenter noted that such assessments do not measure qualities like student motivation, intellectual readiness, persistence, creativity, or the ability to apply knowledge and work productively with others. One commenter asserted that State assessments are generally of low quality and measure a narrow range of student learning. The commenter also noted that assessments do not acknowledge the contributions (or lack thereof) of others, such as prior teachers, towards student achievement. Two commenters argued that State assessments do not provide information about the conditions in which learning occurs and over which a teacher has no control, such as class size, student demographics, or instructional resources. One commenter asserted that State assessments fail to capture academic growth with respect to students with disabilities. A number of commenters proposed other academic and nonacademic measures for evaluating teachers and school leaders, such as standards-based evaluations of practice that include such criteria as observations of lesson preparation, content, and delivery; innovation in teaching practices; analyses of student work and other measures of student learning, such as writing samples, grades, goals in individualized education programs for students with disabilities, and ''capstone'' projects such as end-of-course research papers; assessment of commitment and ability to use feedback and data to learn and improve practices; one-on-one teaching; staff leadership and mentoring skills; conflict resolution skills; crisis management experience; extra-curricular roles and contributions to a school; and relationships with parents and the community.

Discussion: We respect and agree with the commenters' concerns that student achievement data alone should not be used as the sole means to evaluate teachers and principals. We must develop and support better measures that take into account student achievement and more accurately measure teacher and principal performance. Accordingly, we have revised the transformation model's evaluation systems provision to require that these systems take into account student growth data as a significant factor, but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.'' We have also clarified that those systems must be rigorous, transparent, and equitable and that they must be designed and developed with teacher and principal involvement.

Nonetheless, it is important to note that the Secretary believes that student achievement data must be included as a significant factor in evaluations of teacher and principal effectiveness. We are confident that the legitimate concerns of the commenters regarding use of student data can be addressed.

Changes: We have modified paragraph (d)(1)(i)(B) regarding evaluation systems for teachers and principals in several respects. First, we modified paragraph (d)(1)(i)(B) to require that evaluation systems be rigorous, transparent, and equitable. Second, we modified paragraph (d)(1)(i)(B)(*1*) to require that those systems take into account student growth data as a significant factor but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates.'' Third, we added paragraph (d)(1)(i)(B)(*2*) to require that evaluation systems be designed and developed with teacher and principal involvement.

Comment: A number of commenters raised issues related to collective bargaining and the transformation model. Several commenters objected to the perceived requirement to establish a performance pay plan based on student outcomes, noting that collective bargaining agreements and, in some cases, State laws often prohibit such a plan. Two others noted that, because union contracts limit a principal's control over staffing, principals should not be held accountable for school performance results. At least one commenter expressed concern that these collective bargaining barriers could preclude implementation of the transformation model.

Discussion: In general, we refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar public comments regarding collective bargaining as it relates to the turnaround model. In addition, we note that the transformation model does not require that an LEA establish a performance pay plan for teachers or principals. Rather, an LEA must identify and reward school leaders, teachers, and other staff who, in implementing the transformation model, have increased student achievement and graduation rates. One way of meeting this requirement would be through performance pay. An LEA has the flexibility to devise other means that meet this requirement.

Changes: None.

Comment: One commenter, responding to the proposed requirement to remove staff who fail to contribute to raising student achievement, recommended that this provision be deleted. The commenter noted that this provision would make it very difficult to attract the most highly qualified teachers and principals to the persistently lowest-achieving schools. The commenter suggested that extensive

professional development, rather than removal, be required for staff in schools in which achievement does not improve.

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding removal of the staff replacement requirement under the turnaround model.

Changes: We have modified paragraph (d)(1)(i)(C) regarding removing staff who, in implementing a transformation model, have not contributed to increased student achievement and high school graduation rates to make clear that removal should only occur after an individual has had multiple opportunities to improve his or her professional practice and has still not contributed to increased student achievement and increased high school graduation rates.

Comment: Several commenters objected to the Secretary's proposal to require an LEA to make ''high-stakes'' tenure and compensation decisions through which the LEA would ''identify and reward school leaders, teachers, and other staff who improve student achievement outcomes and identify and remove those who do not.'' The commenters thought this standard was too imprecise. They noted that teacher compensation, tenure, and dismissal are, for the most part, governed by State laws and/or collective bargaining agreements that cannot be simply overturned by a Federal grant program. One of the commenters suggested that this provision be modified by adding, at the end, the phrase ''in full accordance with local and State laws, including collective bargaining agreements.''

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding collective bargaining issues as they relate to the turnaround model. In addition, we note that no LEA is required to apply for a School Improvement Grant. Those that do will receive significant resources to support their efforts to reform their most struggling schools, but they also must have the ability to implement the required components of whichever intervention they choose. Accordingly, we decline to make the recommended changes.

Changes: None.

Comment: A number of commenters provided additional examples of what professional development of staff under the transformation model should entail, such as: addressing the needs of students with disabilities and limited English proficient students; creating professional learning communities within a school; providing mentoring; involving parents in their child's education, especially parents of limited English proficient students and immigrant children; understanding and using data and assessments to improve and personalize classroom practice; and implementing adolescent literacy and mathematics initiatives.

Discussion: We appreciate the many excellent suggestions for additional areas on which professional development should focus. With one exception, we decline to add examples. We could never list all relevant topics for strong professional development, which must be tailored to the needs of staff in particular schools, and we would not want to suggest that topics not listed were, thus, less worthy of addressing.

Changes: We have added a permissible activity in paragraph (d)(2)(ii)(C) under ''comprehensive instructional reform strategies'' to highlight the need for additional supports and professional development for teachers and principals in implementing effective strategies to educate students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills necessary to master academic content.

Comment: One commenter noted that the requirement to provide staff with ongoing, high-quality, job-embedded professional development was silent with respect to the impact of professional development on instruction. The commenter pointed to an apparent inconsistency with the emphasis in the permissible activity that suggested that LEAs be required to institute a system for measuring changes in instructional practices resulting from professional development. Because the commenter values professional development designed to improve instruction, the commenter recommended that the Secretary require a school to have a system for measuring changes in instructional practices resulting from professional development in order to evaluate its efficacy.

Discussion: We believe that the requirement to provide ongoing, high-quality, job-embedded professional development to staff in a school is clearly tied to improving instruction in multiple ways. First, the requirement that professional development be ''job-embedded'' connotes a direct connection between a teacher's work in the classroom and the professional development the teacher receives. Second, the examples of topics for professional development, such as subject-specific pedagogy and differentiated instruction, are directly related to improving the instruction a teacher provides. Third, professional development must be aligned with the school's comprehensive instructional program. Finally, the articulated purpose of professional development in paragraph (d)(1)(i)(D) of the transformation model is to ensure that a teacher is ''equipped to facilitate effective teaching and learning'' and has the ''capacity to successfully implement school reform strategies.'' Although we believe that instituting a system for measuring changes in instructional practices resulting from professional development can be valuable, we decline to require it as part of this program. We believe that the specificity in the nature of the professional development required for a transformation model is sufficient to ensure that it, in fact, results in improved instruction.

Changes: None.

Comment: One commenter recommended that the Department add a requirement that professional development be designed to ensure that staff of a school using the transformation model can work effectively with families and community partners. The commenter reasoned that, given the emphasis on working with families and community partners to improve the academic achievement of students in a school, staff must know how to work with them.

Discussion: We decline to make the suggested change. We agree with the commenter that family and community involvement in a school is critical to the school's ultimate success and have included, as both required and permissible activities, a variety of provisions to address this important need. We would expect professional development to include appropriate training to ensure, as the commenter suggests, that staff are well equipped to facilitate family and community involvement. We do not believe, however, that we should try to expressly highlight each and every appropriate topic of high-quality professional development in this notice.

Changes: None.

Comment: One commenter suggested that financial incentives are not necessarily the most motivating factor in retaining high-quality staff. Rather, the commenter stated that the culture of a school—*i.e.*, quality relationships with other teachers, the school climate, the leadership of the principal, and the potential for professional growth—is often a greater motivator.

Discussion: We agree that financial incentives are not the only motivating factor in attracting staff to a school or retaining them in the school. We hope that changes in the culture of a school that result from implementing the interventions established in this notice play a large role in attracting, placing, and retaining high-quality staff. As a result, in both the transformation and turnaround models, we have provided examples of several strategies to recruit, place, and retain high-quality staff.

Changes: We have added examples of strategies designed to recruit, place, and retain staff, including ''financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions'' in paragraphs (d)(1)(i)(E), with respect to the transformation model, and (a)(1)(iii), with respect to the turnaround model. We have also made clear that those strategies must be designed to recruit, place, and retain staff who have the skills necessary to meet the needs of the students in the schools implementing a transformation or turnaround model, respectively.

Comment: Several commenters supported the concept of ''mutual consent''—that is, ensuring that a school is not required to accept a teacher without the mutual consent of the teacher and the principal, regardless of the teacher's seniority. One commenter recommended making ''mutual consent'' a required component of both the turnaround model and the transformation model. Other commenters, however, opposed any mention of ''mutual consent,'' even as a permissible activity. One asserted that the concept conflicts with the provision in section 1116(d) of the ESEA that precludes interventions in Title I schools from affecting the rights, remedies, and procedures afforded school employees under Federal, State, or local laws or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between employees and their employers.

Discussion: Like several commenters, the Secretary supports and encourages the use of mutual consent. The Secretary considers mutual consent to be a positive example of LEAs' partnering with unions to bring change to the Nation's persistently lowest-achieving schools. That said, we decline to require mutual consent as a part of the transformation model because mutual consent policies and other similar agreements are best resolved at the State and local levels in the context of existing collective bargaining agreements.

Changes: None.

Comment: One commenter recommended that the Secretary add a requirement that, in the event budget cuts occur, a principal be allowed to lay off teachers on the basis of performance rather than seniority. The commenter noted that this provision could be an important lever for obtaining positive changes to collective bargaining agreements that would help low-achieving schools attract and retain effective staff.

Discussion: We decline to make the suggested change. Although we support the need to modify collective bargaining agreements if they impede efforts to attract and retain qualified staff in the persistently lowest-achieving schools, we do not believe we can or should prescribe the specific terms of those agreements.

Changes: None.

Comprehensive Instructional Reform Strategies

Comment: Several commenters suggested that the Department revise the comprehensive instructional reform component of the transformation model by modifying or expanding the provision requiring the use of individualized student data to inform and differentiate instruction. One commenter suggested clarifying that individualized student data are to be used to meet students' academic needs while another commenter suggested clarifying that the data should be used to address the needs of ''individual'' students. Other commenters suggested expanding this provision to include non-academic data such as chronic absenteeism, truancy, health (vision, hearing, dental, and access to primary care), safety, family engagement and well-being, and housing. The commenter suggested that these data be used, in partnership with parents and other community partners, to address other student needs.

Discussion: The purpose of this section of the transformation model is to improve instruction, and we agree that adding the word ''academic'' is a helpful clarification. Although we also agree that non-academic data can play an important role in identifying other student needs that can affect learning, local school administrators, working with parents and community partners, are in the best position to determine how to address those needs. Therefore, we decline to add a requirement that a school examine non-academic data.

Changes: We have added the word ''academic'' in paragraph (d)(2)(i)(B) to clarify that the continuous use of student data to inform and differentiate instruction must be promoted to meet the academic needs of individual students. We made a corresponding change in paragraph (a)(1)(vii) regarding the turnaround model.

Comment: One commenter noted that requiring instructional programs to be ''evidence-based'' instead of ''research-based'' would enable the use of programs for which there is accumulated evidence that does not meet the current ESEA definition of ''scientifically based research.''

Discussion: We agree with the commenter that an LEA should only implement instructional programs for which there is a sufficient body of evidence supporting improved student achievement. We do not believe a change is necessary, however, because we do not use the term ''scientifically based research'' and, therefore, do not invoke the stringent requirements in section 9101(37) of the ESEA.

Changes: None.

Comment: One commenter recommended that the Department add a provision that would require a school to identify ''off-track and out-of-school youth, through analysis and segmentation of student data,'' and develop and implement education options to put them back on track to graduate. The commenter stated that, once students are off track to graduating on time, their likelihood of graduating is often as low as 20 percent. Moreover, in the 2,000 high schools in the Nation with four-year graduation rates of 60 percent or less, up to 80 percent of ninth graders are significantly behind in skills or credits. Several other commenters suggested including stronger support for re-enrolling youth who have left high school as a critical part of increasing graduation rates.

Discussion: We agree that programs and strategies designed to re-engage youth who have dropped out of high school without receiving a diploma are necessary in increasing graduation rates. Accordingly, we are modifying the notice to address this need. We also hope that an LEA's extension or restructuring of the school day to add time for strategies such as advisory periods to build relationships between students, faculty, and other staff will help to identify students who are struggling and to secure for them the necessary supports sufficiently early to prevent their dropping out of school. Finally, as noted earlier, we have added references to increased high school graduation rates in four provisions to make clear that implementation of the models in high schools must focus on increasing graduation rates as well as improved student achievement.

Changes: We have modified paragraph (d)(2)(ii)(E)(*3*) to add re-engagement strategies as an example of a way to increase high school graduation rates. We have also added paragraph (d)(2)(ii)(E)(*4*) suggesting that permissible comprehensive instructional reform strategies may include establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

Comment: A number of commenters suggested that the Department include additional required or permissible activities for carrying out comprehensive instructional reform strategies. Specifically, two commenters recommended that the Department require schools to conduct periodic reviews so as to ensure that the curriculum is being implemented with fidelity (rather than merely permitting this activity) and improve school library programs. Other commenters suggested expanding the permissible activities in secondary schools to include learning opportunities that reflect the context of the community in which the school is located, such as service learning, place-based education, and civic and environmental education. The commenters also recommended clarifying that improving students' transition from middle to high schools should include family outreach and parent education. Another commenter suggested that the Department expand the list of permissible activities in elementary schools to include providing opportunities for students to attend foreign language immersion programs.

Discussion: The Secretary agrees that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, nothing precludes local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: We have included in this notice a definition of *increased learning time* that would permit many, if not all, of the commenters' suggestions. For example, that definition makes clear that a school may increase time to teach core academic subjects, including, for example, civics and foreign languages, and to provide enrichment activities such as service learning and experiential and work-based learning opportunities.

Comment: One commenter recommended that the Department add the implementation of technology-based solutions to the list of permissible activities, while another commenter recommended that the Department add online instructional services offered by a for-profit or non-profit entity as an example of a comprehensive, research-based instructional program.

Discussion: The Secretary agrees that technology can be an important tool for supporting instruction, and we are adding as a permissible activity the suggestion to use and integrate technology-based supports and interventions as part of a school's instructional program. Although online instructional programs might be part of a school's system of technology-based supports, we decline to mention it specifically. Online instructional programs, if research-based, are one of many ways to meet the needs of students in struggling schools, particularly to provide courses or programs that schools in rural or remote areas cannot otherwise provide. We cannot mention in this notice, however, each and every type of instructional program.

Changes: We have added as a permissible activity in paragraph (d)(2)(ii)(D) using and integrating technology-based supports and interventions as part of a school's instructional program.

Comment: One commenter recommended that the Department add to the transformation model the strategy to reorganize the school with a new purpose and structure it as a magnet school, a thematic school, or a school-community partnership.

Discussion: We decline to include this change in the transformation model, a model that uses the existing staff in a school and who would likely not have the expertise to implement an instructional program with a whole new purpose.

Changes: None. However, we have clarified in paragraph (a)(2)(ii) that a turnaround model may include a new school model (*e.g.*, themed, dual language academy).

Increasing Learning Time and Creating Community-Oriented Schools

Comment: Several commenters expressed support overall and for various activities of the ''Increasing learning time and creating community-oriented schools'' component of the transformation model, including the references to school climate, internships, and community service.

Discussion: We appreciate the commenters' support. We are including some of these activities in the definition of *increased learning time* that also applies to the Stabilization Phase II and Race to the Top programs, rather than listing them as specific elements of the ''increasing learning time and creating community-oriented schools'' component. They have no less importance, however.

Changes: We have included in the notice a definition of *increased learning time* that includes opportunities for enrichment activities for students, such as service learning and community service.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by revising the heading of this component. For example, one commenter suggested revising the heading to emphasize family involvement while another commenter suggested revising it to specifically reference students' social and emotional needs. A third commenter suggested expanding the title to include ''using research-based methods to deliver comprehensive services to students.''

Discussion: We decline to make these changes. Although we embrace the need to address not just the academic needs of students but also how their social and emotional needs affect their learning and to emphasize the importance of family involvement, we believe it is preferable to keep the heading for this component more general. The headings for each of the components in the transformation model are deliberately broad so as to cover a number of important activities, and the fact that a specific activity is not in a heading is not a reflection of that activity's importance. We believe the list of permissible activities illustrates various ways in which a school can address students' social and emotional needs and involve families in their child's education.

Changes: None.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by making them required. For example, some commenters recommended expanding the required activities to include a comprehensive guidance curriculum delivered by a school counselor who is certified by the State department of education; partnering with parents, faith-based and community-based organizations, and others to provide comprehensive student services; more time for social and emotional learning; and improving school climate. Another commenter recommended requiring that the transformation model include the components of the Comprehensive School Reform Demonstration program.

Other commenters suggested adding references to high school study-abroad programs as an example of a student enrichment activity and activities designed to reduce out-of-school suspensions and expulsions as a strategy for addressing school climate.

Discussion: As we noted earlier, we agree that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, there is nothing to prevent local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: None.

Comment: One commenter suggested that the Department define ''community-oriented schools'' as schools that partner with community-based organizations to provide necessary services to students and families using research-based methods, which might include: a school-based, on-site coordinator; comprehensive school- and student-level needs assessments; community-assets assessments and identification of potential partners; annual plans for school-level prevention and individual intervention strategies; delivery of an appropriate mix of prevention and intervention services; data collection and evaluation over time, with on-going modifications of services; and/or other research-based components. Another commenter suggested removing the word ''oriented'' and using the term ''community-schools,'' which the commenter indicated is more commonly known.

Discussion: Although we appreciate the commenters' interest in ensuring greater clarity on the concept of ''community-oriented schools,'' we decline to make the suggested changes. The components of ''community-oriented schools'' will vary school by school depending on student and community needs and resources. There is nothing in the notice that would prevent local school leaders from undertaking any of the strategies in the definition the commenters proposed if necessary to respond to the specific needs of students in the school.

Changes: None.

Comment: Some commenters suggested that the Department add ''community-based organization'' and ''workforce systems, specifically nonprofit and community-based organizations providing employment, training, and education services to youth'' to the list of entities with which an LEA or school may choose to partner in providing enrichment activities during extended learning time.

Discussion: In the SIG NPR, we listed universities, businesses, and museums as examples of entities with which a school could partner in providing enrichment activities during extended learning time. In this final notice, we are instead including a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. That definition no longer includes examples of appropriate partnership entities, because there may be any number of organizations or entities in a particular community that might be appropriate partners.

Changes: In the definition of *increased learning time,* we have included the following: ''(b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations;''.

Comment: One commenter suggested that the reference to ''parents,'' in the list of entities with which schools might partner to create safe school environments that meet students' social, emotional, and health needs, should include ''parent organizations.''

Discussion: We agree with this suggestion and are adding a reference to parent organizations.

Changes: We have revised the permissible activity in paragraph (d)(3)(ii)(A) regarding creating safe school environments to include a reference to partnering with parents and ''parent organizations,'' along with faith- and community-based organizations, health clinics, other State and local agencies, and others.

Comment: One commenter recommended that the Department define ''family engagement'' and requiring the use of certain family-engagement mechanisms, including family-engagement coordinators at school sites, home visitation programs, family literacy programs, and parent leadership programs. Another commenter recommended defining ''community engagement'' as systemic efforts to involve parents, community residents, members of school communities, community partners, and other stakeholders in exploring student and school needs and, working together, developing a plan to address those needs.

Discussion: We agree that there are any number of important activities that could support increased family and community engagement. The reference to family and community engagement in this notice is deliberately broad so as to provide maximum flexibility in determining how best to address local needs. However, there is nothing to prevent local school leaders from incorporating any of the strategies mentioned or other strategies that will lead to effective family and community engagement.

Changes: None.

Comment: One commenter recommended that the Department include language to make clear that extending learning time can be accomplished by adding a preschool program prior to school entry.

Discussion: The Secretary agrees that preschool education is very important in ensuring that children enter kindergarten with the skills necessary to succeed in school. He also agrees that preschool education is an effective way to increase learning time.

Changes: We have added, as a permissible activity in paragraph (d)(3)(ii)(D), expanding the school program to offer full-day kindergarten or pre-kindergarten.

Comment: Several commenters suggested that the Department clarify that increased learning time includes summer school, after-school programs, and other instruction during non-school hours. Several other commenters suggested increasing instructional time during the school day and the need to make existing time more effective, including through the use of technology. Another commenter suggested clarifying that extended learning time should be beyond the current State-mandated instructional time.

Discussion: We have added in this notice a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. Under that definition, *increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for instruction in core academic subjects; time for instruction in other subjects and enrichment activities that contribute to a well-rounded education; and time for teachers to collaborate, plan, and engage in professional development within and across grades and subjects.

Changes: We have revised the notice to define *increased learning time.* The full definition is as follows:

Increased learning time means using a longer school day, week, or year

schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[9]

Providing Operating Flexibility and Sustained Support

Comment: One commenter suggested that the Department add a requirement that a school implementing the transformation model be required to present a plan for how the various elements of the model are aligned and coordinated to improve student achievement and other indicators of student growth (such as health and civic competencies).

Discussion: We decline to make the suggested change. We are confident that a school implementing the transformation model would have a plan without the need for the Department to require it.

Changes: None.

Comment: One commenter recommended that the list of potential technical assistance providers in proposed section I.A.d.iv.A.2 of the SIG NPR be expanded to include ''professional organizations that have a track record of turning around low-performing schools.''

Discussion: This provision is intended to ensure that schools implementing the transformation model receive coordinated ongoing technical assistance and reflects the belief that an SEA, LEA, or external lead partner organization would be in the best position to integrate services at the school level. This notice does not preclude the involvement of entities other than those mentioned so long as they fulfill the role of a lead partner in integrating services and supports for the school.

Changes: None.

Comment: One commenter cautioned about the use of ''weighted per-pupil school-based budgeting,'' noting that early research indicates this practice undermines cross-school cooperation by promoting competition among schools for students and the resources or liabilities they may represent.

Discussion: We note that implementing a per-pupil school-based budget formula that is weighted based on student needs is listed as a permissible, not required, activity to give schools operational flexibility. We believe allocating funds based on student characteristics and then giving schools broad flexibility to use those funds to meet their respective needs is one way to provide incentives for schools to use their cumulative resources in innovative ways to meet the needs of their student population. If an LEA determines such budgeting is not appropriate in the context of its schools, it need not implement this activity.

Changes: None.

Final Requirements

The Secretary establishes the following requirements for the Stabilization program. We may apply these requirements in any year in which this program is in effect.

I. *Assurance Indicators and Descriptors:* In general, a State must collect and publicly report (as defined in this notice) data and other information for the following indicators and descriptors regarding the assurances that the State has provided in order to receive funds under the Stabilization program.

(a) *Achieving equity in teacher distribution.* A State must collect and publicly report data and other information on the extent to which students in high- and low-poverty schools in the State have access to highly qualified teachers; steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers; on how teacher and principal performance is evaluated; and the distribution of performance evaluation ratings or levels among teachers and principals. Specifically, a State must—

Indicator (a)(1). Confirm, for the State, the number and percentage (including numerator and denominator) of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified consistent with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA);

Indicator (a)(2). Confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA);

Descriptor (a)(1). Describe, for each local educational agency (LEA) in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal;

Indicator (a)(3). Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion;

Indicator (a)(4). Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level;

Indicator (a)(5). Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA;

Descriptor (a)(2). Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal;

Indicator (a)(6). Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion; and

[9] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in-school and out-of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.* Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)

Indicator (a)(7). Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level;

(b) *Improving collection and use of data.* A State must collect and publicly report information on the elements of its statewide longitudinal data system, on whether teachers receive data on student growth in a manner that is timely and informs instructional programs, and on whether teachers receive reports of individual teacher impact on student achievement. Specifically, a State must—

Indicator (b)(1). Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are included in the State's statewide longitudinal data system;

Indicator (b)(2). Indicate whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs; and

Indicator (b)(3). Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.

(c) *Standards and assessments.* A State must collect and publicly report data and other information on whether students are provided high-quality State assessments; whether students with disabilities and limited English proficient students are included in State assessment systems; whether the State makes information available regarding student academic performance in the State compared to the academic performance of students in other States; and the extent to which students graduate from high school in four years with a regular high school diploma and continue on to pursue a college education. Specifically, a State must—

Indicator (c)(1). Confirm the approval status, as determined by the Department, of the State's assessment system under section 1111(b)(3) of the ESEA with respect to reading/language arts, mathematics, and science assessments;

Indicator (c)(2). Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by the Department;

Indicator (c)(3). Confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards;

Indicator (c)(4). Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments;

Indicator (c)(5). Confirm the number and percentage (including numerator and denominator) of students with disabilities who are included in State reading/language arts and mathematics assessments;

Indicator (c)(6). Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments;

Indicator (c)(7). Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by the Department;

Indicator (c)(8). Confirm the number and percentage (including numerator and denominator) of limited English proficient students who are included in State reading/language arts and mathematics assessments;

Indicator (c)(9). Confirm that the State's annual State Report Card (under section 1111(h)(1) of the ESEA) contains the most recent available State reading and mathematics National Assessment of Educational Progress (NAEP) results as required by 34 CFR 200.11(c);

Indicator (c)(10). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i);

Indicator (c)(11). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an institution of higher education (IHE) (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) within 16 months of receiving a regular high school diploma; and

Indicator (c)(12). Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.

(d) *Supporting struggling schools.* A State must collect and publicly report data and other information on the progress of certain groups of schools in the State on State assessments in reading/language arts and mathematics; on the extent to which reforms to improve student academic achievement are implemented in the persistently lowest-achieving schools in the State; and on the extent to which charter schools are operating in the State. Specifically, a State must—

Indicator (d)(1). Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year;

Indicator (d)(2). Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year;

Descriptor (d)(1). Provide the definition of ''persistently lowest-

achieving schools'' (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools;

Indicator (d)(3). Provide, for the State, the number and identity of the schools that are Title I schools in improvement, corrective action, or restructuring, that are identified as persistently lowest-achieving schools;

Indicator (d)(4). Provide, for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year;

Indicator (d)(5). Provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools;

Indicator (d)(6). Provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year;

Indicator (d)(7). Provide, for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law;

Indicator (d)(8). Confirm, for the State and for each LEA in the State that operates charter schools, the number of charter schools currently operating;

Indicator (d)(9). Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year;

Indicator (d)(10). Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year;

Indicator (d)(11). Provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years; and

Indicator (d)(12). Indicate, for each charter school that has closed (including a school that was not reauthorized to operate) within each of the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.

II. *State Plans:* A State receiving funds under the Stabilization program must develop and submit to the Department a comprehensive plan that includes the following information.

(a) *Indicator and descriptor requirements.* Except as discussed in paragraphs (c) and (d) of this section, the State must collect and publicly report the data or other information required by an assurance indicator or descriptor. To this end, the State must describe, for each assurance indicator or descriptor—

(1) The State's current ability to fully collect the required data or other information at least annually;

(2) The State's ability to fully publicly report the required data or other information, at least annually through September 30, 2011;

(3) If the State is not currently able to fully *collect,* at least annually, the data or other information required by the indicator or descriptor—

(i) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully collect the data or information, including—

(A) The milestones that the State establishes toward developing and implementing those means;

(B) The date by which the State expects to reach each milestone; and

(C) Any obstacles that may prevent the State from developing and implementing those means by September 30, 2011, including but not limited to requirements and prohibitions of State law and policy;

(ii) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(iii) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds; and

(4) If the State is not able to fully publicly report, at least annually through September 30, 2011, the data or other information required by the indicator or descriptor—

(i) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully publicly report the data or information, including—

(A) The milestones that the State establishes toward developing and implementing those means;

(B) The date by which the State expects to reach each milestone; and

(C) Any obstacles that may prevent the State from developing and implementing those means by September 30, 2011, including but not limited to requirements and prohibitions of State law and policy;

(ii) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(iii) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(b) *Data or other information.* If the State is currently able to fully collect and publicly report the data or other information required by the indicator or descriptor, the State must provide the most recent data or information with its plan and publicly report that plan.

(c) *Requirements for indicators in reform area (b) (improving collection and use of data).*

(1) With respect to Indicator (b)(1), the State must develop and implement a statewide longitudinal data system that includes each of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act. To this end, the State must, in its plan—

(i) Indicate which of the 12 elements are currently included in the State's statewide longitudinal data system; and

(ii) If the State's statewide longitudinal data system does not currently include all 12 elements, describe—

(A) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system that fully includes all 12 elements, including the milestones that the State establishes toward developing and implementing such a system, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing such a system by September 30, 2011 (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing such a system; and

(C) The amount of funds the State is using or will use to develop and implement such a system, and whether the funds are or will be Federal, State, or local funds.

(2) With respect to Indicator (b)(2), the State must provide student growth data on their students to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs. To this end, the State must—

(i) Indicate whether the State provides teachers with such data; and

(ii) If the State does not provide teachers with such data, describe—

(A) The State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means by September 30, 2011 (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(C) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(3) With respect to Indicator (b)(3), the State must—

(i) Indicate whether it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments; and

(ii) If the State does not provide those teachers with such reports, describe—

(A) The State's process and timeline for developing and implementing the means to provide those teachers with such reports, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means (including but not limited to requirements and prohibitions of State law and policy);

(B) The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and

(C) The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

(d) *Requirements for Indicators (c)(11) and (c)(12).* With respect to Indicators (c)(11) and (c)(12), the State is required to, at a minimum, possess the ability to collect and publicly report the data. As a result, the requirements of paragraph (a) of this section apply to these indicators, at a minimum, with respect to the State's development of the means to collect and to publicly report the data. Accordingly—

(1) If, for either of these indicators, a State will develop *but not implement* the means to collect and publicly report the data (*i.e.,* the State will not collect and publicly report the data) by September 30, 2011, the State—

(i) Must submit a plan with respect to the indicator that addresses the requirements of paragraph (a) only with respect to the State's development of the means to collect and to publicly report the data, and not the State's implementation of those means; and

(ii) If submitting a plan in this manner, must include in its plan a description of the evidence it will provide to the Department of Education, by September 30, 2011, to demonstrate that it has developed the means to collect and publicly report that data.

(2) If, however, for either of these indicators, a State will develop *and implement* those means (*i.e.,* the State will collect and publicly report the data) by September 30, 2011, the State must submit a plan with respect to the indicator that fully addresses the requirements of paragraph (a).

(e) *General requirements.* The State must describe—

(1) The agency or agencies in the State responsible for the development, execution, and oversight of the plan, including the institutional infrastructure and capacity of the agency or agencies as they relate to each of those tasks;

(2) The agency or agencies, institutions, or organizations, if any, providing technical assistance or other support in the development, execution, and oversight of the plan, and the nature of such technical assistance or other support;

(3) The overall budget for the development, execution, and oversight of the plan;

(4) The processes the State employs to review and verify the required data and other information; and

(5) The processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable.

Final Definitions

The Secretary establishes the following definitions for Stabilization program terms not defined in the ARRA (or, by reference, in the ESEA or the HEA). We may apply these definitions in any year in which this program is in effect.

For the purposes of this program, *publicly report* means that the data or information required for an indicator or descriptor are made available to anyone with access to an Internet connection without having to submit a request to the entity that maintains the data and information in order to access that data and information. Therefore, States are required to maintain a public Web site that provides the data and information that are responsive to the indicator and descriptor requirements. If a State does not currently provide the required data or information, it must provide on this Web site its plan with respect to the indicator or descriptor and its reports on its progress in implementing that plan.

With respect to the requirement that a State collect and publicly report on the extent to which students in high- and low-poverty schools in the State have access to highly qualified teachers, *highest-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools (at the State and LEA levels, respectively) using a measure of poverty determined by the State. Similarly, *lowest-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the lowest quartile of schools (at the State and LEA levels, respectively) using a measure of poverty determined by the State.

With respect to the requirements that a State indicate whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criterion, *student achievement outcomes* means outcomes including, at a minimum, one of the following: student performance on summative assessments, or on assessments predictive of student performance on summative assessments, in terms of absolute performance, gains, or growth; student grades; and rates at which students are on track to graduate from high school with a regular high school diploma.

With respect to the requirements that a State indicate whether teacher and principal evaluation systems include student growth data as an evaluation criterion and whether the State provides such data to, at a minimum, teachers of reading/language arts and mathematics

in grades in which the State administers assessments in those subjects, *student growth* means the change in achievement for an individual student between two or more points in time. For grades in which the State administers summative assessments in reading/language arts and mathematics, student growth data must be based on a student's score on the State's assessment under section 1111(b)(3) of the ESEA. A State may also include other measures that are rigorous and comparable across classrooms.

With respect to the requirement that a State collect and publicly report the number of high-school graduates who enrolled in a public IHE in the State who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment, *college credit (applicable to a degree)* is used as that term is defined by the IHE granting such credit.

With respect to the requirements that a State collect and publicly report the numbers and percentages of certain groups of schools that have made progress on State assessments in reading/language arts and in mathematics in the last year, *school that has made progress* means a school whose gains on the assessment, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), are equal to or greater than the average statewide school gains in the State on that assessment, in the ''all students'' category and for each student subgroup, except that if the average statewide school gains in the State on that assessment are equal to or less than zero, the gains of the school must be greater than zero.

With respect to the requirements that a State collect and publicly report data and information on the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring or secondary schools that are eligible for, but do not receive, Title I funds, *persistently lowest-achieving schools* means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(1) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(2) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

With respect to the requirements that a State collect and publicly report, of the persistently lowest-achieving schools, the number and identity of schools that have been turned around, restarted, closed, or transformed through one of the following in the last year—

(a) *Turnaround model.* (1) A turnaround model is one in which an LEA must—

(i) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

(ii) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students,

(A) Screen all existing staff and rehire no more than 50 percent; and

(B) Select new staff;

(iii) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(iv) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new ''turnaround office'' in the LEA or SEA, hire a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(vi) Use data to identify and implement an instructional program that is research-based and ''vertically aligned'' from one grade to the next as well as aligned with State academic standards;

(vii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

(viii) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(ix) Provide appropriate social-emotional and community-oriented services and supports for students.

(2) A turnaround model may also implement other strategies such as—

(i) Any of the required and permissible activities under the transformation model; or

(ii) A new school model (*e.g.,* themed, dual language academy).

(b) *Restart model.* A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides ''whole-school operation'' services to an LEA.) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(c) *School closure.* School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

(d) *Transformation model.* A transformation model is one in which

an LEA implements each of the following strategies:

(1) *Developing and increasing teacher and school leader effectiveness.*

(i) *Required activities.* The LEA must—

(A) Replace the principal who led the school prior to commencement of the transformation model;

(B) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that—

(*1*) Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates; and

(*2*) Are designed and developed with teacher and principal involvement;

(C) Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(D) Provide staff with ongoing, high-quality, job-embedded professional development (*e.g.,* regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(E) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school.

(ii) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(A) Providing additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(B) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(C) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(2) *Comprehensive instructional reform strategies.*

(i) *Required activities.* The LEA must—

(A) Use data to identify and implement an instructional program that is research-based and ''vertically aligned'' from one grade to the next as well as aligned with State academic standards; and

(B) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students.

(ii) *Permissible activities.* An LEA may also implement comprehensive instructional reform strategies, such as—

(A) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(B) Implementing a schoolwide ''response-to-intervention'' model;

(C) Providing additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;

(D) Using and integrating technology-based supports and interventions as part of the instructional program; and

(E) In secondary schools—

(*1*) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(*2*) Improving student transition from middle to high school through summer transition programs or freshman academies;

(*3*) Increasing graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills; or

(*4*) Establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

(3) *Increasing learning time and creating community-oriented schools.*

(i) *Required activities.* The LEA must—

(A) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(B) Provide ongoing mechanisms for family and community engagement.

(ii) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(A) Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

(B) Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

(C) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

(D) Expanding the school program to offer full-day kindergarten or pre-kindergarten.

(4) *Providing operational flexibility and sustained support.*

(i) *Required activities.* The LEA must—

(A) Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(B) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(ii) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(A) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(B) Implementing a per-pupil school-based budget formula that is weighted based on student needs.

If a school identified as a persistently lowest-achieving school has implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models, the school may continue or complete the intervention being implemented.

With respect to the requirement that schools using a turnaround model or a transformation model have increased learning time, *increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English, reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[10]

Final Approval Criteria

The Secretary establishes the following criteria for approving the plan of a State receiving funds under the Stabilization program. We may apply one or more of these criteria in any year in which this program is in effect.

(a) *Quality of the State plan.* Except as described in paragraph (b), in determining the quality of the plan submitted by a State, we consider the following:

(1) Whether the plan clearly and accurately describes the State's abilities to collect and to publicly report the data or other information required by an assurance indicator and descriptor; and

(2) If the State is not currently able to fully collect and publicly report the data or information required by an indicator or descriptor—

(i) Whether the timeline and process for developing and implementing the means to fully collect and publicly report the data or information are reasonable and sufficient to comply with the requirement;

(ii) Whether any obstacles identified by the State as preventing it from developing and implementing the means to fully collect and publicly report the data or information by September 30, 2011 are sufficient to justify a delay in complying with the requirement; and

(iii) Whether the reports that the State will provide to the public will be appropriately accessible and will sufficiently indicate the State's progress in developing and implementing the means to comply with the requirement.

(b) *Quality of the State plan with respect to indicators in reform area (b) (improving collection and use of data).* In determining the quality of the plan submitted by a State as it relates to the indicators in reform area (b), we consider the following:

(1) Whether the plan clearly and accurately describes the State's ability to meet the plan requirement for the indicator (*i.e.,* in the case of Indicator (b)(1), the requirement to develop and implement a statewide longitudinal data system that includes each of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act; and in the case of Indicator (b)(2), the requirement to provide student growth data on their students to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs); and

(2) If the State does not currently meet the plan requirement for the indicator—

(i) Whether the timeline and process for developing and implementing the means to meet the requirement are reasonable and sufficient to comply with the requirement;

(ii) Excluding Indicator (b)(3), whether any obstacles identified by the State as preventing it from developing and implementing the means to meet the requirement by September 30, 2011 are sufficient to justify a delay in complying with the requirement; and

(iii) Whether the reports that the State will provide to the public will be appropriately accessible and will sufficiently indicate the State's progress in developing and implementing the means to comply with the requirement.

(c) *Adequacy of the State plan.* In determining the adequacy of the plan submitted by a State, we consider the following:

(1) Whether the institutional infrastructure and capacity of the agency or agencies responsible for the development, implementation, and oversight of the plan, together with any technical assistance or other support provided by other agencies, institutions, or organizations, are adequate to comply with the indicator and descriptor requirements individually and as a whole;

(2) Whether the funds the State is using or will use are adequate to comply with the indicator and descriptor requirements both individually and as a whole;

(3) Whether the processes the State employs to review and verify the required data and information are adequate to ensure that the data and information are accurate and of high quality; and

(4) Whether the processes the State employs are adequate to ensure that, where applicable, the required data and other information are not made publicly available in a manner that personally identifies students.

Executive Order 12866:

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. Pursuant to the Executive Order, it has been determined that this regulatory

[10] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in school and out of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.* Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)

action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through SFSF will exceed that amount. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of the Executive Order.

The costs of this regulatory action have been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these requirements, the Department has determined that the benefits of the requirements exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

These requirements, definitions, and approval criteria are needed to implement the State Fiscal Stabilization Fund program in a manner that the Secretary believes will best enable the program to achieve its objectives of supporting meaningful education reforms in the States while helping to stabilize State and local budgets and minimize reductions in education and other essential services. In particular, the requirements, definitions, and approval criteria included in this notice are necessary to advance the four key educational reforms listed in the ARRA, particularly by ensuring better reporting and more public availability of information on the progress of implementation in each of the four reform areas. The requirement for each State to establish a longitudinal data system that includes the elements specified in the America COMPETES Act will have an especially significant impact on the availability of data that can be used in developing and improving programs; targeting services; developing better linkages between preschool, elementary and secondary schools, and postsecondary systems, agencies, and institutions; and holding schools, LEAs, and institutions accountable for their performance. Establishment of such a system by each participating State is also required under the ARRA.

Further, the requirement for each State to provide student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs, reflects a need to ensure that teachers have better data on how well they are educating their students, and that school and LEA leaders have valuable information that they can use in developing and providing professional development opportunities, assigning teachers, and implementing compensation and other human capital policies.

The definitions included in this notice are necessary to give clearer meaning to some of the terms used in the descriptions of the requirements and approval criteria. The approval criteria themselves are needed in order to provide for a clear and objective set of standards that the Secretary will use in ensuring that each State, before receiving the remainder of its Stabilization program allocation, has in place a plan for collecting and publicly reporting the required data and meeting the other requirements in this notice.

Regulatory Alternatives Considered

A likely alternative to promulgation of the types of requirements, definitions, and approval criteria in this notice would be for the Secretary to release the remaining Stabilization program funds without establishing specific reporting or other requirements. Under such a scenario, participating States would still be required to meet the statutory requirements (that is, to take actions to improve teacher effectiveness and the equitable distribution of highly qualified teachers, establish statewide longitudinal data systems that include the elements specified in the America COMPETES Act, enhance the quality of their standards and assessments, ensure the inclusion of students with disabilities and limited English proficient students in their assessments, and take steps to improve consistently low-performing schools), but there would be no assurance of consistent and complete reporting of States' progress and no uniform mechanism for measuring and comparing States' performance. Additionally, the need for teachers to obtain better information on their students' educational progress would likely be unfulfilled.

Summary of Costs and Benefits

The Department has analyzed the costs of complying with these final requirements. Some of the costs will be minimal and others more significant. As an example of a requirement that will result in minimal burden and cost, States are currently required to report annually, through ED*Facts* (the Department's centralized data collection and warehousing system), for the State as a whole and for each LEA, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Indicator (a)(1) requires that they confirm the data they have reported, which should not be a time-consuming responsibility. As a second example, the requirement to confirm the approval status of the State's assessment system under section 1111(b)(3) of the ESEA, as determined by the Department, should also require minimal effort.

General Discussion of Comments

Other requirements will impose significant new costs. Many commenters asserted that the volume of the proposed data collection requirements would constitute an unreasonable, unrealistic task for States and LEAs, particularly in light of strained budgets and reductions in personnel. Two commenters acknowledged that some data requirements would be appropriate in light of such an investment as the SFSF; they contended, however, that the proposed requirements would go beyond what they considered appropriate. Commenters variously recommended generally reducing the data requirements, allowing sampling, increasing reporting time, and adding support for school and LEA capacity-building specifically to meet data collection and reporting requirements. One commenter argued that, while the commenter's State could complete the plan as required, the State could not actually carry out all data collection activities in the plan.

While we understand the fiscal challenges that face numerous States and LEAs, we strongly believe that the benefits to the public of these requirements outweigh the State and local implementation costs. Specifically, the major benefit of these requirements, taken in their totality, is better and more publicly available information on the status of activities related to the reform areas identified in the authorizing statute for the Stabilization program. As described in detail later in this section, research indicates or suggests that progress on each of the reforms will contribute to improved student outcomes. The provision of better information (on teacher qualifications, teacher and principal evaluation systems, State student longitudinal data systems, State standards and assessment systems, student success in high-school and postsecondary education, efforts to turn around persistently lowest-achieving schools, and charter school

reforms) to policymakers, educators, parents, and other stakeholders will assist in their efforts to further the reforms. In addition, State reporting of these data will help the Department determine the impact of the unprecedented level of funding made available by the ARRA. Further, the data and plans that States submit will inform Federal education policy, including the upcoming reauthorization of the ESEA.

While several commenters expressed concern regarding the lack of funds available to States to comply with the data requirements, emphasizing that States have recently had to make severe budget cuts, States will be able to draw on Federal resources in meeting some of the requirements. For example, the requirements that would result in the most significant costs are related to the implementation of a State data system that can track individual student transitions from high school to college. As one commenter noted, Federal funds that States receive from the Statewide Longitudinal Data Systems Grant program, through which the Department has made over $187 million available since fiscal year 2005, may be used to meet this requirement. The ARRA provided an additional $250 million for that program, and the Administration's budget request for fiscal year 2010 includes an additional $65 million. In addition, it is important to note that States may use funds available through the Stabilization program's Government Services Fund (over $8.8 billion) to develop and implement the systems necessary to report on these performance indicators.

Some commenters argued that the Stabilization Government Services Fund will not be sufficient to cover the expenses of complying with these requirements. Three commenters added that the Department should not add data requirements unknown at the time States obligated the Stabilization funds. A few commenters contended that, in accordance with congressional intent, States have used or will use SFSF funds to help avoid severe reductions in State services and layoffs of State-funded employees, including in the educational system. One of these commenters further explained that, even with Stabilization funds, the LEAs in the commenter's State must still implement severe budget cuts. Another explained that other Federal programs requiring States to collect data provide administrative funds for this purpose. Numerous commenters asserted that much time has already been spent collecting and reporting data related to SFSF Phase I. Two commenters expressed appreciation for the relief SFSF funds have provided to LEAs, but noted that States received no portion of the Education Fund resources. The Department appreciates the perspective captured in these comments but continues to believe that Stabilization funds should be used to save and create jobs as well as to advance education reform, and has clearly stated those objectives since the passage of the ARRA. As stated earlier, the Department is requiring States to report on the particular indicators and descriptors presented in this notice in the interest of advancing reform in a transparent manner.

The Department recognizes, however, that the proposed requirements would have required more effort than may be reasonable for States at this time. Therefore, the Department has made a key change from the proposed requirements to reduce the estimated cost of the final requirements. In the NPR, the Department proposed to require each State to provide teachers of reading/language arts and mathematics with data on the performance of their students that includes estimates of individual teacher impact on student achievement and, if the State does not do so, to describe a process and timeline for doing so by September 30, 2011. The final requirements provide, instead, for States to provide student growth data to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.[11] The Department expects that this requirement will be significantly less costly to implement.

One commenter warned that, without ongoing funds to maintain, for example, the longitudinal data system, the modifications to student assessments, or the Federal reporting requirements, these requirements will create a ''funding cliff'' in fiscal year 2011. The Department encourages States to consider ways that these funds may be invested so as to minimize the impact of the end of the period of availability of the Stabilization funds, and disagrees with another commenter who argued that these requirements constitute an unfunded mandate. States and LEAs may use a share of these or other resources to respond to these requirements, and the Department expects that Government Services funds as well as State administrative funds from other programs, including Title II, Part A, can be used as appropriate to meet these requirements. Two additional commenters urged the Department to allow States to report that they will use funds from Race to the Top to comply with the requirements established in this notice; the Department encourages States that apply for Race to the Top grants to consider how those funds may be used to meet these requirements while also meeting the criteria for Race to the Top.

The following is a detailed analysis of the estimated costs of implementing the specific final requirements, followed by a discussion of the anticipated benefits. The costs of implementing specific paperwork-related requirements are also shown in the tables in the Paperwork Reduction Act of 1995 section of this notice.

Distribution of Highly Qualified Teachers

Section 14005(d)(2) of the ARRA requires a State receiving funds under the Stabilization program to assure, in the Stabilization program application, that it will address inequities in the distribution of highly qualified teachers. In response to this requirement, the Department is requiring States to confirm, for the State and for each LEA in the State, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Because States will have previously submitted this information to the Department through the ED*Facts* system, we anticipate that the costs of complying with this requirement would be minimal. A State likely would need only to ensure that it had correctly aggregated and reported data received from its LEAs. The Department expects that each State would require one hour of staff time to complete this effort, at a cost of $30 per hour.[12] For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at a cost of $1,560. In addition, the final requirements provide for States to indicate whether the State's Teacher Equity Plan (a part of the State's Highly Qualified Teacher Plan) has been updated to fully reflect the steps the State is currently taking to ensure that

[11] The final requirements, however, still require States to indicate whether they provide reports of individual teacher impact on student achievement and, if they do not, to provide a plan for doing so.

[12] Some commenters argued that we should use a higher estimate than $30 per hour of State effort but did not provide specific alternate estimates. We believe that $30 is a reasonable estimate of the national average cost of staff time in State educational agencies; it is also the estimate the Department has used in other regulatory cost estimates. We recognize, however, that actual costs will vary across States.

students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. The Department expects that this will require an hour of effort, for a total estimated burden of 52 hours at a cost of $1,560.

Teacher and Principal Evaluation Systems

Section 14005(d)(2) also requires States to take actions to improve teacher effectiveness. To accomplish that goal, States must first have a means of assessing teacher success. A limited number of States have implemented statewide teacher and principal evaluation systems, while in the other States the responsibility for evaluating teachers and principals rests with the LEAs or schools. Little is known about the design of these systems across the Nation, but the collection and reporting of additional information would create a resource that additional States and LEAs can draw on in building their own systems. The Department, therefore, proposes to require States to collect and publicly report information about these evaluation systems.

Specifically, the Department is requiring that States describe, for each LEA in the State, the systems used to evaluate the performance of teachers and principals. Further, the Department proposes to require States to indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes or student growth data as an evaluation criterion.

The level of effort required to respond to these requirements would likely vary depending on the types of teacher and principal evaluation systems in place in a given State or LEA. The Department believes that, if a system is in place at the State level, the response burden would be low, because the State will have the required information readily available. According to the National Council on Teacher Quality, 12 States require LEAs to use a State-developed instrument to evaluate teachers or to develop an equivalent instrument that must be approved by the State.[13] For these 12 States, the Department estimates that a total of 72 hours (6 hours per State) would be required to respond to these requirements, for a total cost, at $30 per hour, of $2,160. The 2,632 LEAs located in these States would not be involved in the response to these requirements.

In the 40 States that do not have statewide teacher and principal evaluation systems in place, the level of effort required would likely be significantly higher. For each of these States, the Department estimates that 360 hours would be required at the State level to develop and administer a survey of LEAs (including designing the survey instrument, disseminating it, providing training or other technical assistance to LEAs on completing the survey, collecting the data and other information, checking accuracy, and public reporting), which would amount to a total of 14,400 hours and a total estimated State cost of $432,000 (assuming, again, a cost per hour of $30). While one commenter asserted that a survey will not suffice to collect these data annually, the Department expects that a survey is all that would be necessary for a State to collect this information. The 12,368 LEAs located in these States would bear the cost of collecting and reporting the data to their States.

For the purpose of the burden estimates in this section, the Department estimates that 75 percent of these LEAs (9,276) have centralized teacher and principal evaluation systems in place. For those LEAs, we estimate that 3 hours would be required to respond to these requirements. For the estimated 3,092 LEAs that do not have a centralized evaluation system in place, we estimate that 2 hours would be required because we expect that these systems are less complex than centralized systems. The Department, thus, estimates that LEAs would need to spend a total of 34,012 hours to respond to these proposed requirements at a total cost of $850,300. In the NPR, we invited commenters to provide information on the prevalence of these systems in LEAs (so that we could further refine our estimates) and on the potential costs of meeting the requirements for LEAs that have or do not have such a system, but we did not receive any comments on these issues. As a result, we are retaining the estimates that we included in the NPR for these metrics.

The Department is also requiring States to provide, for each LEA in the State whose teachers and principals receive performance ratings or levels through an evaluation system, the number and percentage of teachers and principals rated at each performance rating or level, as well as a description of how each LEA uses results from those systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal. Finally, the Department is requiring States to indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage of teachers rated at each performance rating or level are publicly reported for each school in the LEA. One commenter expressed the belief that LEAs will have to develop Web sites to post information on their evaluation systems. The Department expects that many LEAs that make this information publicly available will choose to do so on their pre-existing Web site; if any LEAs currently do not have Web sites, they may create a Web site or may publicly report this information in another easily accessible format.

We were unable to find nationally representative information on whether LEAs will have information on their teacher and principal evaluation systems readily available in a centralized database and, therefore, invited comment on this issue. Though at least one commenter asserted that the request was reasonable, many commenters argued that the cost and time to comply with these data requirements would far exceed the estimates in the NPR. One commenter directed us to a study by the New Teacher Project (NTP),[14] which analyzed the teacher evaluation systems of a sample of 12 LEAs. Of those 12 LEAs, only 4 tracked teacher evaluation results electronically. Although the NTP report examined only a small number of LEAs, which were not nationally representative, we base our cost estimates on this finding, as it is the only source of information available. Thus, we assume that 33 percent of LEAs will have information on the teacher and principal evaluation results in a central database.[15] Applying this percentage to the estimated 11,908 LEAs that have in place a centralized system to evaluate teacher and principal performance (which includes the 2,632 LEAs in States with statewide systems, as well as the estimated 9,276 LEAs in other States that have their own local systems), the Department estimates that 3,930 LEAs would need to spend 3 hours each to respond to these requirements for a total burden of

[13] *State Teacher Policy Yearbook: 2008,* page 68. *http://www.nctq.org/stpy08/reports/stpy_national.pdf.*

[14] *See http://widgeteffect.org/downloads/TheWidgetEffect.pdf.*

[15] It is important to note that this study includes in its sample only medium-size and large LEAs and, therefore, that the actual percentage of LEAs with teacher and principal evaluation results in a central database may be lower than 33 percent. We also believe, however, that small LEAs with fewer teachers and principals would require less effort than a medium-size or large LEA to comply with these requirements.

11,790 hours and $294,750. One commenter suggested that the Department include in this estimate the cost of LEAs participating in training from the State on how to respond to these requirements; this estimate of 3 hours includes 1 hour per LEA for such training. The Department downwardly revised the LEA-level estimate of burden for these LEAs from 5 hours per LEA in the NPR to 3 hours per LEA because we are now assuming that these LEAs not only have this information available in the central office but also that the information is available electronically, which would further simplify the process.

We estimate that each of the other 7,978 LEAs will require significantly more time to respond. One commenter suggested that we estimate LEA burden for the requirements regarding the number and percentage of teachers and principals rated at each performance rating or level by considering the number of teachers, assuming that all evaluation results would need to be entered and aggregated at the LEA level, which would require ten minutes per individual. This commenter also recommended that we use the estimate of 3.6 million public school teachers nationwide to determine the level of LEA effort required. We agree with this commenter's point that the estimate of LEA burden for these requirements should consider the number of teachers in the LEA; however, according to the Digest of Education Statistics, there are approximately 3.2 million teachers and 87,620 principals in public elementary and secondary schools.[16] [17] Based on this figure, we estimate that an average LEA employs 213 teachers and 6 principals. Applying this number of teachers and principals to the estimated 7,978 LEAs nationwide that do not have this information electronically in a central system, we estimate that these LEAs will need to enter data for 1,699,314 teachers and 47,868 principals into their existing personnel systems. Using the commenter's estimate that LEAs could enter information for 6 individuals per hour, we estimate that these LEAs would have a combined burden of 291,197 hours at a cost of $7,279,925.

We further estimate that all 15,000 LEAs would each require 1 hour to describe how they use results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

The Department, therefore, estimates the total LEA burden for these requirements to be 317,987 hours across the Nation at an estimated total cost of $7,949,675 (assuming a cost per hour of $25).

States would then need to collect these data, most likely by including these items in the survey instrument that they will develop to respond to the other requirements in this section, and will then need to aggregate and publicly report the data on their Web site. We estimate that these activities will require 8 hours of effort per State, for a total burden of 416 hours at a cost of $12,480. We further estimate that it will cost each State $10,000 to establish and maintain a Web site to which it will post all of the data required by this notice, including the requirements in this section. While one commenter expressed concern for States with large numbers of LEAs, the 8-hour estimate reflects average burden across all States, including those with high and low numbers of LEAs.

Many commenters reported that complying with the teacher and principal evaluation data requirements will significantly burden States and LEAs. One commenter emphasized that the commenter's State does not currently collect any of the information included in these requirements. Some commenters elaborated that collecting these data will require extensive communication and follow-up between States and LEAs. One commenter recommended that States be permitted to sample their LEAs, and another commenter suggested that, while the estimates may be fairly accurate, these data requirements will negatively affect a State's ability to complete the application within the required timeframe.

The Department agrees that States and LEAs will be required to make an effort to meet these requirements, and that the level of effort will vary across the States and their LEAs. We believe that the availability of these data will benefit parents and their children and that the benefits of collecting and reporting this information outweigh the costs. Further, we believe that parents with children in every LEA across the Nation deserve to have access to this information and, therefore, decline to allow States or LEAs to sample their teachers and principals in responding to these requirements.

Another commenter recommended that the Department identify the most effective teacher and principal evaluation systems and provide States with a tool for collecting the teacher and principal data. The Department may, in the future, assess teacher and principal evaluation systems, but does not believe State collection and reporting of data on their systems should await completion of such an effort.

Two commenters expressed particular concern for the effort required of small, rural LEAs, but we expect that collecting this information will be a simple process for small LEAs (which typically operate few schools and employ few teachers and principals), so we do not provide separate estimates for them here. Lastly, two commenters contended that the estimates do not account for the data systems that LEAs will have to develop to collect this information. We assume that LEAs will add a data element to an existing data system and, therefore, do not believe that it is appropriate to assume the need for development of data systems for the purpose of these estimates.

For more detailed estimates of costs for these requirements, please see the tables in the *Paperwork Reduction Act of 1995* section of this notice.

State Data Systems

Section 14005(d)(3) requires States to assure that they will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act. To track State progress in this reform area, the Department requires each State to indicate which of the 12 elements are included in the State's statewide longitudinal data system. The costs of reporting this information should be minimal. Moreover, most States are already reporting information on ten of the 12 elements to the Data Quality Campaign, a national effort to encourage State policymakers to use high-quality education data to improve student achievement. The Department expects that States will be able to readily provide information on whether the two remaining elements are included in their data systems and that it should take little time for the States that have not been reporting to the Data Quality Campaign to provide information on their data systems. We, therefore, estimate that States would need only 2 hours to respond to this requirement, for a total level of effort of 104 hours at an estimated cost of $3,120.

The Department is also requiring that States report whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and

[16] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_004.asp?referrer=list.* The most recent data available is from 2006.

[17] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_086.asp.* The most recent data available is for the 2003–04 school year.

mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs. The Department believes that making such information available would help improve the quality of instruction and the quality of teacher evaluation and compensation systems. Under the State Plan section, we discuss the costs of developing systems for the provision of student growth data in all States. We are also requiring States to indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. The costs of merely publicly reporting on whether a State currently provides this information to teachers should be minimal. We estimate that each State would spend one hour to publicly report this information, for a total level of effort of 52 hours at a cost of $1,560.

State Assessments

In response to the requirement in section 14005(d)(4)(A) of the ARRA that States enhance the quality of their student assessments, the Department requires that the States confirm certain existing data and other information and submit some new information about their assessment systems. Specifically, the Department requires each State to confirm the approval status, as determined by the Department, of the State's assessment system (with respect to reading/language arts, mathematics, and science assessments). In addition, States will confirm that their annual State Report Card (issued pursuant to the requirements of section 1111(h) of the ESEA) contains the most recent available State reading and mathematics NAEP results. The Department estimates that each State would require two hours to respond to these requirements, for a total cost of $3,120.

Section 14005(d)(4)(B) requires States to assure that they will administer valid and reliable assessments for children with disabilities and limited English proficient students. To measure State progress on this assurance, the Department requires States to: confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that have been approved by the Department; confirm whether the State's alternative assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments; and confirm whether the State provides native language versions of State assessments for limited English proficient students. To respond to these five indicators, the Department estimates that the 50 States, the District of Columbia, and Puerto Rico would each require five hours, for a total cost of $7,800.

In addition, the Department requires that States confirm the number and percentage of students with disabilities and limited English proficient students who are included in State reading/language arts and mathematics assessments. The Department expects that each State would, on average, require one hour of staff time to complete this effort, at a cost of $30 per hour. The burden estimated for this requirement is minimal because the States will have already submitted this information to the Department through the ED*Facts* system. For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at cost of $1,560.

High School and Postsecondary Success

Section 14005(d)(4)(C) of the ARRA requires States to assure, in their Stabilization Fund applications, that they take steps to improve their State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the COMPETES Act, which calls for States to identify and make any necessary changes to their secondary school graduation requirements, academic content standards, academic achievement standards, and the assessments students take preceding graduation from secondary school in order to align those requirements, standards, and assessments with the knowledge and skills necessary for success in academic credit-bearing coursework in postsecondary education, in the 21st century workforce, and in the Armed Forces without the need for remediation. Several of the indicators and descriptors in this notice are aligned with this provision of the America COMPETES Act.

First, the Department requires each State to publicly report, for the State and each LEA and high school in the State and, at each of these levels, by student subgroup,[18] the number and percentage of students who graduate from high school as determined using the four-year adjusted cohort graduation rate. The Department believes that State efforts to comply with the Department's October 29, 2008 regulation requiring the use of a four-year adjusted cohort graduation rate in the determination of adequate yearly progress under Title I of the ESEA are now underway (see 34 CFR 200.19(b)(1)(i)). Some additional effort would be required to collect and report these data for all schools as the current regulations apply only to Title I schools.

Based on the Data Quality Campaign's 2008 survey of the 50 States and the District of Columbia, which found that 42 States have the capacity to calculate the National Governors Association longitudinal graduation rate,[19] the Department believes that most States are well-situated to collect and publicly report these data, or have the processes underway to make such reporting possible by September 30, 2011. In fulfillment of the requirement, the Department estimates that States would need to distribute to non-Title I LEAs the survey instrument they are using to collect this information from Title I LEAs and to input the data from these surveys, which would require an estimated 8 hours per State. The new LEA burden to respond to this indicator would be limited to the approximately 976 LEAs that do not receive Title I funds.[20] The Department estimates that these LEAs would spend an average of 40 hours to respond to this indicator for a total LEA effort of 39,040 hours. The total estimated cost is, therefore, $976,000.

In addition, the Department is requiring States to publicly report, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup, the number and percentage of students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in an IHE within 16 months of receiving a regular high school diploma and, of those students who

[18] As noted earlier in this notice, the student subgroups include: economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, and students with disabilities.

[19] *http://www.dataqualitycampaign.org/survey.*

[20] According to data States submitted to the Department through the Consolidated State Performance Report 2007–08, there are a total of 15,016 LEAs across the Nation, 14,040 of which receive Title I, Part A funds.

enroll in a public IHE within the State, the number and percentage who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE. The requirements would entail considerable coordination among high schools, LEAs, SEAs, and IHEs. The Department expects that SEAs would have to develop a system to make this data collection and sharing possible, which they could at least partially achieve by establishing a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the COMPETES Act. As discussed earlier, section 14005(d)(3) of the ARRA requires States to assure, in their Stabilization Fund application, that they will establish such a data system.

One commenter expressed concern that, according to the 2008 Data Quality Campaign survey, only 28 States reported the ability to share data with postsecondary institutions. While that may be true, several of the data elements described in section 6401(e)(2)(D) of the COMPETES Act require data systems to include linkages to postsecondary institutions, and States assured that they would implement a data system with these elements in place when they applied for Phase I Stabilization funds. Several commenters contended that many LEAs currently lack the infrastructure and data collection systems necessary to comply with the requirements proposed in the NPR. One commenter explained that many of the requirements presume that States already have P–20 data systems in place. These commenters correctly state that we do not include the costs of establishing such a system in the costs of these requirements. This exclusion is warranted because the requirement to establish such a system flows from the ARRA, not from these requirements.[21] In addition, States will be able to use Government Services funds that they receive as part of their Stabilization allocation to support these efforts, and may compete for funds from the Department's Statewide Longitudinal Data Systems Grant program. Further, the efforts of the National Student Clearinghouse (NSC), a non-profit organization that provides student enrollment and degree verification services, demonstrate that there is significant interest in information sharing between IHEs and LEAs; more than 3,300 colleges (which enroll over 92 percent of college students) and hundreds of LEAs participate in the NSC's efforts. The Department expects that LEAs and IHEs that currently provide data to this system may require less effort to respond to this requirement.

Two commenters requested that States be allowed to use the NSC to reduce burden; however, one commenter reported that use of the NSC would increase the cost of meeting these requirements. One commenter noted that the NSC collects only enrollment data. It is important to note that the Department mentions the NSC as a potential resource, but that States and IHEs are not encouraged or required to use it to meet these requirements.

With respect to the requirement on publicly reporting postsecondary enrollment, the Department expects that LEAs will need to enter, into their State's statewide longitudinal data system, data on each high-school graduate's plans after high school, including the IHE where the student intends to enroll, if applicable. According to the *Digest of Education Statistics,* approximately 2,492,000 students who graduated from public high schools enrolled in IHEs as first-time freshmen in fall 2007.[22] Holding that number constant, the Department estimates that LEAs will be able to enter data for these students at a pace of 20 students per hour which will result in a total level of LEA effort of 124,600 hours at a cost of $3,115,000. One commenter correctly pointed out that the tables in the *Paperwork Reduction Act of 1995* section in the NPR did not include this $3,115,000 in LEA burden; the Department has added this item to the table in this notice.

The State will then likely need to request that each IHE in the State confirm a student's enrollment, using the statewide longitudinal data system to obtain data on students who intended to enroll within the State. Based on data from the 2006 Integrated Postsecondary Education Data System (IPEDS), Spring 2007,[23] the Department estimates that 2,018,520 first-time freshmen (81 percent of all first-time freshmen who graduated from public high schools) enroll in IHEs in their home State. The Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 100,926 hours of IHE effort at a total cost of $2,523,150 (assuming a cost of $25 per hour).[24]

States will also likely need to request that IHEs outside the State confirm the enrollment of students who indicated that they would enroll in those institutions. Again, based on data from the 2006 IPEDS, Spring 2007, the Department estimates that 473,480 students who graduate from public high schools each year enroll in IHEs in States outside their home State. The Department estimates that it will take States 30 minutes per student to complete this process, including contacting out-of-State IHEs, obtaining the necessary information from them, and including data on those students in their public reports. One commenter argued that the estimate provided in the NPR accounts only for the data to be entered, whereas the burden relates more to obtaining the information rather than entering the data. However, our estimates include the effort involved in obtaining the data as well as entering it into the system. This element of the requirement, therefore, will result in a national total of 236,740 hours of State effort at a total cost of $7,102,200. As with students who enroll in IHEs in their home State, the Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 23,674 hours of IHE effort at a total cost of $591,850.

Finally, to meet the requirement that they publicly report the number of students who enroll in IHEs, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, for each LEA, for each high school and, at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

The requirement that States publicly report the number of students enrolling

[21] We do acknowledge, however, that although the statute does not set a deadline for State establishment of the required data systems, paragraph (c)(2)(ii)(A) under the section of this notice entitled ''State Plans'' would require States to have in place statewide longitudinal data systems that fully include all 12 elements described in the COMPETES Act by September 30, 2011. Putting a full system in place by that date might increase costs to States or, alternatively, might reduce costs (if the more rapid establishment of a system results in efficiencies).

[22] According to the *Digest of Education Statistics,* 2008, almost 2.8 million first-time freshmen enrolled in IHEs in fall 2007. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_198.asp.* Also according to the *Digest,* in fall 2005, 6,073,240 students were enrolled in private elementary and secondary schools. At that time, enrollment in public elementary and secondary schools was 49,113,298. Extrapolating from those data, the Department estimates that 11 percent of all first-time postsecondary students graduated from private schools. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_058.asp.*

[23] *http://nces.ed.gov/programs/digest/d08/tables/dt08_223.asp.*

[24] Note that a table in the Paperwork Reduction Act of 1995 section of this notice provides the burden estimates by IHE, but that this narrative provides national estimates using the total number of students included in the data requirement.

in a public, in-State IHE who complete at least one year's worth of college credit applicable toward a degree within two years of enrollment at the IHE will also entail a collaborative process between SEAs and IHEs. Again, based on data from the *Digest of Education Statistics,* the Department estimates that 2,018,520 first-time freshmen enroll in IHEs in their home State. Based on additional data from the *Digest of Education Statistics,* we further estimate that 74 percent of students enrolled in degree-granting IHEs are enrolled in public IHEs.[25] We therefore estimate that 1,493,705 first-time freshmen enroll in public IHEs in their home State. Further, the Department estimates that, once a State has established a system for the collection and reporting of these data, IHEs will be able to enter data for 20 students an hour; thus, the total estimated level of effort to respond to this requirement will be approximately 74,685 hours of IHE effort at an estimated cost of $1,867,131, assuming a cost of $25 per hour.

Finally, as with the previous indicator, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, LEA, and school levels and at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

Many commenters opposed the proposed requirements to collect information on high-school student college enrollment and course completion, particularly for those students enrolling in and completing courses at out-of-State IHEs. The Department strongly believes that the indicators in this section provide the best gauge for the extent to which students graduate from high school in four years with a regular high school diploma and continue on to pursue a college education. This information should be a central factor in evaluating the effectiveness of high schools in preparing young people for successful futures. However, to reduce the overall burden of complying with these requirements, the Department has removed the requirement that course completion data for students enrolling out-of-State be collected and reported.

Several commenters asserted that the cost and time to comply with the college enrollment and course completion data requirements would far exceed the estimates in the notice, but they did not provide alternate estimates. Further, one commenter questioned whether or not, after requiring States to invest significant cost and time building the capacity to collect these data, the Department would require States to submit them beyond 2011; the Department is not requiring States to submit data beyond 2011 at this time. One commenter detailed the necessary one-time development and planning, and annual, activities that collection of these data would require and contended that were not accounted for in the Department's cost estimate. The Department considers these costs to be requirements of maintaining a high-quality longitudinal data system and, therefore, does not include the effort involved in these steps in the burden estimates for these requirements.

Supporting Struggling Schools

A key goal of the ARRA is to ensure that States and LEAs provide targeted, intensive support and effective interventions to turn around the persistently lowest-achieving schools in the State. Section 14005(d)(5) requires States to ensure compliance with the Title I requirements in this area. To track State progress, the Department is requiring States to provide, for each LEA in the State and aggregated at the State level, the number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments in reading/language arts and mathematics in the last year, and, for the State, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), and, of the Title I schools in improvement, corrective action, or restructuring, the number and identity of the persistently lowest-achieving schools as defined by the State. The State is also required to provide the definition that it uses to identify its ''persistently lowest-achieving schools.'' States are also required to publicly report the number and identity of their Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest-achieving and, of those schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

The Department believes that States will already have available the data needed to report on the indicators related to the total number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments, although they might need to run new analyses of the data. However, the Department expects that States will have to collect new data on the schools in improvement, corrective action, or restructuring (in general and in the persistently lowest-achieving schools) that have been turned around, restarted, closed, or transformed. (In addition, the State will need to define the term ''persistently lowest-achieving schools.'') We estimate that this data collection will entail two hours of effort in each of the 1,173 LEAs (the number of LEAs that, according to data reported to ED*Facts,* had at least one school in improvement, corrective action, or restructuring in the 2007–08 school year). As a result, the Department estimates that the total LEA burden for this requirement will be 2,346 hours at a cost of $58,650. States will then need to aggregate these data, in addition to the effort they will spend responding to the other indicators that relate to struggling schools. The Department estimates that each State will require 25 hours of effort to respond to these requirements, for a total cost of $39,000.

In addition, the Department is requiring States to provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools, and, of these schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year. The Department expects that some, but not all, States have the data required to determine the identity of secondary schools that are eligible for, but do not receive, Title I funds, but that they may have to run new analyses of the data to determine which of these schools have been turned around, restarted, closed, or transformed in the last year. Other States may have to include an item in the LEA survey that they will be distributing to respond to several of these requirements. The Department estimates that each State will require an average of 16 hours of effort to respond to these two requirements, for a total cost of $24,960. We further estimate that the 1,173 affected LEAs will need a total of 4 hours to respond to these two survey items.

Two commenters asserted that the cost and time to comply with the supporting struggling schools data requirements would exceed the estimates in the NPR. The Department declines to adjust these burden estimates as these commenters did not provide specific recommended revisions.

[25] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_192.asp.*

Charter Schools

The Department believes that the creation and maintenance of high-quality charter schools is a key strategy for promoting successful models of school reform. To determine the level of State effort in this area, the Department proposes to require States to provide, at the State level and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law and the number that are currently operating. We expect that this information will be readily available and that States will need only a total of one hour to respond to these two requirements.

In addition, the Department will require States to provide, for the State and for each LEA in the State that operates charter schools, the number and percentage (including numerator and denominator) of charter schools that have made progress on State assessments in reading/language arts and mathematics in the last year. Finally, the Department is requiring States to provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years and to indicate, for each such school, whether the closure was for financial, enrollment, academic, or other reasons. The Department believes that SEAs will likely also have this information readily available (although some may need to obtain additional information from their LEAs) and will need eight hours to publicly report it. The Department assumes that the effort to respond to these requirements will be limited to the 42 States (including the District of Columbia and Puerto Rico) that allow charter schools. The Department thus estimates that the State effort required to respond to these indicators will total 336 hours at a cost of $10,080.

State Plans

These requirements require States, as a condition of receiving their remaining funding for the Stabilization program, to submit a plan to the Department that describes the State's current ability to fully collect and publicly report data for the indicators and descriptors at least annually. If the State is currently able to fully collect and publicly report the data or other information required by the indicator or descriptor, the State must provide the most recent data or information with its plan. If a State is not currently able to fully collect and publicly report the required data or other information, the plan must describe the process that the State will undertake in order to have the means to fully collect and publicly report such data or information as soon as possible but no later than September 30, 2011.

As a part of this plan, the State will need to establish milestones and a date by which the State expects to reach each milestone, describe the nature and frequency of publicly available reports that the State will publish on its progress, and identify the amount and source (*i.e.,* whether Federal, State or local) of funds that will support the efforts necessary to collect and publicly report the data or information. The level of effort involved in preparing these elements of the plan will vary from State to State based on individual State progress in each reform area. For example, according to the Data Quality Campaign's 2008 survey of the 50 States and the District of Columbia, 48 States have ''a unique statewide student identifier that connects student data across key databases across years,'' 28 States have the ''[a]bility to match student-level pre-K–12 and higher education data,'' and 21 States have a ''statewide teacher identifier with a teacher-student match.'' States that have taken these steps have built a foundation for the efforts that will be necessary to meet some of the requirements and will likely need to spend less time completing these elements of their plans. The Department estimates that, in total, each of the 15 States that currently provides student growth information to teachers will need an average of 439 hours to prepare these sections of the plan, and that the other 37 States will require 547 hours; thus, the total hours that will be necessary to meet this requirement for the 50 States, the District of Columbia, and Puerto Rico would be 26,824 hours, for a total cost of $804,720. For more detailed estimates of costs for each specific requirement, please see the tables in the *Paperwork Reduction Act of 1995* section of this notice.

The final requirements provide for States to include in their plan under this program the State's Teacher Equity Plan if it was updated to fully reflect the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. If the State has not updated the State's Teacher Equity Plan to fully reflect the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers, the State must do so as soon as possible but no later than September 30, 2011. Accordingly, the State must provide the date by which it will make its updated Teacher Equity Plan available to the public. The Department assumes that all States will need to revise their plan to reflect efforts they have made in this area as a result of the funds available to them through this program and estimates that the revisions will take 80 hours per State. The total State effort involved in meeting this requirement is, therefore, 4,160 hours at a total cost of $124,800 (assuming $30 per hour of State effort).

In addition, as part of the planning requirements, the Department is requiring each State to indicate whether it provides student growth data to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs and, if the State does not currently do so, to describe a process and timeline for doing so by September 30, 2011. The Department understands that at least 15 States currently provide this type of information to their teachers; the 15 States have been approved to use ''growth models'' to inform determinations of adequate yearly progress under the ESEA. However, additional States are implementing growth models for State-level accountability purposes, and most other States that are developing State longitudinal data systems have included teacher identifiers in those systems and, thus, have part of the infrastructure to produce and report these data.

The Department contacted several experts in an effort to accurately estimate the State cost of calculating student growth data. According to these experts, the State cost is not a function of the student enrollment in a State; the two drivers of cost are an alignment analysis of the proficiency levels of the State assessments and the new programming required in the State assessment results database to enable the State to generate growth estimates for individual students. These experts estimated that the cost per State would range from $100,000 to $500,000. Using these figures, the Department estimates that the total cost across the 37 States that the Department has not approved to implement growth models would range from $3,700,000 to $18,500,000.

In the NPR, the Department estimated that the State cost of estimating individual teacher impact on student achievement, including the cost of

analyzing the data, verifying with teachers that the correct teacher-subject-student connection is made in the system, and publishing the information online in a user-friendly format would be 2 dollars per student. Two commenters suggested that the cost of providing reading/language arts and mathematics teachers with student performance data is closer to $4 per student rather than the $2 per student estimated in the NPR, but these commenters included the cost of the data system in the $4 per student figure. As noted earlier, these estimates do not include the cost of the data system as that requirement flows from the ARRA, not these requirements. As a result, the Department considers that the estimate of $2 per affected student is a fair estimate of the cost of implementing the proposed requirement.

In addition, the Department estimated that 30 percent of all K–12 public school teachers are teaching reading/language arts or mathematics in the grades in which the State administers assessments and used this assumption to estimate that the State assessment results for approximately 14,790,000 students (30 percent of all students enrolled in public elementary and secondary schools) would be included in the calculations necessary for States to meet this requirement.[26] Based on data on public elementary and secondary student enrollment by grade, however, the Department now estimates that approximately 25,836,000 students are in tested grades.[27] Applying the revised number of students in tested grades to this estimate, the total State cost of this requirement would have been $51,672,000.

In the interest of reducing the overall costs of these requirements, the Department has decided to require States to provide (in a manner that is timely and informs instructional programs) student growth data, rather than estimates of individual teacher impact on student achievement to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects. The Department estimates that this change from the proposed to the final requirement in this section reduces the State burden by at least $34,000,000 and up to almost $49,000,000 (from $52,672,000 if we had required States to provide teachers with estimates of their impact, to between $3,700,000 and $18,500,000 now that we have changed the requirement to have States provide teachers with student growth data).

The Department is, however, requiring States to indicate whether they provide teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments, and, if the State does not provide those teachers with such reports, describe the State's process and timeline for developing and implementing the means to provide those teachers with such reports, including the milestones that the State establishes toward developing and implementing those means, the date by which the State expects to reach each milestone, and any obstacles that may prevent the State from developing and implementing those means. In addition, we are requiring States to describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means and the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds. We estimate that these sections of the State plan will require an average of 129 hours for States to complete at a cost per State of $3,870. These amounts are included in the total estimated State burden of completing the plan.

The Department understands that an important element of State efforts to inform teachers of the estimated impact of their teaching on student achievement is providing professional development for principals and teachers on the interpretation and use of those data in raising student achievement. However, since the planning requirements would not require States to provide this professional development, we have not included its cost in the estimated costs of these requirements.

In addition, the Department is requiring States to describe in their plans the following: The entities responsible for the development, execution, and oversight of the plan; the agencies or organizations that will provide any technical assistance or other support that is necessary; the overall budget for the development, execution, and oversight of the plan; the processes that the State employs to review and verify the required data and other information; and the processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable. The Department estimates that this management and oversight section of the plan will require 80 hours per State, for a total national estimate of 4,160 hours at a cost of $124,800. The total estimated cost to States of preparing the plans is, thus, $742,560.

Total Estimated Costs

The Department estimates that the total burden of responding to these requirements will be 294,076 hours and between $13,042,280 and $27,842,280 for SEAs, 522,677 hours and $13,066,925 for LEAs, and 199,285 hours and $4,982,131 for IHEs, for a total burden of 1,016,038 hours at a cost of between $31,091,336 and $45,891,336. Several commenters argued that the cost and time to comply with the data requirements would far exceed the estimates in the notice. Another commenter asserted that the Department underestimated the burden for the writing of a State plan, and another that the Department underestimated the burden for preparing the application. As noted elsewhere in this section of the notice, we revised our estimates of the burden involved in responding to Indicators (a)(4) and (a)(7). As these particular commenters did not provide alternate estimates of the effort involved with drafting a State plan or completing the application, we decline to revise our estimates of those requirements. Many commenters expressed concern that the estimates did not account for the development of or enhancements to current State and LEA data systems and software necessary to collect and report the data. We believe, however, that our estimates include the effort involved with collecting and reporting the data, and have added the estimate that States would need to spend an average of $10,000 to develop and maintain a Web site on which to post this information.

Benefits

The principal benefits of the requirements are those resulting from the reporting and public availability of information on each State's progress in the four reform areas described in the ARRA. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance, help States, LEAs, and schools learn from one another and

[26] According to the *Digest of Education Statistics,* 49,298,945 students were enrolled in public elementary and secondary schools in fall 2006. *See http://nces.ed.gov/programs/digest/d08/tables/dt08_033.asp.*

[27] *See http://nces.ed.gov/programs/digest/d08/tables/dt08_034.asp.* To determine the number of students in tested grades, we used the total number of public school students enrolled in grades 3 through 8, as well as grade 10, in fall of 2006.

make improvements in what they are doing, and inform the ESEA reauthorization process.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one or more areas may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes.

For example, statewide longitudinal data systems are essential tools in advancing education reform. With these systems in place, States can use this data to evaluate the effectiveness of specific interventions, schools, principals, and teachers by tracking individual student achievement, high-school graduation, and postsecondary enrollment and credit. They can, for example, track the academic achievement of individual students over time, even if those students change schools within the State during the course of their education. By analyzing this information, decision-makers can determine if a student's ''achievement trajectory'' will result in his or her being college- or career-ready and can better target services based on the student's academic needs.[28]

The Department also believes that States' implementation of these requirements will lead to more widespread development and implementation of better teacher and principal evaluation systems. In particular, the availability of accurate, complete, and valid achievement data is essential to implementing better systems of teacher and principal evaluation. Value-added models, for example, can provide an objective estimate of the impact of teachers on student learning and achievement.[29] Further, they can be used by schools, LEAs, or States to reward excellence in teaching or school leadership, as a component of performance-based compensation systems, or to identify schools in need of improvement or teachers who may require additional training or professional development.[30]

A few commenters questioned the utility of the data to be collected. Specifically, one commenter noted that lack of context on teacher/principal evaluation systems will render that data minimally meaningful to the end user. Another commenter cautioned that inconsistencies between States limit the comparability of the data and effectively reduce the value of data collection efforts. A third commenter argued more generally that, while data-driven decision making constitutes a priority for the commenter's State, much of the data required would not contribute to improved educational outcomes for students and, in fact, would divert attention from developing the infrastructure and relationships necessary to improve education. The Department continues to believe, however, that the requirements will have additional benefits to the extent that they provide States with incentives to address inequities in the distribution of effective teachers, improve the quality of State assessments, and undergo intensive efforts to improve struggling schools. Numerous studies document the substantial impact of improved teaching on educational outcomes and the need to take action to turn around the lowest-performing schools, including high schools (and their feeder middle schools) that enroll a disproportionate number of the students who fail to complete a high-school education and receive a regular high-school diploma. The Department believes that more widespread adoption of these reforms would have a significant, positive impact on student achievement.

Although these benefits are not easily quantified, the Department believes they will exceed the projected costs.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this regulatory action. Expenditures are classified as transfers to States.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annual Monetized Transfers.	$11,500,425,885.
From Whom to Whom	Federal Government to States.

The Stabilization program provides approximately $48.6 billion in formula grants to States.[31] As previously noted, the Department is awarding Stabilization program funds in two phases. In the first phase, the Department awarded 67 percent of a State's Education Stabilization Fund allocation, unless the State demonstrated that additional funds were required to restore fiscal year 2009 State support for education, in which case the Department awarded the State up to 90 percent of that allocation. In addition, the Department awarded 100 percent of each State's Government Services Fund allocation in Phase I. The Department will award the remainder of a State's Education Stabilization Fund allocation in the second phase. Approximately $11.5 billion will be available in Phase II.

Paperwork Reduction Act of 1995

This notice contains information collection requirements 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 Department has received emergency approval for the information collections described below under Information Collection Reference Number 200910–1810–003.

A description of the specific information collection requirements is provided in the following tables along with estimates of the annual recordkeeping burden for these requirements. Included in an estimate is the time for collecting and tracking data, maintaining records, calculations, and reporting. The first table presents the estimated indicators burden for SEAs, the second table presents the estimated indicators burden for LEAs, the third table presents the estimated indicators burden for IHEs, and the fourth table presents the estimated State plan burden for SEAs.

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[28] For example, *see http://dataqualitycampaign.org/files/publications-dqc_academic_growth-100908.pdf* and *http://www.dataqualitycampaign.org/files/Meetings-DQC_Quarterly_Issue_Brief_092506.pdf.*

[29] *See:* Braun, Henry I. *Using Student Progress To Evaluate Teachers: A Primer on Value-Added Models.* Educational Testing Service, Policy Information Center, 2005; Marsh, Julie A.; Pane, John F.; Hamilton, Laura S. *Making Sense of Data-Driven Decision Making in Education: Evidence from Recent RAND Research.* Santa Monica, CA: RAND Corporation, 2006; and Sanders, William L. ''Value-Added Assessment from Student Achievement Data: Opportunities and Hurdles.'' Journal of Personnel Evaluation in Education, Vol. 14, No. 4, p. 329–339, 2000.

[30] Center for Educator Compensation Reform: *http://cecr.ed.gov/.*

[31] A table listing the allocations to States under the Stabilization program is available at: *http://www.ed.gov/programs/statestabilization/funding.html.*

State Fiscal Stabilization Fund Indicators and Descriptors

I. Assurance Indicators and Descriptors Burden Hours/Cost for SEAS

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (a)(1)	Confirm, for the State, the number and percentage (including numerator and denominator) of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified consistent with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).	52	1	52	$1,560
Indicator (a)(2)	Confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA).	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(1)	Describe, for each local educational agency (LEA) in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal.	52	132.2	6,874	$206,220
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	52	7	362	$10,860
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	52	4	208	$6,240
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	52	2	104	$3,120

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(2)	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	52	132.2	6874	$206,220
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	52	7	362	$10,860
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	52	2	104	$3,120
Indicator (b)(1)	Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are included in the State's statewide longitudinal data system.	52	2	104	$3,120

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (b)(2)	Indicate whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.	52	.5	26	$780
Indicator (b)(3)	Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.	52	.5	26	$780
Indicator (c)(1)	Confirm the approval status, as determined by the Department, of the State's assessment system under section 1111(b)(3) of the ESEA with respect to reading/language arts, mathematics, and science assessments.	52	1	52	$1,560
Indicator (c)(2)	Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by the Department.	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(3)	Confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards.	52	1	52	$1,560
Indicator (c)(4)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments.	52	1	52	$1,560
Indicator (c)(5)	Confirm the number and percentage (including numerator and denominator) of students with disabilities who are included in State reading/language arts and mathematics assessments.	52	.5	26	$780
Indicator (c)(6)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments.	52	1	52	$1,560
Indicator (c)(7)	Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by the Department.	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(8)	Confirm the number and percentage (including numerator and denominator) of limited English proficient students who are included in State reading/language arts and mathematics assessments.	52	.5	26	$780
Indicator (c)(9)	Confirm that the State's annual State Report Card (under section 1111(h)(1) of the ESEA) contains the most recent available State reading and mathematics National Assessment of Educational Progress (NAEP) results as required by 34 CFR 200.11(c).	52	1	52	$1,560
Indicator (c)(10)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an institution of Higher education (IHE) (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) within 16 months of receiving a regular high school diploma.	52	4,593	238,820	$7,164,600

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	52	40	2,080	$62,400

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(1)	Provide, for the State, the average statewide school gain in the "all students" category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year.	52	8	416	$12,480
Indicator (d)(2)	Provide, for the State, the average statewide school gain in the "all students" category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year.	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (d)(1)	Provide the definition of "persistently lowest-achieving schools" (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools.	52	1	52	$1,560
Indicator (d)(3)	Provide, for the State, the number and identity of the schools that are Title I schools in improvement, corrective action, or restructuring, that are identified as persistently lowest-achieving schools.	52	4	208	$6,240
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year.	52	4	208	$6,240
Indicator (d)(5)	Provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year.	52	8	416	$12,480
Indicator (d)(7)	Provide, for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law.	52	.5	26	780
Indicator (d)(8)	Confirm, for the State and for each LEA in the State that operates charter schools, the number of charter schools currently operating.	52	.5	26	780
Indicator (d)(9)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.	42	2	84	$2,520
Indicator (d)(10)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.	42	2	84	$2,520

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(11)	Provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years.	42	2	84	$2,520
Indicator (d)(12)	Indicate, for each charter school that has closed (including a school that was not reauthorized to operate) within each of the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.	42	2	84	$2,520

*Figures in this column may reflect rounding.

II. Assurance Indicators and Descriptors Burden Hours/Cost for LEAs

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(1)	Describe, for each LEA in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion retention, and removal.	15,000	2	23,656	$591,400
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	12,368	.1	850	$21,250
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	11,908	23.7	282,180	$7,054,500
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	11,908	.5	5,955	$148,875

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Descriptor (a)(2)	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	15,000	2	23,656	$591,400
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	12,368	.1	850	$21,250
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	11,908	1.25	14,852	$371,300
Indicator (c)(10)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	976	40	39,040	$976,000

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	15,000	8.3	124,600	$3,115,000
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	1,173	2	2,346	$58,650
Indicator (d)(5)	Provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	1,173	2	2,346	$58,650

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $30.00)
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	1,173	2	2,346	$58,650

*Figures in this column may reflect rounding.

III. Assurance Indicators and Descriptors Burden Hours/Cost for IHEs

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $25.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage(including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	4,352	28.63	124,600	$3,115,000

Citation	Description	Number of respondents	Average hours per response *	Total hours	Total cost (total hours x $25.00)
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	1,685	44.32	74,685	$1,867,125

IV. State Plan Burden for SEAs

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(1)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, the State's current ability to fully collect the required data or other information at least annually	52	20	1,040	$31,200
II(a)(2)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, the State's ability to fully publicly report the required data or other information, at least annually through September 30, 2011	52	10	520	$15,600
II(a)(3)(i)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect, at least annually, the data or other information required by the indicator or descriptor, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully collect the data or information, as required	52	40	2,080	$62,400

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(3)(ii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect the data or information required by the indicator or descriptor, the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means	52	8	416	$12,480
II(a)(3)(iii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not currently able to fully collect the data or information required by the indicator or descriptor, the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(4)(i)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to fully publicly report the data or information, as required	52	20	1,040	$31,200
II(a)(4)(ii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, by September 30, 2009 and at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means	52	8	416	$12,480

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(a)(4)(iii)	[Except as discussed in II(c)] Describe, for each assurance indicator or descriptor, if the State is not able to fully publicly report, by September 30, 2009 and at least annually through September 30, 2011, the data or other information required by the indicator or descriptor, the amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200
II(b)	If the State is currently able to fully collect and publicly report the data or information required by the indicator, the State must provide the most recent data or information with its plan and publicly report that plan	52	20	1,040	$31,200
II(c)(1)(i)	[With respect to Indicator (b)(1)] Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are currently included in the State's statewide longitudinal data system	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(1)(ii)(A)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe, as required, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, a statewide longitudinal data system that includes all 12 elements	52	80	4,160	$124,800
II(c)(1)(ii)(B)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing such a system	52	2	104	$3,120
II(c)(1)(ii)(c)	[With respect to Indicator (b)(1)] If the State's statewide longitudinal data system does not currently include all 12 elements, describe the amount of funds the State is using or will use to develop and implement such a system, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200
II(c)(2)(i)	[With respect to Indicator (b)(2)] Indicate whether the State provides teachers with student growth data consistent with the indicator	52	1	52	$1,560

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(2)(ii)(A)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe, as required, the State's process and timeline for developing and implementing, as soon as possible but no later than September 30, 2011, the means to provide teachers with such data	37	80	2,960	$88,800
II(c)(2)(ii)(B)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing the means to provide the data	37	8	296	$8,880
II(c)(2)(ii)(C)	[With respect to Indicator (b)(2)] If the State does not provide teachers with such data, describe the amount of funds the State is using or will use to develop and implement the means to provide the data, and whether the funds are or will be Federal, State, or local funds	37	20	740	$22,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(c)(3)(i)	[With respect to Indicator (b)(3)] Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments	52	1	52	$1,560
II(c)(3)(ii)(A)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe, as required, the State's process and timeline for developing and implementing the means to provide teachers with such data	52	100	5,200	$156,000
II(c)(3)(ii)(B)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe the nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing the means to provide the data	52	8	416	$12,400
II(c)(3)(ii)(C)	[With respect to Indicator (b)(3)] If the State does not provide teachers with such data, describe the amount of funds the State is using or will use to develop and implement the means to provide the data, and whether the funds are or will be Federal, State, or local funds	52	20	1,040	$31,200

Citation	Description	Number of respondents	Average hours per response	Total hours	Total cost (total cost x $30.00)
II(e)(1)	Describe the agency or agencies in the State responsible for the development, execution, and oversight of the plan, including the institutional infrastructure and capacity of the agency or agencies as they relate to each of those tasks	52	10	520	$15,600
II(e)(2)	Describe the agency or agencies, institutions, or organizations, if any, providing technical assistance or other support in the development, execution, and oversight of the plan, and the nature of such technical assistance or other support	52	10	520	$15,600
II(e)(3)	Describe the overall budget for the development, execution, and oversight of the plan	52	40	2,080	$62,400
II(e)(4)	Describe the processes the State employs to review and verify the required data and information	52	10	520	$15,600
II(e)(5)	Describe the processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable	52	10	520	$15,600

BILLING CODE 4000–01–C

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program and small IHEs.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet

the costs of compliance with this regulatory action using the funds provided under this program.

With respect to small IHEs, the U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Based on data from the Department's Integrated Postsecondary Education Data System (IPEDS), up to 532 small IHEs with revenues of less than $5 million may be affected by this requirement; only 100 of these IHEs are public. These small IHEs represent only 15 percent of degree-granting IHEs. In addition, only 161,155 students (0.7 percent) enrolled in degree-granting IHEs in fall 2007 attended these small institutions; just 60,391 of these students are enrolled in small, degree-granting public IHEs. As the burden for indicators (c)(11) and (c)(12) is driven by the number of students for whom IHEs would be required to submit data, small IHEs will require significantly less effort to adhere to these requirements than will be the case for larger IHEs. Based on IPEDS data, the Department estimates that 24,517 of these students are first-time freshmen. As stated earlier in the Summary of Costs and Benefits section of this notice, the Department estimates that, as required by indicator (c)(11), IHEs will be able to confirm the enrollment of 20 first-time freshmen per hour. Applying this estimate to the estimated number of first-time freshmen at small IHEs, the Department estimates that these IHEs will need to spend 1,226 hours to respond to this requirement at a total cost of $30,650 (assuming a cost of $25 per hour).

The effort involved in reporting the number of students enrolling in a public IHE in their home State who complete at least one year's worth of college credit applicable toward a degree within two years as required by indicator (c)(12) will also apply to small IHEs, but will be limited to students who enroll in public IHEs in their home State. As discussed earlier in the Summary of Costs and Benefits section of this notice, the Department estimates that 81 percent of first-time freshmen who graduate from public high schools enroll in IHEs in their home State. Applying this percentage to the estimated number of first-time freshmen enrolled in small public IHEs (9,187), the Department estimates that small IHEs will be required to report credit completion data for a total of 7,442 students. For this requirement, the Department also estimates that IHEs will be able to report the credit completion status of 20 first-time freshmen per hour. Again, applying this data entry rate to the estimated number of first-time freshmen at small public IHEs in their home State, the Department estimates that these IHEs will need to spend 372 hours to respond to this requirement at a total cost of $9,300. The total cost of these requirements for small IHEs is, therefore, $39,950; $19,310 of this cost will be borne by small private IHEs, and $20,640 of the cost will be borne by small public IHEs. Based on the total number of small IHEs across the Nation, the estimated cost per small private IHE is $45, and the estimated cost per small public IHE is $206. The Department has, therefore, determined that the requirements will not represent a significant burden on small not-for-profit IHEs. It is also important to note that States may use their Government Services Fund allocations to help small IHEs meet the costs of complying with the requirements that affect them, and public IHEs may use Education Stabilization Fund dollars they receive for that purpose.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these institutions of complying with the requirements. One of these benefits will be the provision of better information on student success in postsecondary education to policymakers, educators, parents, and other stakeholders. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance; help States, LEAs, and schools learn from one another and improve their decision-making; and inform Federal policymaking.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one area or another may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. The requirements that apply to IHEs should, in particular, spur more rapid implementation of pre-K–16 State longitudinal data systems.

Assessment of Educational Impact

In the NPR and in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comment on whether these requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPR and on our review, we have determined that these final requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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Dated: November 6, 2009.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–27161 Filed 11–9–09; 11:15 am]

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Federal Register

Thursday,
November 12, 2009

Part IV

The President

Proclamation 8451—Honoring the Victims of the Tragedy at Fort Hood, Texas

Proclamation 8452—World Freedom Day, 2009

Federal Register
Vol. 74, No. 217
Thursday, November 12, 2009

Presidential Documents

Title 3—

The President

Proclamation 8451 of November 6, 2009

Honoring the Victims of the Tragedy at Fort Hood, Texas

By the President of the United States of America

A Proclamation

Our Nation's thoughts and prayers are with the service members, civilians, and families affected by the tragic events at Fort Hood, Texas. The brave victims, who risked their lives to protect their fellow countrymen, serve as a constant source of strength and inspiration to all Americans. We ask God to watch over the fallen, the wounded, and all those who are suffering at this difficult hour.

As a mark of respect honoring the victims of the tragedy at Fort Hood, Texas, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, Tuesday, November 10, 2009. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–27364
Filed 11–10–09; 11:15 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8452 of November 9, 2009

World Freedom Day, 2009

By the President of the United States of America

A Proclamation

Twenty years ago today, the Wall came down in Berlin and both a country and a continent came together. After thousands of East Berliners flooded through checkpoints into West Berlin, border restrictions dissolved across Eastern Bloc countries. The Iron Curtain that divided Europe for decades finally fell, ushering in a new era of freedom and cooperation. On this anniversary, we are reminded that no challenge is too great for a world united in common purpose.

After the Berlin Wall fell, oppressive regimes across the globe gave way. From Kiev to Cape Town, prison camps closed and democracy's doors were unlocked for millions who had known only tyranny. Markets opened too, spreading information and technology that empowered once-insolvent nations to achieve prosperity. Twenty years later, our world is more interconnected than at any time in human history, giving rise to new opportunities for shared progress.

Today, the barriers that challenge our world are not walls of cement and iron, but ones of fear, irresponsibility, and indifference. History reminds us that such walls can be torn down, but where they still exist we must work with all nations to strengthen civil societies, support democratic institutions and the rule of law, and promote free and fair electoral processes. Upholding these principles into the 21st century will require America's enduring commitment and steady leadership.

From our first days as a Nation, Americans have felt a sense of urgency and determination to promote liberty and release the potential within each individual to contribute to the common good. On World Freedom Day, we celebrate the thriving democracies of Central and Eastern Europe, and we honor their citizens' right to choose their own destinies and contribute to their nations' future success.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 9, 2009, as World Freedom Day. I call upon the people of the United States to observe this day in fellowship with other nations and people of the world with appropriate ceremonies and activities, reaffirming our dedication to freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–27366
Filed 11–10–09; 11:15 am]
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Proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously. (Nov. 6, 2009; 123 Stat. 2999)

S. 832/P.L. 111–95

To amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes. (Nov. 6, 2009; 123 Stat. 3001)

S. 1694/P.L. 111–96

To allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes. (Nov. 6, 2009; 123 Stat. 3005)

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